

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

**EXHIBIT D**

**SUBJECT:** Regulation No. 12; Storage Tanks

**DESCRIPTION:** The proposed revisions are designed to make Regulation No. 12 comply with state and federal legislation affecting the state's RST program, specifically Act 264 of 2007, Act 282 of 2009, and the Federal Energy Policy Act of 2005.

The proposed revisions are:

- Changes to Chapters 1 and 3 to repeal the current requirement for an annual storage tank self-inspection audit to conform to statutory language in Act 282 of 2009.
- Changes to Chapter 3 to clarify the language for eligibility of certain regulated storage tanks for reimbursement from the Arkansas Petroleum Storage Tank Trust Fund (Trust Fund) for remedial actions resulting from tank releases affecting the environment.
- Changes to Chapter 3 to establish a timeframe for requesting review by the Arkansas Petroleum Storage Tank Advisory Committee involving ADEQ determinations on Trust Fund reimbursement eligibility or costs.
- Changes to Chapter 3 to establish a timeframe for submittal of final costs for trust fund reimbursement after completion of corrective actions involving a release from an eligible storage tank.
- Changes to Chapter 7 to define and implement operator training requirements of Act 264 of 2007 and the Federal Energy Policy Act of 2005.

**PUBLIC COMMENT:** A public hearing was held on August 31, 2009. The public comment period expired on September 15, 2009. Public comments were as follows:

**Ms. Ann Hines, Arkansas Oil Marketers Association**

**Comment 1** – 12.302(E) It is not prudent to have a request for review filed with the Advisory Committee Chairman since the Chairman is only present at the agency during Advisory Committee meetings. Instead, the Regulated Storage Tank Division Chief should receive such requests for review.

**Response 1** – ADEQ agrees with this comment and a change to that effect will be made to 12.302(E).

**Comment 2** – 12.302(E) Add the following to this section: “Any person requesting Advisory Committee review of a Department determination shall have their request for review placed on the agenda for the next Advisory Committee meeting which follows receipt of the request.”

**Response 2** – The suggested change would conceivably require ADEQ to place a request for review on a meeting agenda even if the request was just received the morning of the meeting. Advisory Committee meeting agendas are set one week prior to each meeting to allow staff adequate time to prepare and mail the committee members’ meeting

packages. ADEQ's Legal Division must also research and evaluate any request for review prior to its being placed on an agenda. The suggested language would, again, not allow for this. The regulation will not be changed as a result of this comment.

**Comment 3** – We suggest the following verbiage be placed in Regulation No. 12: “Trust fund coverage for a release can be transferred from an owner or operator to another owner or operator if the transferor executes documents satisfactory to the Department requiring the Transferor to accept responsibility for addressing the occurrence.”

**Response 3** – This comment concerns an area of the regulation not addressed by the proposed rulemaking. The basis for the comment as outlined by the commenter is to enhance the “marketability” of storage tank facilities. ADEQ's statutory and regulatory authority with regard to the trust fund is to administer it for the two-fold purpose established in 1989 by the Arkansas General Assembly: 1) to provide a financial assurance mechanism for underground storage tank owners to utilize in order to comply with their federal financial assurance requirements; 2) to provide reimbursement to eligible tank owners for the costs of cleaning up environmental contamination and paying third-party claims resulting from leaks from petroleum storage tanks. The “marketability” or non-marketability of a storage tank facility concerns a private business transaction between buyer and seller. ADEQ, as the state's environmental regulatory agency, should not be in the position of brokering private property transactions using access to a public trust fund as leverage.

The comment proposes to add language to Regulation No. 12 that is not based on existing statutory authority or provision. Therefore, no change will be made based on this comment.

**Comment 4** – Add verbiage to Regulation No. 12 that requires the Department to notify the owner or operator whenever a release is eligible for trust fund reimbursement.

**Response 4** – This comment concerns an area of the regulation not addressed by the proposed rulemaking. The commenter is seeking to require ADEQ to react to each reported storage tank release with an automatic determination of trust fund eligibility for the owner. This is not practical (or even possible in most cases) for several reasons. First, a release is usually reported as “suspected”. Until a suspected release has been confirmed under the provisions of 40 CFR 280, Subpart E, trust fund eligibility cannot be determined. Confirmation or denial of a suspected release may take an indefinite period of time to achieve. Second, participation in the trust fund is voluntary – not mandatory. It is the tank owner's responsibility to seek trust fund eligibility if he/she wishes to access the trust fund for assistance with the costs of cleanup. Third, a tank owner should know whether or not he/she has met the requirements for trust fund eligibility at the time of a release. [The eligibility requirements are: 1) at the time of the release, the owner had the tank(s) registered with ADEQ; 2) at the time of the release, the owner had paid the storage tank fees required; 3) at the time of the release, the tank owner had financial assurance for the trust fund deductible amount (\$7,500).]

Additionally, there are issues of trust fund **coverage** -- not eligibility -- that can't be established until well after a release has occurred and been confirmed. The elements of

coverage include timely reporting of the release to ADEQ; full cooperation of the owner in conducting corrective action to address the release; and the expenditure by the owner of the deductible amount (\$7,500) in reasonable, allowable and necessary costs of cleanup for the release. When ADEQ makes a "determination of trust fund eligibility" for a release, the owner's compliance with **all** the elements discussed above for both eligibility and coverage has to be determined; hence, the impracticality of the commenter's suggested addition to Regulation No. 12. Therefore, no change will be made based on this comment.

**Comment 5** – Reg. 12.702 Add the following definition: "Remotely monitored facility means any facility that has automatic tank gauges on all underground storage tanks and pressurized line leak detectors on all product lines in operation at the facility and which are remotely monitored 24 hours a day, seven days a week."

**Response 5** – The suggested definition is overly broad and ambiguous. Some of the equipment mentioned is appropriate for installation on certain types of UST systems but not on others. Additionally, the 24/7 remote monitoring referenced is completely undefined as to location, method, frequency, etc. No change will be made based on this comment.

**Comment 6** – Reg. 12.704 Add "(C) Remotely monitored facilities".

**Response 6** – ADEQ declined to include the commenter's term "remotely monitored facilities" and its associated definition. (See "Comment and Response 5.") The commenter's suggestion is to add this type of facility to the facilities identified in Reg. 12.704 as not required to have at least one Class C operator onsite during all hours of operation. Not only is this suggestion inappropriate given the reasons outlined in ADEQ's previous response, it is also potentially in conflict with the requirements of the Arkansas Fire Prevention Code, 2007 Edition, Section 2204, "Unattended Self-Service Motor Fuel/Dispensing Facilities". No change will be made based on this comment.

**Comment 7** – Reg. 12.708 ADEQ should consider whether third-party providers could be enlisted to help administer the examination process.

**Response 7** – ADEQ received federal funding to implement the new regulatory requirements associated with the Energy Policy Act of 2005, including training for operators of underground storage tanks (USTs). The RST Division is adequately staffed to provide sufficient testing opportunities and venues for UST operators to meet their training/certification deadline of August 8, 2012. Therefore, no change will be made based on this comment.

**Comment 8** – Reg. 12.708 ADEQ currently certifies or otherwise utilizes third-party trainers in some of its other programs. This program should also provide that option.

**Response 8** – Although listed as a comment on Reg. 12.708, "Operator Examination", this comment does not apply to the regulatory section cited. However, in response, ADEQ's proposed language requires only that an applicant make a passing score on the operator examination in order to be certified as a trained UST operator. Training is one method an applicant may choose by which to prepare for the exam, and ADEQ is

proposing to make Department-provided training available to applicants at no cost. However, this would not prohibit an applicant's use of a third-party provider for UST operator training. Therefore, no change will be made based on this comment.

**Mr. Stephen Sturdivant, Office of Underground Storage Tanks, U.S. EPA, Region 6**

**Comment 9** – Reg. 12.706(A)(1) Add the word “reporting” after the word “maintenance”, and before the words “and recordkeeping”.

**Response 9** – This comment correctly identifies an omission of “reporting” in the draft language as one of the required elements of knowledge for a Class B Operator. ADEQ agrees with this comment and a change will be made as follows: “Reporting and recordkeeping requirements” will be added as 12.706(A)(1)(g); “Class C operator training requirements” will be changed to 12.706(A)(1)(h). This change will conform to the comparable list in EPA’s grant guidance for operator training.

The proposed effective date is November 5, 2009.

**CONTROVERSY:** This is not expected to be controversial.

**FINANCIAL IMPACT:** The incremental cost to implement the rule is \$60,000 in federal funds and for the current fiscal year and \$65,000 in federal funds for the next fiscal year. This is the cost of the program.

There is a \$25 exam fee for each Class A and Class B certification exam. Class A and Class B operators of underground storage tanks (USTs) are required by the Federal Energy Policy Act of 2005 and Arkansas Act 264 of 2007 to be trained and certified in the operation and maintenance of UST systems which contain regulated substances. Class C operators are not required to take the certification exam and, therefore, should not experience a fiscal impact from the proposed amendments.

The total estimated cost to the agency to implement the rule is \$15,000 for the current fiscal year and \$16,250 for the next fiscal year. These additional costs to the agency consist primarily of the 25% match for the increased federal funding.

All regulated storage tank owners, public or private, will be positively affected by the repeal of the self-inspection audit form requirement. All underground storage tank (UST) owners, public or private, are required to comply with the UST operator training requirement, but the economic effect is anticipated to be primarily neutral with minimal, if any, economic impact to tank owners. There are no foreseen economic impacts associated with the clarification of procedural timeframes for tank owners covered by the Petroleum Storage Tank Trust Fund, nor should there be any economic effect on tank owners from the clarification of trust fund coverage. There are approximately 3,800 registered owners of regulated underground and aboveground storage tanks that will be covered by the self-audit form repeal and the trust fund changes for clarification. The UST operator training requirement affects approximately 2,500 UST owners and an estimated 8,000 UST operators.

Regulation No. 12 revisions deleting the self-audit language and clarifying trust fund procedures and coverage should have a neutral economic effect. The new UST operator training requirements may either have a slightly increased cost or no increased cost at all to UST owners. The only cost proposed is an exam fee of \$25 for Class A and Class B operators, which may be borne by the individuals seeking certification rather than the tank owners. The estimated total cost to implement the proposed change is \$50 per facility for a total of \$200,000. The assumption is for a \$25 exam fee for an average of 2 individuals per facility multiplied by approximately 4,000 UST facilities.

**LEGAL AUTHORIZATION:** The Underground Storage Tank Program is delegated to the State of Arkansas by the EPA and administered pursuant to Ark. Code Ann. § 8-7-801 *et seq.* and § 8-7-901 *et seq.* The Arkansas Pollution Control and Ecology Commission and ADEQ are authorized to promulgate rules and regulations pertaining thereto. Ark. Code Ann. § 8-7-802.



# EXHIBIT D

Pollution Control and Ecology Commission # 014.00-012

## ARKANSAS POLLUTION CONTROL and ECOLOGY COMMISSION

### REGULATION NO. 12 STORAGE TANKS



**INITIAL DRAFT**

Submitted to the PC&E Commission in July, 2009  
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## CHAPTER ONE: GENERAL PROVISIONS

### Reg.12.101 Purpose and Title

The purpose of Arkansas Pollution Control and Ecology Commission Regulation Number 12 (Storage Tanks), which is referred to herein as "Regulation" and which may be cited as "Department of Environmental Quality Regulation 12 (Storage Tanks)," is to regulate underground storage tank systems and certain aboveground storage tank systems in order to protect the public health and the lands and waters of the State of Arkansas.

### Reg.12.102 Authority

This Regulation is promulgated pursuant to the authority of Arkansas Code Annotated (A.C.A.) §8-7-801 et seq. and the Petroleum Storage Tank Trust Fund Act (A.C.A. §8-7-901 et seq.).

### Reg.12.103 Definitions

(A) Except for the definitions of "Owner," "Person," and "Release" found at 40 CFR 280.12, the definitions set forth in 40 CFR 280.12 and 280.92 are all adopted by reference herein.

(B) As used in this Regulation, unless the context otherwise requires:

(1)(a) "Aboveground storage tank" means any one or a combination of containers, vessels, and enclosures located aboveground, including structures and appurtenances connected to them, whose capacity is greater than one thousand three hundred twenty (1,320) gallons and not more than forty thousand (40,000) gallons and that is used to contain or dispense motor fuels, distillate special fuels, or other refined petroleum products. Such term does not include mobile storage

tanks used to transport petroleum from one location to another or those used in the production of petroleum or natural gas.

(b) "Aboveground storage tank" shall not include any such containers, vessels, or enclosures used to contain or dispense refined petroleum substances listed under 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 USCS Section 9601 (14)).

(2) "Advisory Committee" means the Advisory Committee on Petroleum Storage Tanks as established by state law.

(3) "Certificate of Registration" means a certificate issued by the Department to an owner or operator who has paid the applicable storage tank fees and registered his or her storage tank(s) with the Department.

(4) "Combination," for purposes of implementation of this Regulation on aboveground storage tanks only, means containers, vessels, and enclosures located aboveground which are joined by common piping and located in tandem.

(5) "Commission," unless indicated otherwise by the context, means the Arkansas Pollution Control & Ecology Commission.

(6) "Compensatory damages" means all damages for which an owner or operator may be liable including, without limitation, bodily injury or property damage. This term does not include punitive damages or the costs of litigation, which shall not be limited to attorney or expert witness fees. This definition shall apply to any pending third-party claim which has not been reduced to judgment as of April 7, 2003.

(7) "Community water system" means a public water

system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. Such term includes any collection, treatment, storage, and distribution facilities under control of the operator of such system, and used primarily in connection with such system.

(8) "Corrective action" means those actions which may be necessary to protect human health and the environment as a result of an accidental release, sudden or nonsudden.

(9) "Department" means the Arkansas Department of Environmental Quality.

(10) "Director" means the Director of the Arkansas Department of Environmental Quality.

(11) "Motor fuel dispenser" means a device that measures and transfers liquid fuel via pressure or suction from an underground storage tank system into a motor vehicle or container. The term "motor fuel dispenser" does not include the equipment necessary to connect a dispenser to an underground storage tank system.

(12) "Motor fuel dispenser system" means the equipment necessary to connect a dispenser to an underground storage tank system, and may include check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are beneath a dispenser and connect a dispenser to underground piping.

(13) "Operator," in addition to having the meaning given in the definition found at 40 CFR 280.12, means, unless the context dictates otherwise, any person in control of, or having responsibility for, the daily operation of an aboveground storage tank system; provided, however, that "operator" as it is used in Chapters Five, ~~and Six~~, and Seven, and Subsection 12.104(A) shall

not include such persons.

(14) "Owner" means:

(a) In the case of any underground storage tank system in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank system used for the storage, use, or dispensing of regulated substances;

(b) In the case of any underground storage tank system in use before November 8, 1984, but no longer in use on that date, any person who owned such tank system immediately before the discontinuation of its use. The term "Owner" does not include any person who, without participation in the management of an underground storage tank system, holds indicia of ownership primarily to protect a security interest in the tank system; and

(c) Unless the context dictates otherwise, any person who owns an aboveground storage tank; provided, however, that "owner" as it is used in Chapters Five, and Six, and Seven, and Subsection 12.104(A) shall not include such persons.

(15) "Person" means any individual; corporation; company; firm; partnership; association; trust; joint-stock company or trust; venture; municipal, state, or federal government or agency; or any other legal entity, however organized.

(16) "Potable drinking water well" means any hole (dug, driven, drilled, or bored) that extends into the earth until it meets groundwater which:

(a) Supplies water for a non-community public water system, or

(b) Otherwise supplies water for household use (consisting of drinking, bathing, and cooking, or other similar uses.)

(17) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank into the groundwater, surface water or subsurface soils of the state.

(18) "Secondary Containment" means a release prevention and release detection system for an underground storage tank or piping, or both, that provides an inner barrier and an outer barrier and an interstitial space between the two barriers for monitoring to detect the presence of a leak or release of regulated substances from the underground storage tank or piping, or both.

(19) "Storage tank" means an aboveground storage tank or underground storage tank as defined by this Regulation.

~~(20) "Storage tank self-inspection audit" means a checklist or form issued by the department addressing the compliance status of a storage tank that the owner or operator completes on an annual basis.~~

~~(21)~~ (20) "Trust fund" means the Petroleum Storage Tank Trust Fund created by the Petroleum Storage Tank Trust Fund Act.

~~(22)~~ (21) "Unknown petroleum storage tank" means a petroleum storage tank as defined by state law whose existence on a property or at a facility at the time of discovery of a release was not known or should not have been reasonably known by the owner or operator. An owner or operator is deemed to have known of the existence of an unknown petroleum storage tank if there was surficial evidence of such tank in the form of visible vent pipes, fill caps, or lines protruding from such tank.



Reg.12.104 Incorporation of Federal Regulations

(A) The following regulations promulgated on or before August 24, 2007, by the United States Environmental Protection Agency are hereby adopted as provisions of this Regulation as though set forth herein line for line and word for word, except that unless the context otherwise dictates, all references therein to "Implementing Agency" shall be considered references to "Arkansas Department of Environmental Quality," and all references to "Administrator," "Regional Administrator," "Director" or "State Director" shall be considered references to the "Director of the Arkansas Department of Environmental Quality," and all references to the "U. S. Environmental Protection Agency" or "EPA" shall be considered references to the "Arkansas Department of Environmental Quality," and all references elsewhere in this Regulation to any of the following regulations shall constitute a reference to the regulation as herein adopted; and provided that the effective date of the provisions adopted herein by reference as provisions of this Regulation shall be the date such provisions are specified as being effective by the Commission in its rulemaking and the effective date of the federal regulations adopted herein shall have no bearing on the effective date of any provisions of this Regulation:

Code of Federal Regulations (CFR), Title 40

(1) 280.10 through 280.74

(2) 280.90 through 280.116

(3) 280.200 through 280.230

(B) The Commission shall conduct rulemaking as necessary to incorporate into this Regulation any new or revised federal regulations.

Reg.12.105 Records

(A) In addition to any other records required to be maintained under the Regulated Substance Storage Tanks program, the Petroleum Storage Tank Trust Fund Act, or this Regulation, all owners or operators shall maintain, and submit or, upon request make available for review and copying by the Department at all reasonable times, any records which may reasonably be required by the Department, the Commission, or the Advisory Committee in the performance of their duties under law.

(B) Any owner or operator of an underground storage tank shall grant the Department access to all records concerning the storage of regulated substances.

Reg.12.106 Entry and Inspection of Underground Storage Tank Facilities

Any owner or operator of an underground storage tank system shall, upon request of a duly authorized representative of the Department, permit the representative to enter the property at all reasonable times to inspect the facilities and equipment or to conduct monitoring and sampling activities.

Reg.12.107 Entry and Inspection of Aboveground Storage Tank Facilities

The Department shall have the authority to enter upon the property of any owner or operator of an aboveground storage tank to obtain information, conduct surveys, or review records for the purpose of determining compliance with the requirements of the Petroleum Storage Tank Trust Fund Act, relating to aboveground storage tanks prior to approval of a claim for reimbursement from the Petroleum Storage Tank Trust Fund.

Reg.12.108 Notice Requirements

(A) The Department must be given timely notice of any release as required by 40 CFR 280, Subpart E.

(B) (1) The requirement for giving timely notice of a release from an aboveground storage tank system shall be the same as that for underground storage tank systems.

(2) An owner or operator is required to give notice of a release from an aboveground storage tank system if the amount of the release equals or exceeds existing reporting limits in any other applicable federal or state statutes or regulations.

(C) (1) To ensure timely notice of a release or suspected release from a storage tank system is received by the Department, an owner or operator must follow up a verbal notice to the Department with written notice of the release or suspected release within three (3) business days following the date of the initial verbal notice.

(2) Written notice may be submitted in, but is not limited to, the following forms: facsimile, electronic mail, U. S. mail, hand-written correspondence or by another form as may be provided by the department.

Reg.12.109 Secondary Containment

(A) (1) Each new underground storage tank, or piping connected to any new underground storage tank, installed after July 1, 2007, shall be secondarily contained and monitored for leaks if the new underground storage tank or piping is within one thousand feet (1,000') of any existing community water system or any existing potable drinking water well.

(2) In the case of a new underground storage tank

system consisting of one (1) or more underground storage tanks and connected by piping, the requirement to provide secondary containment shall apply to all underground storage tanks and connected pipes comprising such system.

(B) (1) Any existing underground storage tank, or existing piping connected to such existing underground storage tank, that is replaced after July 1, 2007, shall be secondarily contained and monitored for leaks if the replaced underground storage tank or piping is within one thousand feet (1,000') of any existing community water system or any existing potable drinking water well.

(2) In the case of a replacement of an existing underground storage tank, or existing piping connected to the underground storage tank, the requirement to provide secondary containment shall apply only to the specific underground storage tank or piping being replaced, not to other underground storage tanks and connected pipes comprising such system.

(3) With respect to piping, "replace" means to remove and put back in more than five feet (5') of piping associated with a single underground storage tank.

(C) (1) Each installation of a new motor fuel dispenser system, or replacement of an existing motor fuel dispenser system, after July 1, 2007, shall include under-dispenser spill containment if the new or replaced dispenser system is within one thousand feet (1,000') of any existing community water system or any existing potable drinking water well.

(2) Under-dispenser spill containment must:

(a) Be liquid-tight on its sides, bottom, and at any penetrations;

(b) Be compatible with the substance conveyed

by the piping;

(c) Allow for visual inspection and access to the components in the containment system and/or be monitored.

(3) A motor fuel dispenser system is considered to have been replaced when an existing motor fuel dispenser and the equipment necessary to connect the motor fuel dispenser to the underground storage tank system are removed, and another motor fuel dispenser and the equipment necessary to connect the motor fuel dispenser to the underground storage tank system are put in its place.

(D) Secondary containment systems shall be designed, constructed, and installed to:

(1) Contain regulated substances released from the tank system until they are detected and removed;

(2) Prevent the release of regulated substances to the environment at any time during the operational life of the underground storage tank system; and

(3) Be checked for evidence of a release at least every thirty (30) days.

(E) In addition to the requirements of 12.109(D), double-walled tanks must be designed, constructed, and installed to:

(1) Contain a release from any portion of the inner tank within the outer wall; and

(2) Detect the failure of the inner wall.

(F) In addition to the requirements of 12.109(D),

external liners (including vaults) must be designed, constructed, and installed to:

(1) Contain 100 percent of the capacity of the largest tank within its boundary;

(2) Prevent the interference of precipitation or groundwater intrusion with the ability to contain or detect a release of regulated substances; and

(3) Surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances.)

(G) Underground piping must be equipped with secondary containment that satisfies the requirements of subsection (D) of this section.

(H) In accordance with the requirement of subsection (D)(3), interstitial monitoring shall meet at least one of the following requirements:

(1) For double-walled underground storage tank systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains a regulated substance;

(2) For underground storage tank systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the underground storage tank system and the secondary barrier;

(a) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least 10<sup>-6</sup> cm/sec for the regulated substance stored) to

direct a release to the monitoring point and permit its detection;

(b) The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

(c) For cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system;

(d) The groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days;

(e) The site is assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and

(f) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(3) For tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

(I) The requirements of this section shall apply to all UST systems installed or replaced after July 1, 2007, unless certified by an Arkansas registered professional engineer to exceed 1,000 feet in distance from a community water system or potable drinking water well. The written engineer's certification must be

submitted to the department prior to the initiation of the installation or replacement of the system.

(J) The distance of 1,000 feet from a community water system or potable drinking water well must be measured from the closest part of a new or replaced UST or piping or new motor fuel dispenser system to:

(1) The closest part of the nearest existing community water system, including such components as -

(a) the location of the wellhead(s) for groundwater and/or the location of the intake point(s) for surface water;

(b) water lines, processing tanks, and water storage tanks; and

(c) water distribution/service lines under the control of the community water system operator.

(2) The wellhead of the nearest existing potable drinking water well.

(K) (1) For purposes of Section 12.109 only, "existing" means an underground storage tank, piping, motor fuel dispensing system, facility, community water system, or potable drinking water well in place when a new installation or replacement of an underground tank, piping, or motor fuel dispensing system begins.

(2) A potable drinking water well installed or planned for installation at a new UST facility will be considered "existing" even if it is installed after the UST system.

(L) The requirements of Section 12.109 do not apply to:



(1) Suction piping which meets the requirements of 40 CFR 280.41(b)(2)(i)-(v); or

(2) Piping that manifolds two or more underground tanks together.

Reg. 12.110 Delivery Prohibition

(A) It shall be unlawful to deliver to, deposit into, or accept a regulated substance into an underground storage tank at a facility that has been identified by the Department as ineligible for fuel delivery or deposit.

(B) (1) In order to prevent the delivery of a regulated substance into an underground storage tank system that has been identified by the Department as ineligible, a tamper-proof red tag shall be affixed to the fill pipe of the ineligible underground storage tank.

(2) This affixed red tag shall serve as written notification to the owner, operator, and the product delivery industry of the prohibition of delivery to the tank system.

(C) No owner or operator shall receive any regulated substance into any underground storage tank to which notification of delivery prohibition (red tag) has been affixed.

(D) No person selling any regulated substance shall deliver or cause to be delivered a regulated substance into any underground storage tank to which notification of delivery prohibition (red tag) has been affixed.

(E) It shall be unlawful for any person, other than an authorized representative of the Department, to remove, tamper with, destroy, or damage a red tag affixed to any underground storage tank by Department personnel.

(F) (1) Pursuant to this section, a red tag shall immediately be affixed upon finding by the Department of any of the following:

(a) Required spill prevention equipment is not present;

(b) Required overfill protection equipment is not present;

(c) Required release detection equipment is not present; or

(d) Required corrosion protection equipment is not present.

(2) The Department, in its sole discretion, may delay the affixing of a red tag to an underground storage tank for up to 180 days upon determination that:

(a) no urgent threat to public health exists;  
and

(b) such an action would jeopardize the availability of, or access to, fuel for the local community.

(G) Pursuant to this section, a red tag shall be affixed to an underground storage tank upon finding by the Department of any of the following if the owner or operator has been provided a written notice of noncompliance and the owner or operator has failed to comply within the time frame given in the notice:

(1) Failure to properly operate or maintain release detection equipment;

(2) Failure to properly operate or maintain spill, overfill, or corrosion protection equipment; or

(3) Failure to maintain financial responsibility.

(H) (1) In order for an owner or operator of an underground storage tank which has been red tagged to have the tank reclassified by the Department as eligible to receive delivery of a regulated substance, he or she must provide a written statement to the Department that the deficiencies listed in the notice of noncompliance have been corrected.

(2) The Department will determine whether the deficiencies have been corrected as soon as practicable but within five (5) business days after receipt of the owner's written statement of compliance.

(3) Upon verification of compliance, Department personnel will remove the red tag.

## CHAPTER TWO: REGISTRATION OF STORAGE TANKS

### Reg.12.201 Registration Requirement

(A) As provided by state and federal law, all owners and operators of storage tanks must register their tanks in accordance with this Regulation.

(B) (1) No owner or operator shall receive any regulated substance into any storage tank for which current and proper proof of registration, as provided by Subsection 12.202(A), has not been furnished to the person selling the regulated substance.

(2) No person selling any regulated substance shall deliver, or cause to be delivered, a regulated substance into any storage tank for which he or she has not obtained current and proper proof of registration, as provided by Subsection 12.202(A), from the owner or operator.

(C) The provisions of this Regulation shall not apply to aboveground storage tanks located on farms, the contents of which are used for agricultural purposes and not held for resale.

### Reg.12.202 Certificate of Registration

(A) Proper proof of registration shall be in the form of a Certificate of Registration.

(B) Each year the Department shall issue or renew a Certificate of Registration for each storage tank facility meeting the following requirements:

(1) All storage tanks at the facility must be registered in accordance with this Regulation; and

(2) The registration fees required by Section 12.203

must be paid.

(C) A Certificate of Registration must be posted in a conspicuous place at each registered facility.

Reg.12.203 Storage Tank Registration Fees

(A) (1) An annual registration fee for each storage tank shall be paid by the tank owner or operator to the Department for each year or portion of a year that the tank is in use.

(2) A storage tank shall be deemed "in use" until it has been removed or otherwise permanently closed in accordance with the procedures mandated by this Regulation and the Department has been given written notice of the change in status of the tank.

(B) The annual registration fee for a storage tank newly placed into service shall be paid within thirty (30) days after the tank is placed into service.

(C) The annual registration fee for all storage tanks shall be seventy-five dollars (\$75) per tank.

(D) The annual registration fees shall be allocated to the Regulated Substance Storage Tank Program Fund and the Department of Arkansas State Police.

(E) If the annual registration fee required by this Chapter is not paid within thirty (30) days of the billing date of the applicable fee invoice from the Department, a late fee shall be imposed in the amount of five dollars (\$5) per storage tank.

(F) Nonpayment of any fee required by this Chapter shall constitute grounds for legal action by the Department, and may result in assessment of civil penalties as provided in Chapter ~~Eight~~ Nine.

(G) No fees required by this Chapter shall be refundable.

**CHAPTER THREE: PETROLEUM STORAGE TANK TRUST FUND CORRECTIVE ACTION  
REIMBURSEMENT PROCEDURES**

Reg.12.301 Purpose

In accordance with the Petroleum Storage Tank Trust Fund Act, eligible owners or operators may obtain partial reimbursement for costs of corrective action taken in response to accidental releases from qualified petroleum storage tank systems. This Chapter establishes the procedures to be followed and documentation required to receive such reimbursement from the trust fund.

Reg.12.302 Trust Fund Eligibility

(A) (1) Every owner or operator of an underground petroleum storage tank system is required by 40 CFR 280.93 to demonstrate financial responsibility for taking corrective action in response to accidental releases from underground petroleum storage tank systems. One mechanism which may be used to partially satisfy this requirement is the Petroleum Storage Tank Trust Fund.

(2) Every owner or operator choosing to use the trust fund as a mechanism to partially satisfy the financial responsibility requirements described in 12.302(A)(1) must also utilize an additional financial responsibility mechanism, as described in 12.302(D)(2), for the first seven thousand five hundred dollars (\$7,500) of the costs of corrective action.

(B) In accordance with the Petroleum Storage Tank Trust Fund Act, owners or operators of certain aboveground petroleum storage tank systems may also qualify for and access the trust fund.

(C) ~~The trust fund shall not be accessed for storage tank systems storing substances for which payment of the environmental assurance fee is not required.~~ The trust fund shall not be accessed for storage tank systems storing any substance listed under 101(14)

of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 USCS Section 9601 (14)], as amended. These tank systems shall not be considered qualified storage tanks for purposes of Chapters Three and Four of this Regulation.

(D) In order to be eligible for the trust fund, the owner or operator must:

(1) Register each petroleum storage tank and pay the annual storage tank fees required by this Regulation for each tank until such time as the permanent closure requirements of this Regulation are satisfied; and

(2) Maintain financial responsibility in the amount of seven thousand five hundred dollars (\$7,500) per occurrence for corrective action costs, by any one or combination of the following: insurance, guaranty, surety bond, letter of credit, insurance pool or any other mechanism allowed by 40 CFR 280, ~~and~~.

~~(3) For each petroleum storage tank for which trust fund eligibility is sought, certify on forms supplied by the Department that he or she has completed and submitted an annual self-inspection audit form to the Department.~~

(E) (1) Any person requesting Advisory Committee review of a Department determination on trust fund eligibility or costs must file a request with the Department within ninety (90) days of the date of the Department's determination.

(2) A request for Advisory Committee review must be in writing and mailed to the Department's postal address, to the attention of the Regulated Storage Tanks Division Chief.

Reg.12.303 Trust Fund Coverage for a Release

(A) In order for an owner or operator to obtain any



coverage by the trust fund for corrective action necessary to address an accidental release, all of the following requirements must be met:

(1) At the time of the discovery of the release, the owner or operator must have met each of the requirements for trust fund eligibility as set forth in Subsection 12.302(D);

(2) The release must have occurred after February 22, 1989;

(3) The Department must have been given timely notice of the release as required by Section 12.305;

~~(4) At the time of the occurrence, the owner or operator must have a completed current annual self-inspection audit form on file with the Department;~~

~~(5)~~ (4) The owner or operator must cooperate fully with the Department in conducting corrective action to address the release; and

~~(6)~~ (5) The owner or operator must have expended seven thousand five hundred dollars (\$7,500) in reasonable, allowable, and necessary corrective action costs for the occurrence.

~~(B) Payment for corrective action may be denied if the storage tank owner or operator submits an inaccurate storage tank self-inspection audit form which results in a delay in the corrective action of a release, and the delay contributes to an adverse impact to the environment.~~

~~(C)~~ (B) Upon request by the Department, the owner or operator shall submit proof of compliance with the requirements for trust fund coverage.

Reg.12.304 Trust Fund Coverage for Unknown Petroleum Storage Tanks

(A) Unknown petroleum storage tanks that have satisfied the requirements of Section 12.303 shall be eligible for reimbursement for corrective action as provided by this section if:

(1) The unknown petroleum storage tank is discovered while removing, upgrading, or replacing a petroleum storage tank meeting the requirements of Section 12.303, or while performing petroleum investigation or corrective action activities required by federal or state laws, and the petroleum storage tank meeting the requirements of Section 12.303 is located on the same property or facility; or

(2) The unknown petroleum storage tank is located on a right-of-way purchased by a city, county, or state governmental agency or entity and is discovered during construction in such right-of-way.

(3) Eligibility for reimbursement of an unknown petroleum storage tank will be conditioned on the payment of three hundred and seventy-five dollars (\$375) to the Department.

Reg.12.305 Notice Requirements

(A) The Department must be given timely notice of any release as required by 40 CFR 280, Subpart E.

(B) (1) The requirement for giving timely notice of a release from an aboveground storage tank system shall be the same as that for underground storage tank systems.

(2) An owner or operator is required to give notice of a release from an aboveground storage tank system if the amount of the release equals or exceeds existing reporting limits in any

other applicable federal or state statutes or regulations.

(C) (1) To ensure timely notice of a release or suspected release from a storage tank system is received by the Department, an owner or operator must follow up a verbal notice to the Department with written notice of the release or suspected release within three (3) business days following the date of the initial verbal notice.

(2) Written notice may be submitted in, but is not limited to, the following forms: facsimile, electronic mail, U. S. mail, hand-written correspondence or by another form as may be provided by the department.

(D) If the Department is not given the required timely notice of a release, and the failure to report the release causes a delay in the corrective action that contributes to an adverse impact to the environment, no reimbursement shall be made under this Chapter for the costs of corrective action incurred in response to the release.

Reg.12.306 Amount of Reimbursement

(A) The trust fund will provide reimbursement to eligible owners or operators of storage tanks for corrective action costs required to address accidental releases in an amount not to exceed one million four hundred ninety-two thousand five hundred dollars (\$1,492,500) per occurrence.

(B) The owner or operator shall be responsible for the first seven thousand five hundred dollars (\$7,500) of corrective action costs per occurrence.

Reg.12.307 Deductible

(A) The first seven thousand five hundred dollars

(\$7,500) of corrective action costs incurred by the owner or operator shall be considered a deductible and is not eligible for reimbursement from the trust fund.

(B) (1) No reimbursement for corrective action costs shall be made from the trust fund until the deductible for the occurrence has been expended by the owner or operator.

(2) No owner or operator may submit an application for reimbursement for corrective action costs until he or she has expended the deductible.

(3) Proof of payment of the deductible must be provided to the Department prior to approval of reimbursement for any corrective action costs.

(4) For purposes of meeting the deductible, proof of payment shall consist of a receipt, a copy of a money order, or a canceled check. An IOU, a discharge in bankruptcy, a conditional payment, an installment payment, or a down payment shall not be considered proof of payment.

(C) The only corrective action costs which shall be credited toward the deductible are costs which are:

(1) Incurred in response to a release that has been timely reported to the Department; and

(2) Found to be reasonable, allowable, and necessary.

Reg.12.308 Applying for Reimbursement of Corrective Action Costs

(A) In order to apply for reimbursement of corrective action costs, an owner or operator must meet the requirements for

coverage set forth in Section 12.303 and meet the requirements of this Chapter for reimbursement applications.

(B) No application shall contain a request for reimbursement, nor shall reimbursement be made, in advance of the reimbursable services being rendered or reimbursable costs being incurred.

(C) Any applications for reimbursement of corrective action costs must be submitted on forms provided by the Department and shall include an accounting of all charges itemized by labor hours and rates, analytical charges, equipment charges and other categories which may be identified by the Department. The application shall also contain the following:

(1) The name, address and telephone number of the applicant;

(2) The name, address and telephone number of each owner and operator of each storage tank and the facility owner, if different from the applicant;

(3) The location of the facility at which the corrective action was performed or is being performed, identified with sufficient clarity and detail to enable a person unfamiliar with the site to locate it;

(4) A legible copy of all invoices for which reimbursement is requested, providing a description of the work performed, where the work was performed, the dates the work was performed, the unit costs, and the total amount paid;

(5) Evidence that the amounts shown on the invoices for which reimbursement is requested have been paid in full by the applicant. The evidence must be accompanied by a copy of any of the following:

(a) Business receipts, indicating all payments received;

(b) Canceled checks (front and back);

(c) The certification of a certified public accountant that the costs for which reimbursement is requested have been paid in full; or

(d) An affidavit signed by the person who performed the corrective action, affirming that the amounts which the applicant represents as being paid to that person have been paid in full; and

(6) Any other information which the Department may reasonably require.

(D) An application must be signed as follows:

(1) For a corporation -

(a) By a principal executive officer of at least the level of vice-president;

(b) By a duly authorized representative or agent of the executive officer named in 12.308(D)(1)(a), provided that the representative or agent is responsible for the overall operation of the facility that is the subject of the application; or

(c) By a person whom the board of directors designates by means of a corporate resolution;

(2) For a partnership, sole proprietorship or individual, by a general partner, the proprietor, or individual, respectively; or

(3) For a municipality, state, federal, or other public agency, by either a principal, executive officer, or ranking elected official.

(E) A person who signs an application for reimbursement shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I also certify that the amounts for which reimbursement is requested under this application have been paid in full and that I have the authority to submit this application on behalf of \_\_\_\_\_.

(F) Application for reimbursement of corrective action costs must be made by an eligible owner or operator no later than one (1) year after the Department's issuance of a "No Further Action" letter for the occurrence.

Reg.12.309 Interim Payments

(A) The Director may provide for interim payments, provided the investigation or corrective action is being conducted in accordance with an approved workplan or corrective action plan. Payment will only be made at the following times:

(1) After the completion of a phase, as approved by the Department; or

(2) At points during the corrective action process

agreed to by the Department and the applicant.

(B) The applicant must update his or her application with any information not yet submitted to the Department before review of the reimbursement application will commence.

(C) For purposes of Section 12.309, the following are the phases of corrective action:

- (1) Completion of site stabilization activities;
- (2) Completion and submittal of a report for a preliminary investigation;
- (3) Implementation of a free product removal system;
- (4) Completion and submittal of a report for a secondary investigation and development of a corrective action plan;
- (5) Implementation of a corrective action plan; and
- (6) Provision of an alternate water supply.

(D) (1) Applications for payments for the implementation of a phase may be submitted ninety (90) days following initiation of work to implement the phase and at ninety (90)-day intervals thereafter until completion of the authorized activities.

(2) Upon request, the Director may approve interim payments at more frequent intervals.

(E) Interim payments shall consist of payment of an amount not to exceed ninety percent (90%) of one million five hundred thousand dollars (\$1,500,000). The remaining ten percent (10%) shall be released only upon final payment for corrective action concerning the occurrence.



Reg.12.310 Reimbursement Application Review

(A) (1) Before commencing a substantive review of an application for reimbursement of corrective action costs, the Department shall determine whether the release meets the requirements of Section 12.303 for trust fund coverage for corrective action.

(2) Any person aggrieved by the Department's determination of whether a release is eligible for trust fund coverage for corrective action may request that the Advisory Committee, and, if necessary thereafter, the Director, review the Department's determination.

(B) The Department is not required to commence substantive review of an application until it has received a completed application form containing all of the information required by Section 12.308. If, during the course of the substantive review, the Department finds that additional information is needed to evaluate the application, the Department may require that the information be provided before review of the application may be completed.

(C) The Department and the Advisory Committee shall not recommend, and the Director shall not approve, reimbursement of corrective action costs unless they are reasonable, allowable, and necessary.

(D) (1) After a reimbursement application is complete, the Department shall make a written recommendation to the Advisory Committee as to whether the applicant has met the trust fund eligibility requirements and, if so, which of the costs specified in the application are reasonable, allowable, and necessary.

(2) The Advisory Committee in its sole discretion may allow supplemental information explaining the application to be

presented orally. It may establish a fair and reasonable limit on time allowed for oral presentation.

(3) The Advisory Committee may consider, but is not bound by, the recommendation prepared by the Department pursuant to 12.310(D)(1). It shall make a written recommendation to the Director as to whether the applicant has met the trust fund eligibility requirements and, if so, which of the costs for which reimbursement is requested are reasonable, allowable, and necessary and should therefore be paid.

(E) (1) The Director shall consider, but is not bound by, the recommendations made by the Department pursuant to 12.310(D)(1) and by the Advisory Committee pursuant to 12.310(D)(3).

(2) The Director shall decide whether the applicant has met the trust fund eligibility requirements and, if so, which of the costs for which reimbursement is requested are reasonable, allowable, and necessary and should therefore be paid.

(3) If the decision of the Director is contrary to the recommendation of the Advisory Committee, the Director shall provide in writing his or her reasons for declining to follow the Advisory Committee's recommendation.

(F) (1) The decision of the Director shall be the final decision of the Department.

(2) The decision of the Director may be appealed to the Commission. An owner or operator who considers himself or herself injured in his or her business, person or property by a final decision of the director or his designee, may, within thirty (30) days after the date of the final decision of the director or his designee, appeal the decision to the Commission.

Reg.12.311 Reasonable Costs

(A) "Reasonable costs" means costs or a range of costs commensurate with the level of corrective action necessary to assess or remediate (or both) the petroleum storage tank system release, based on an evaluation of typical costs expected for the particular corrective action under review, with respect to the necessary or required scope and complexity of the action.

(B) Hourly charges for equipment may be established in the cost proposal submitted for each major phase of work. Hourly rates must be competitive with similar charges by other contractors and may be rejected if they are determined to represent unreasonable costs.

(C) No cost is reasonable unless it is also an allowable cost pursuant to this Chapter.

Reg.12.312 Allowable Costs

(A) Only those costs which are allowable costs pursuant to the terms of this Chapter shall be reimbursable.

(B) (1) (a) Allowable costs are those costs which are approved by the Department and arise directly from the performance of corrective action in accordance with the requirements of this Regulation.

(b) For purposes of appeal only, a cost which has been submitted to, reviewed and disallowed by the Department is deemed "approved by the Department" pursuant to Reg. 12.312(B)(1)(a).

(c) Approval of costs by the Department shall not be construed to be a contract with the State to pay the costs.

(2) The cost of repairing damages caused by the performance of the corrective action shall be allowable unless otherwise prohibited by this Regulation or by other law; provided, however, that the cost of repairing damages resulting from contractor negligence, error, or other wrongful action shall not be allowable.

(C) No reimbursement shall be made under this Chapter for any costs incurred prior to the discovery of a release.

(D) If the Department is not given timely notice of a release as required by Section 12.305, no reimbursement shall be made under this Chapter for the costs of corrective action incurred in response to the release.

(E) Reimbursement shall be made under this Chapter only for costs incurred for corrective action which is approved by the Department.

(F) The determination as to which costs are allowable will be made on a case-by-case basis. However, costs for the following types of activities or items will generally be considered reimbursable:

(1) Site investigation, testing and monitoring necessary for the preparation of an approved corrective action plan;

(2) Preparation of an approved corrective action plan;

(3) Recovery and disposal of contaminated soils;

(4) Cleanup and disposal of contaminated soils;

(5) Installation and operation of monitoring wells;

(6) Analysis of soils and water;

(7) Removal of leaking storage tanks if required by the Department as necessary to the corrective action;

(8) Provision of an alternate water supply;

(9) Treatment and disposal of contaminated groundwater;

(10) Equipment, such as bailers and sample containers, which can be charged to a specific site; and

(11) Travel costs which are necessary for corrective action and which present the least-cost alternative for the required corrective action.

(12) (a) Repair, reassembly, or reinstallation of fixtures, equipment, or appurtenances that are disassembled, moved, or otherwise taken apart as a necessary requirement of the investigation or remediation of a petroleum storage tank release and that are, or would be, damaged by such investigation or remediation.

(b) The provisions of 12.312(F)(12)(a) shall not apply to structures, landscaping, or petroleum storage tank systems, except for the costs of repairing boring or sampling holes inside structures.

(G) The following types of costs are those which will not be considered allowable costs of corrective action:

(1) Retrofitting, repairing or replacing petroleum storage tank systems or piping;

(2) Loss of revenue;

(3) Profit for the responsible party or for any

entity in which the responsible party has an ownership interest of five per cent (5%) or more unless payment of such profit is the least-cost alternative for the required corrective action, as determined by the Department's review of reasonable costs;

(4) Rental of temporary petroleum storage tanks not necessary for corrective action;

(5) (a) Rental of real estate or buildings owned in part or in total by the responsible party or by any entity in which the responsible party has an ownership interest of five per cent (5%) or more unless such rental is the least-cost alternative for the required corrective action, as determined by the Department;

(b) Rental of real estate or buildings in which the responsible party, or any entity in which the responsible party has an ownership interest of five per cent (5%) or more, has a leasehold interest for any reason other than to facilitate the corrective action;

(6) The value of lost trees, shrubs, grass or signs on the owner's or operator's property, or other fixtures, appurtenances or personal property except as allowed in 12.312(F)(12);

(7) The value of lost petroleum or petroleum products;

(8) The cost of sample analysis performed by a laboratory which is not certified by the Department;

(9) Duplicative charges for travel time and mileage for any trip to multiple job sites where such costs are billed in total to multiple corrective action projects rather than allocated between the separate projects (i.e., only charges based on actual

miles traveled for all corrective action projects charged to the trust fund shall be eligible for reimbursement);

(10) Excess charges for travel time and mileage if visits to multiple sites are not scheduled economically so that the costs can be allocated between the projects, if possible;

(11) Corrective action taken in violation of state or federal laws or regulations; and

(12) The costs of equipment purchases; provided, however, that costs of routinely required supplies which are expended at a given site, or equipment which must be installed at a site to implement a corrective action plan, are allowable. Equipment which cannot be charged to a specific site includes, but is not limited to, the following:

(a) Drilling rigs;

(b) Earth-moving equipment;

(c) Tools of the trade, such as hand tools, safety or traffic control equipment, personal protective equipment, surveying equipment, etc.

(d) Field analytical and measuring devices, such as groundwater sampling pumps, photoionization detectors, organic vapor meters, infrared analyzers, portable gas chromatographs, dataloggers, soil gas probes, etc.

(H) (1) No reimbursement shall be made pursuant to this Chapter for any item for which payment is made under a third-party claim for the same occurrence pursuant to Chapter Four.

(2) No third-party claim reimbursement shall be made

pursuant to Chapter Four for any item which is included in an approved corrective action plan and is reimbursable under this Chapter.

Reg.12.313 Necessary Costs

Only costs which are necessary, as determined by the Department, for conducting approved corrective action shall be reimbursable under this Chapter.

Reg.12.314 Records

(A) Any owner or operator participating in the trust fund shall maintain the following records and submit them or make them available to the Department upon request:

(1) Evidence of current financial responsibility for seven thousand five hundred dollars (\$7,500) per occurrence; and

(2) Any other records as may reasonably be required by the Department or the Advisory Committee in the performance of their duties under law.

(B) All records necessary to demonstrate that the trust fund eligibility requirements of Section 12.302 have been fulfilled shall be retained by the owner or operator until one of the following is accomplished:

(1) Closure requirements of this Regulation, if applicable, are satisfied;

(2) Responsibility for meeting the financial assurance requirements of this Regulation is legally transferred; or

(3) The owner or operator is otherwise instructed in writing by the Department.



(C) For auditing purposes, all records necessary to demonstrate that the trust fund coverage requirements of Section 12.303 have been fulfilled shall be retained by the owner or operator for a minimum of three (3) years from the date of closure of the corrective action project.

Reg.12.315 Audits

(A) The Director may cause audits to be performed as necessary to ensure that costs, for which reimbursement is sought or has been paid, were in fact incurred and necessary, that the work was in fact performed and necessary, and that reimbursement would be, or is, in fact reasonable and allowable.

(B) The audits may be performed by the Department or by any qualified person at the direction of the Director.

(C) Monies in the trust fund may be expended by the Director as necessary to pay the cost of audits performed by persons other than the Department.

Reg.12.316 Cost Recovery

(A) The Department may initiate proceedings against any owner or operator of a petroleum storage tank system for recovery of monies that were solicited and received from the trust fund, regardless of whether it was approved by the Advisory Committee or the Director, if:

(1) The funds were solicited or received through willful or accidental utilization of incorrect information;

(2) The costs were not incurred or were unnecessary;

(3) The work was not performed or was unnecessary;

or

(4) The amount of reimbursement is found to be unreasonable or not allowable.

(B) The Department has the right of subrogation which shall apply to sites where corrective action is taken by owners, operators, or the Department. The right of subrogation extends to:

(1) Any insurance policies in existence at the time of the occurrence to the extent of any rights the owner or operator of a site may have had under that policy; and

(2) Any third party who caused or contributed to the occurrence.

(C) For purposes of subrogation, "third party" does not include a former owner or operator of the site where corrective action is taken.

Reg.12.317 Trust Fund Availability

(A) (1) All claims for reimbursement submitted under the provisions of this Chapter are subject to the availability of monies in the trust fund.

(2) Nothing in this Regulation shall be construed to create a permanent entitlement to monies in the trust fund.

(3) The Commission reserves the right to amend the provisions of this Chapter, including the provisions regarding coverage and eligibility, and reasonable, allowable and necessary costs.

(B) (1) If the monies in the trust fund prove insufficient to cover all trust fund claims for reimbursement, the

Advisory Committee shall recommend to the Director a priority system based upon whatever factors it deems appropriate.

(2) The Director may adopt a priority system for reimbursement based upon any factors he or she deems appropriate.

Reg.12.318 Obligation to Comply

(A) Eligibility of an owner or operator for the trust fund shall not preclude the Department's taking any appropriate enforcement action.

(B) Nothing in this Chapter shall affect the liability or responsibility of an owner or operator of a petroleum storage tank system for taking corrective action, as required by this Regulation or any other law, in response to a release.

**CHAPTER FOUR: PETROLEUM STORAGE TANK TRUST FUND THIRD-PARTY PAYMENT PROCEDURES**

Reg.12.401 Purpose

In accordance with the Petroleum Storage Tank Trust Fund Act, eligible owners, operators, or third parties may obtain partial payment for valid compensatory damage claims caused by accidental releases from qualified petroleum storage tank systems. This Chapter establishes the procedures to be followed and documentation required to receive such payment from the trust fund.

Reg.12.402 Trust Fund Eligibility

(A) (1) Every owner or operator of an underground petroleum storage tank system is required by 40 CFR 280.93 to demonstrate financial responsibility for compensating third parties for bodily injury and property damage caused by accidental releases from underground petroleum storage tank systems. One mechanism which may be used to partially satisfy this requirement is the Petroleum Storage Tank Trust Fund.

(2) Every owner or operator choosing to use the trust fund as a mechanism to partially satisfy the financial responsibility requirements described in 12.402(A)(1) must also utilize an additional financial responsibility mechanism, as described in 12.402(C)(1), for the first seven thousand five hundred dollars (\$7,500) of the costs of third-party claims.

(B) In accordance with the Petroleum Storage Tank Trust Fund Act, owners or operators of certain aboveground petroleum storage tank systems may also qualify for and access the trust fund.

(C) In order to be eligible for the trust fund, the owner or operator must:

(1) Register each petroleum storage tank and pay the annual storage tank fee required by this Regulation for each tank until such time as the permanent closure requirements of this Regulation are satisfied;

(2) Maintain financial responsibility in the amount of seven thousand five hundred dollars (\$7,500) per occurrence for third-party claims, by any one or combination of the following: insurance, guaranty, surety bond, letter of credit, insurance pool or any other mechanism allowed by 40 CFR 280; and

(3) For each petroleum storage tank for which trust fund eligibility is sought, certify, on forms supplied by the Department, that he or she is in substantial compliance, as defined by Subsection 12.403(B).

Reg.12.403 Trust Fund Coverage for a Release

(A) In order for an owner or operator to obtain third-party coverage by the trust fund for a release, the following requirements must be met:

(1) At the time of the discovery of the release the owner or operator must have met each of the requirements for trust fund eligibility as set forth in Subsection 12.402(C);

(2) The release must have occurred after February 22, 1989.

(3) The Department must have been given timely notice of the third-party claim as required by Section 12.405;

(4) The owner or operator must have expended seven thousand five hundred dollars (\$7,500) on reasonable and allowable third-party claims for the occurrence; and

(5) At the time of the release, the owner or operator must have been in substantial compliance, as defined in Subsection 12.403(B).

(B) (1) For purposes of this Chapter only, "substantial compliance" means compliance with the requirement for the owner or operator to maintain financial responsibility in the amount of seven thousand five hundred dollars (\$7,500) per occurrence for third-party claims, by any one or combination of the following: insurance, guaranty, surety bond, letter of credit, insurance pool or any other mechanism allowed by 40 CFR 280.

(2) An owner or operator who in fact expends seven thousand five hundred dollars (\$7,500) on reasonable and allowable third-party claims for the occurrence shall be deemed to be in substantial compliance.

(C) Upon request by the Department, the owner or operator shall submit proof of compliance with the requirements for trust fund coverage.

Reg.12.404 Trust Fund Coverage for Unknown Petroleum Storage Tanks

(A) Unknown petroleum storage tanks that have satisfied the requirements of Subsection 12.408(C) of this Chapter shall be eligible for reimbursement for third-party claims as provided by this section if:

(1) The unknown petroleum storage tank is discovered while removing, upgrading, or replacing a petroleum storage tank meeting the requirements of Subsection 12.402(C) or while performing petroleum investigation or corrective action activities required by federal or state laws, and the petroleum storage tank meeting the requirements of Subsection 12.402(C) is located on the same property or facility; or

(2) The unknown petroleum storage tank is located on a right-of-way purchased by a city, county, or state governmental agency or entity and is discovered during construction in such right-of-way.

(3) Eligibility for reimbursement of an unknown petroleum storage tank will be conditioned on the payment of three hundred seventy-five dollars (\$375) to the Department.

Reg.12.405 Notice Requirements

(A) (1) The owner or operator shall give written notice to the Department of any potential third-party claim within thirty (30) days of his or her knowledge of the potential claim.

(2) The notice required by 12.405(A)(1) shall provide the names and addresses of all persons and properties alleged to be injured, as well as the time, place, and circumstances of the release.

(B) (1) Any owner or operator against whom a third-party claim is filed in court or in the Arkansas State Claims Commission shall provide a copy of the complaint to the Department no later than twenty (20) days after service of summons or receipt of notification of the claim from the Arkansas State Claims Commission.

(2) Upon receipt of notice pursuant to 12.405(B)(1), the Department shall immediately notify the Attorney General, who shall have the right to intervene in any such lawsuit or proceeding.

(3) Payment of third-party claims from the fund may be denied for any owner or operator who fails to give the Department notice as required in Subsection 12.405(B).

Reg.12.406 Amount of Payment

(A) The trust fund will reimburse eligible owners or operators of storage tanks for compensating third parties, or will provide payment to third parties, for compensatory damages caused by accidental releases in an amount not to exceed nine hundred ninety-two thousand five hundred dollars (\$992,500) per occurrence.

(B) The owner or operator shall be responsible for the first seven thousand five hundred dollars (\$7,500) of third-party compensatory damage claims per occurrence.

Reg.12.407 Deductible

(A) The first seven thousand five hundred dollars (\$7,500) of costs incurred by the owner or operator for third-party compensatory damage claims for an occurrence shall be considered a deductible and is not eligible for reimbursement from the trust fund.

(B) (1) No payment to any third-party or to any owner or operator against whom a third-party claim is brought for compensatory damages shall be made from the trust fund until the owner or operator has expended the deductible amount on third-party claims for the occurrence, unless the owner or operator has been discharged under the United States Bankruptcy Code or is determined by a court to be insolvent.

(2) Proof of payment of the deductible must be provided to the Department prior to approval of a third-party claim for payment.

(3) For purposes of meeting the deductible, proof of payment shall consist of a receipt, a copy of a money order, or a canceled check. An IOU, a conditional payment, an installment payment, or a down payment shall not be considered proof of payment.



(C) Only third-party claims found to be reasonable and allowable shall be credited toward the deductible.

Reg.12.408 Applying for Payment of Third-Party Claims

(A) In order to apply for payment of a third-party claim, an owner or operator must meet the requirements for coverage set forth in Section 12.403 and meet the application requirements of either Subsection 12.408(C) for judgments or Subsection 12.408(E) for settlements.

(B) Unless otherwise stated in writing, any items which are contained in any information submitted to support a third-party claim and which are presented for payment shall be considered satisfied or compensated if the claim is approved and paid. No such items shall be reimbursable as corrective action under Chapter Three, unless otherwise agreed in writing before the third-party claim is approved for payment.

(C) An owner or operator against whom a judgment has been entered, by either a valid final court order or valid final order of the Arkansas Claims Commission, for compensatory damages caused by an accidental release from a qualified petroleum storage tank system, must submit:

(1) A copy of the order;

(2) Proof that the judgment, or a portion of the judgment, is for compensatory damages, if such is not clearly shown on the face of the order; and

(3) Before payment is made from the trust fund, proof of payment of the deductible of seven thousand five hundred dollars (\$7,500).

(D) (1) An owner or operator shall cooperate with and

assist the Department and, if applicable, the Attorney General's Office in connection with the third-party claim. At a minimum, such cooperation shall include active participation by the owner or operator throughout the litigation and providing assistance as required by the Department or the Attorney General's Office during resolution of a third-party claim.

(2) Reimbursement or payment of a third-party claim may be denied if an owner or operator fails to comply with the requirements of 12.408(D)(1).

(E) (1) An owner or operator who has entered into a settlement agreement with a third-party resolving a claim for compensatory damages caused by an accidental release from a qualified petroleum storage tank system must submit to the Department:

(a) A copy of the legally binding settlement agreement, including a dismissal with prejudice of the third-party's cause of action in accordance with the Arkansas or federal rules of civil procedure, which releases the owner or operator from all future liability to the third-party claimant for the occurrence;

(b) Documentation supporting each claim for which payment is sought;

(c) A notarized certification from the owner or operator and the third-party claimant that the third-party claim should rightfully be paid; and

(d) Before payment is made from the trust fund, proof of payment of the deductible of seven thousand five hundred dollars (\$7,500).