

(2) As an alternative to providing a legally binding settlement agreement pursuant to 12.408(E)(1)(a), an owner or operator may submit a copy of a proposed settlement agreement and request a preliminary Department review of the agreement before it is made binding. However, the settlement agreement must be made binding, except as provided in 12.408(E)(3), before it is submitted to the Advisory Committee.

(3) Any otherwise binding settlement agreement submitted under Subsection 12.408(E) may be conditioned upon approval of payment from the trust fund.

Reg.12.409 Third-Party Claim Review

(A) (1) Before commencing a substantive review of a third-party claim, the Department shall determine whether the release meets the requirements of Section 12.403 for third-party coverage by the trust fund.

(2) Any person aggrieved by the Department's determination of whether a release is eligible for third-party coverage by the trust fund 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 a third-party claim until any corrective action necessary to address the release has been completed.

(C) The Department is not required to commence substantive review of a third-party claim until it has received all of the information required by Subsection 12.408(C) or Subsection 12.408(E), as applicable. If, during the course of the substantive review, the Department finds that additional information is needed to evaluate the claim, the Department may require that the information be provided before review of the claim may be completed.

(D) The Department and the Advisory Committee shall not recommend, and the Director shall not approve, payment of third-party claims unless they are reasonable and allowable.

(E) The Department and the Advisory Committee shall recommend, and the Director shall approve, payment of a settled claim only upon determining that litigation would result in costs to the trust fund which would exceed the settlement amount.

(F) (1) After its third-party claim eligibility determination and substantive review 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, whether the claim, or any portion of it, is both reasonable and allowable.

(2) The Advisory Committee in its sole discretion may allow supplemental information explaining the claim 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 12.409(F)(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, whether the claim, or any portion of it, is both reasonable and allowable and should therefore be paid.

(G) (1) The Director shall consider, but is not bound by, the recommendations made by the Department pursuant to 12.409(F)(1) and by the Advisory Committee pursuant to 12.409(F)(3).

(2) The Director shall decide whether the applicant has met the trust fund eligibility requirements and, if so, whether the claim, or any portion of it, is both reasonable and allowable and should therefore be paid.

(3) The Director may solicit advice on a claim from the Commission.

(4) 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.

(H) (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.12.410 Reasonable Claims

(A) Third-party claims which have been reduced to judgment and for which payment is requested pursuant to Subsection 12.408(C) shall be presumed reasonable under this Chapter.

(B) All settled third-party claims for which payment is requested pursuant to Subsection 12.408(E) must be shown to be reasonable as compared to similar claims for compensatory damages.

Reg.12.411 Allowable Claims

(A) Only claims for compensatory damages, as the term is defined by this regulation, caused by an accidental release from a qualified storage tank are considered allowable under this Chapter.

(B) No payment shall be made pursuant to this Chapter for any injury or damages caused by the performance of corrective

action.

(C) (1) No payment shall be made pursuant to this Chapter for any item for which reimbursement is made for the same occurrence under corrective action pursuant to Chapter Three.

(2) No payment shall be made pursuant to this Chapter for any item which is included in an approved corrective action plan and is reimbursable under Chapter Three.

Reg.12.412 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 12.402 and the trust fund coverage requirements of Section 12.403 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;

(3) The owner or operator is otherwise instructed

in writing by the Department.

Reg.12.413 Audits

(A) The Director may cause audits to be performed as necessary to ensure that claims, for which payment is sought or has been made, were 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.12.414 Cost Recovery

(A) The Department may initiate proceedings against any owner or operator of a petroleum storage tank system or third-party claimant for recovery of monies that were solicited and received from the trust fund either through willful or accidental utilization of incorrect information.

(B) (1) Any owner or operator of a petroleum storage tank system who was not in substantial compliance at the time of a release, as defined by Section 12.402, for which a third-party claimant was compensated from the trust fund, shall be required to reimburse the trust fund for the amount of the claim paid.

(2) If the owner or operator does not reimburse the trust fund as required in 12.414(B) (1), the Department may institute an action against the owner or operator to recover such monies pursuant to the authority of the Regulated Substance Storage Tank program, the Petroleum Storage Tank Trust Fund Act, or this Regulation.

(C) 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.

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

Reg.12.415 Trust Fund Availability

(A) (1) All claims for payment 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 and allowable 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 any factors it deems appropriate.

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

Reg.12.416 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 FIVE: LICENSING OF UNDERGROUND STORAGE TANK INSTALLERS AND SERVICE PERSONNEL

Reg.12.501 Purpose

The purpose of this Chapter is to provide for the regulation of persons installing, repairing, upgrading and closing underground storage tank systems which contain regulated substances in order to assure that the systems are installed, repaired, upgraded and closed in a manner which will not encourage or facilitate leaking and which will protect the public health and the lands and waters of the State of Arkansas.

Reg.12.502 Definitions

The following definitions, in addition to the definitions in Chapter One, apply to this Chapter:

(A) "Closing" or "closure" means the process of removing and disposing of or closing in place an underground storage tank system.

(B) "Contractor" means any person who contracts to install, repair, upgrade or close an underground storage tank system for a third party.

(C) "Critical junctures," in the case of an installation, means the steps in the installation of an underground storage tank system which are important to the prevention of releases and shall, at a minimum, include all of the following:

(1) Preparation of the excavation immediately prior to receiving backfill and the tank;

(2) Setting of the tank and the piping, including placement of any strapping or other anchoring devices and

backfilling to the level of the tank;

(3) Any time during the installation in which components of the piping are connected;

(4) Any time during the installation of corrosion protection measures;

(5) All pressure testing of the underground storage tank system, including associated piping, performed during the installation; and

(6) Placement of backfill and filling of the excavation.

(D) "Critical junctures," in the case of the repair or upgrade of an underground storage tank system, means the steps in the project which are comparable to the steps listed in Subsection 12.502(C) in terms of their importance in the prevention of leaks and shall, at a minimum, include all of the following:

(1) The excavation of the existing tank or piping;

(2) The actual performance of the repairs or upgrades to the tank or the piping;

(3) Any time during the project in which components of the piping are connected; and

(4) Any time during the project in which the tank system or its associated piping is tested.

(E) "Critical junctures" in the case of a closure means the steps in the removal or in-place closure of an underground storage tank system which are important to the safe removal or closure in place (including the detection of current or previous

leakage) and shall, at a minimum, include all of the following:

- (1) The purging or inerting of vapors;
- (2) The removal and disposal of underground storage tank contents;
- (3) The excavation of the existing underground storage tank system;
- (4) The actual performance of the tests or monitoring to determine if previous or current leakage is present;
- (5) The actual removal of the existing underground storage tank and piping; and
- (6) The assessment of the site to ascertain if a current or previous release has resulted in contamination of the environment.

(F) "Install" or "installation" means the work involved in placing an underground storage tank system or any part thereof in the ground and preparing it to be placed in service.

(G) "Repair" means the correction or modification of an underground storage tank system, including but not limited to the replacement of piping, valves, fill pipes or vents and any repairs to the tank.

(H) "Upgrade" means the addition or retrofit of systems such as cathodic protection, lining, spill and overflow controls or leak detection devices to improve the ability of an underground storage tank system to prevent the release of product to the environment.

Reg.12.503 Applicability

(A) This Chapter applies to all persons who install, repair, upgrade or close underground storage tank systems in Arkansas, including officers or employees of owners or operators, except as provided in Subsections 12.503(B) and 12.503(C).

(B) The provisions of this Chapter do not apply to the installation, repair, upgrade or closure of the following underground storage tanks:

- (1) Wastewater treatment tanks;
- (2) Sumps;
- (3) Underground storage tanks containing radioactive waste;
- (4) Electrical equipment tanks;
- (5) Hydraulic lift tanks; and
- (6) Any underground storage tank with a capacity of one hundred ten (110) gallons or less.

(C) The provisions of this Chapter do not apply to the installation, repair, upgrade or closure of any underground storage tank systems holding hazardous wastes that are listed or identified pursuant to the Resource Conservation and Recovery Act of 1976, as amended, or the Arkansas Hazardous Waste Management Act of 1979, as amended.

Reg.12.504 General Requirements

(A) (1) No person shall install, repair, upgrade or close underground storage tank systems in Arkansas unless the person is,

or employs, an individual who is licensed by the Department to perform such work.

(2) No person shall exercise supervisory control over installations, repairs, upgrades or closures unless that person is licensed by the Department to perform such work.

(B) No contractor nor individual shall perform or agree to perform any installation, repair, upgrade or closure unless it is or has in its employ one or more licensed individuals who:

(1) Will exercise responsible supervisory control over any installation, repair, upgrade or closure undertaken;

(2) Will, at a minimum, be physically present on site at all critical junctures in the installation, repair, upgrade and closure;

(3) Is competent to perform the installation, repair, upgrade or closure; and

(4) Has adequate knowledge of appropriate materials, technical requirements and installation, repair, upgrade and closure procedures for such work.

(C) (1) No contractor nor individual shall affix his or her signature or license number to certify any installation, repair, upgrade or closure for which he or she lacks competence.

(2) No contractor nor individual shall certify to an owner or operator that an installation, repair, upgrade or closure is complete unless the installation, repair, upgrade or closure complies with this Regulation.

(3) If an installation, repair, upgrade or closure is performed for an owner or operator on a contract basis, both the

individual and the contractor for whom the individual works are responsible for the accuracy of any representations made concerning such work.

(D) The requirements of this Chapter are not intended to prohibit the employment of apprentices or helpers so long as a licensed individual exercises responsible supervisory control and is physically present on site at the critical junctures in the installation, repair, upgrade or closure.

(E) The requirements of this Chapter are in addition to, and not in lieu of, any other licensing and registration requirements imposed by other local, state or federal laws or regulations.

(F) The provisions of this Chapter do not relieve the owner or operator of any obligations or liabilities under any other applicable state and federal laws or regulations.

Reg.12.505 Surety Requirement

(A) No person shall install, repair, close, or upgrade any underground storage tank system unless that person or the contractor by whom he or she is employed has purchased a surety bond, letter of credit, or cash bond in the amount of at least twenty-five thousand dollars (\$25,000), which provides that the Department is the obligee or payee of the instrument, and otherwise complies with the regulations promulgated under this subchapter.

(B) Persons whose installation, repair, closure, or upgrade activities are limited to their own or their employers' companies' underground storage tank systems are exempt from the surety requirement of Subsection 12.505(A).

(C) In the event the licensee or contracting company fails to properly install, remove, repair, close, or upgrade any

underground storage tank pursuant to state law or regulation, the Director shall commence proceedings to collect on the surety.

(D) The Department shall notify the licensee or contracting company in writing of the collection against the surety, and the licensee or contracting company shall be given an opportunity for a hearing as provided herein.

Reg.12.506 Notification Requirement

(A) For any installation, or upgrade, the individual or contractor shall notify the Department at least one week prior to the beginning of the second critical juncture as described in 12.502(C)(2) and 12.502(D)(2).

(B) (1) For any repair, the individual or contractor shall notify the Department at least one week prior to the beginning of the second critical juncture as described in 12.502(D)(2).

(2) Notwithstanding the provisions of 12.506(B)(1), if the repair is necessary to prevent or abate a release to the environment, the repair shall be performed immediately and the Department shall be notified within twenty-four (24) hours.

(C) If the date scheduled for installation or upgrade, or repair pursuant to 12.506(B)(1), changes, the Department must be notified immediately of the change and the revised schedule.

Reg.12.507 Contractor Licensing

(A) An applicant for a contractor's license must meet all of the following requirements in order to be licensed by the Department:

(1) The applicant must file an application with the

Department on a form furnished by the Department, accompanied by a non-refundable fee of three hundred dollars (\$300);

(2) The applicant, if an individual, must be at least eighteen (18) years of age;

(3) The applicant need not, for purposes of this Regulation, be a resident of Arkansas;

(4) The applicant must demonstrate that:

(a) It is in good standing with all licensing authorities by whom licensing is required, given the nature and scope of its business;

(b) It holds a current contractor's license, if required by local, state, or federal laws or regulations; and

(c) It has not had a business or occupational license suspended or revoked in Arkansas or any other state, except as provided in Subsection 12.507(B);

(5) At least one active officer, partner, owner, or designated managerial representative of the contractor must pass Part One of the licensing examination described in Section 12.511; and

(6) The applicant must attest in the application that on any job involving the installation, repair, upgrade or closure of an underground storage tank system, a licensed individual will exercise responsible supervisory control over the work and will be physically present on the site at all critical junctures in the installation, repair, upgrade or closure.

(7) An application filed with the Department will

remain pending for one (1) year from the date of the application. If, during that year, a license is not issued to the applicant, the applicant must file a new application, complete with the appropriate fee, in order to obtain a license from the Department.

(B) Notwithstanding the provisions of 12.507(A)(4)(c), the Department may grant a license to an applicant who has had a business or occupational license or certificate suspended or revoked if the suspension or revocation, by reason of its date or nature or because of other considerations, is not relevant to the applicant's competence to install, repair, upgrade or close underground storage tanks systems.

Reg.12.508 Individual Licensing

(A) An applicant for an individual license must meet all of the following requirements in order to receive a license from the Department:

(1) The applicant must file an application with the Department on a form furnished by the Department, accompanied by a non-refundable fee of one hundred fifty dollars (\$150);

(2) The applicant must be an individual and must be at least eighteen (18) years of age;

(3) The applicant need not, for purposes of this Regulation, be a resident of Arkansas;

(4) The applicant must demonstrate that he or she is in good standing with all licensing authorities by whom licensing is required, given the nature and scope of the applicant's work, and that he or she has not had a business or occupational license or certificate suspended or revoked in Arkansas or any other state, except as provided in Subsection 12.508(B);

(5) The applicant must meet the experience requirements of Section 12.510; and

(6) The applicant must pass the licensing examination required by Section 12.511.

(7) An application filed with the Department will remain pending for one (1) year from the date of the application. If, during that year, a license is not issued to the applicant, the applicant must file a new application, complete with the appropriate fee, in order to obtain a license from the Department.

(B) Notwithstanding the provisions of 12.508(A)(4), the Department may grant a license to an applicant who has had a business or occupational license or certificate suspended or revoked if the suspension or revocation, by reason of its date or nature or because of other considerations, is not relevant to the applicant's competence to install, repair, upgrade or close underground storage tank systems.

Reg.12.509 Contractor/Individual Licensing

A person who is seeking to be both the contractor and the sole licensed individual exercising supervisory control, as required by 12.507(A)(6), under that contractor's license need only pay the contractor licensing fee required by 12.507(A)(1). Such person must meet all of the requirements for an individual license set forth in Section 12.508 except for the fee requirement of 12.508(A)(1).

Reg.12.510 Experience Requirements

To qualify for an individual license under Section 12.508, an applicant must demonstrate that he or she has had, within the three (3) years immediately prior to making the application, one (1) year of field experience in installation, repair, upgrade or closure of underground storage tank systems.

Reg.12.511 Licensing Examination

(A) To qualify for an individual license under Section 12.508, an applicant shall pass a written examination covering all aspects of the installation, repair, upgrade or closure of underground storage tank systems.

(B) At the time an application is filed, the Department will furnish the applicant with a study package to assist him or her in preparing for the examination. The study package will refer applicants to the appropriate laws and regulations and industry publications used by the Department in preparing the examination and upon which the examination will be based.

(C) The examination will consist of three (3) parts, as follows:

(1) Part One will test an applicant's familiarity with the provisions of this Regulation and the applicable Arkansas and federal laws and regulations;

(2) Part Two will test an applicant's familiarity with current technology and industry recommended practices with respect to the proper installation, repair and upgrade of underground storage tank systems;

(3) Part Three will test an applicant's familiarity with current technology and industry recommended practices for proper closure of underground storage tank systems.

(D) (1) In order to be licensed to perform installations, repairs, or upgrades, an applicant must pass Parts One and Two.

(2) In order to be licensed to perform closures, an applicant must pass Parts One and Three.

(3) In order to be licensed to perform installations, repairs, upgrades, and closures, an applicant must pass all parts of the examination.

(E) (1) An applicant must score seventy percent (70%) or higher on each part of the examination taken in order to pass the examination.

(2) An applicant passing any part of the initial examination taken need not be retested on that part, provided that any part taken but not passed must be passed within one year of the initial testing date; otherwise, the entire examination must be retaken.

(3) (a) An applicant who fails the examination may, by paying a non-refundable fee of twenty-five dollars (\$25), retake the examination.

(b) This fee must accompany each request for retesting after initial failure of the examination.

(c) For purposes of retesting, an application will remain pending for a period of one (1) year after the applicant's failure to pass the initial examination.

(d) If the applicant has not requested retesting within the one (1)-year period, the applicant must file a new application, complete with the appropriate fee, in order to obtain a license from the Department.

(F) (1) The Department shall offer the examination at least four times each year.

(2) At least thirty (30) days prior to the date of a licensing examination, the Department shall provide notice of the

examination to all persons who have requested such notice and to any person who has completed an application for a license since the date of the last examination.

(3) Only persons who have filed applications at least ten (10) business days in advance of an examination are eligible to take the examination.

(E) (1) The Department shall grade all examinations and notify the applicants of the results within thirty (30) days of the date of the examination.

(2) Examination papers will not be returned to applicants, but may be reviewed by applicants at the Department offices in Little Rock.

Reg.12.512 Renewal of Licenses

(A) Any license issued under Section 12.507 or Section 12.508 must be renewed every two (2) years.

(B) (1) At least thirty (30) days before the expiration date of a license, the Department shall mail a renewal application form to the licensee, at the licensee's address of record with the Department.

(2) The licensee shall renew the license on a timely basis regardless of whether an application form has been received from the Department. A form may be requested from the Department if it has not been received by mail.

(C) To qualify for renewal, a licensed contractor must:

(1) Apply for renewal on a form furnished by the Department and accompanied by a non-refundable fee of three hundred dollars (\$300); and

(2) Attest in its renewal application that on any job involving the installation, repair, upgrade or closure of an underground storage tank system, a licensed individual will exercise responsible supervisory control over the work and will be physically present on the site at all critical junctures in the installation, repair, upgrade or closure.

(D) To qualify for renewal, a licensed individual must:

(1) Apply for renewal on a form furnished by the Department and accompanied by a non-refundable fee of one hundred fifty dollars (\$150);

(2) Demonstrate that he or she has completed at least three (3) installations, repairs, upgrades or closures during the two (2)-year period preceding the renewal application; and

(3) Demonstrate that he or she has completed sixteen (16) hours of Department-approved continuing education in the two (2)-year period preceding the renewal application.

(E) Any license which is not renewed prior to its expiration date shall be considered lapsed and shall not be used in the solicitation or performance of any installation, repair, upgrade or closure.

(F) (1) A license should be renewed prior to its expiration date but may be renewed up to two (2) months after the date of expiration if the following requirements are met:

(a) A late fee of twenty-five dollars (\$25) in addition to the renewal fee must be paid; and

(b) The requirements for renewal must be satisfied.

(2) Licenses which have not been renewed within two (2) months after the date of expiration shall be considered lapsed and invalid and applications for renewal will not be accepted after such time.

(3) Any individual or contractor whose license has become lapsed and invalid, as provided in 12.512(F) (2), must submit an application for a new license under Section 12.507 or Section 12.508 and comply with the requirements therein.

(4) Any individual applying for a new license under Section 12.508, and who previously held such a license within the past two years which has become lapsed and invalid, must meet the continuing education requirements of 12.512(D) (3) and submit a certificate or certificates as proof of meeting those requirements as part of his or her application.

Reg.12.513 Denial of Licenses

(A) No license required by this Chapter shall be issued or renewed if the applicant for issuance or renewal fails to meet any of the applicable licensing requirements.

(B) (1) The Department shall, by certified mail with return receipt requested, give written notice to the applicant of its decision to deny the issuance or renewal of a license.

(2) The notice of denial shall state:

(a) The specific reasons for the denial;

(b) That in order to appeal the denial, the applicant must submit a written request for a meeting with the Director to review the Department's decision; and

(c) That the request for a meeting with the Director must be received by the Department no later than ten (10) days following the applicant's receipt of the notice of denial.

(C) (1) An applicant shall be afforded an opportunity to appeal to the Director a decision of the Department to deny the license.

(2) (a) In order to appeal the Department's decision to deny the license, an applicant must submit to the Director a written request for a meeting to review the Department's decision.

(b) The request must be received by the Director no later than ten (10) days following the applicant's receipt of the notice described in Subsection 12.513(B).

(c) If no request is received by the Director within the time specified in 12.513(C)(2)(b), the decision of the Department shall be final and may not be appealed.

(3) The Director, or his or her designee, shall arrange a meeting to discuss the denial of the license within fifteen (15) days of the Director's receipt of the applicant's request pursuant to 12.513(C)(2)(a) and (b).

(D) (1) Following a meeting held pursuant to 12.513(C)(3), the Director shall issue a written decision to issue or deny the license in accordance with Regulation No. 8 (Administrative Procedures).

(2) The decision of the Director shall be final; however, it may be appealed to the Commission by filing a Request for Commission Review and Adjudicatory Hearing in accordance with

Regulation No. 8.

(E) During the pendency of an appeal pursuant to Section 12.513, the denial of a license shall stand.

Reg.12.514 Department Approval of Training and Continuing Education

(A) (1) The types of training and continuing education required by this Chapter which may be eligible for approval include instructional courses, seminars or conferences sponsored by the Department, the Environmental Protection Agency, educational institutions, independent professional or trade associations, manufacturers, or firms engaged in underground storage tank system installation, repair, upgrade, closure or management.

(2) Course content must be reasonably related to work performed by persons installing, maintaining, repairing, upgrading or closing underground storage tank systems.

(B) Evidence of participation by the individual must be furnished to the Department by the organization sponsoring the approved training or continuing education.

Reg.12.515 Violations

(A) (1) The Department may undertake such investigations as it deems necessary to ensure compliance with the provisions of this Chapter.

(2) (a) The Department may take such actions as it deems necessary to ensure compliance with the provisions of this Chapter, including issuing compliance orders, assessing penalties, and revoking or suspending licenses.

(b) The Department may, in order to effectuate

the actions described in 12.515(A)(2)(a), commence civil or administrative actions under the provisions of Arkansas law or Chapter ~~Eight~~ Nine of this Regulation.

(B) The Department may suspend or revoke the license for an individual or contractor upon grounds that the individual or contractor:

(1) Exercised fraud, misrepresentation or deception in obtaining a license;

(2) Exhibited gross incompetence in the performance of an installation, repair, upgrade or closure;

(3) Was derelict in the performance of a duty as a licensed individual or contractor; or

(4) Knowingly violated any provision of this Regulation.

CHAPTER SIX: LICENSING OF UNDERGROUND STORAGE TANK TESTERS

Reg.12.601 Purpose

The purpose of this Chapter is to provide for the regulation of persons testing underground storage tank systems which contain regulated substances in order to assure that the systems are tested in a manner which will not encourage or facilitate leaking and which will protect the public health and the lands and waters of the State of Arkansas.

Reg.12.602 Definitions

The following definitions, in addition to the definitions in Chapter One, apply to this Chapter:

(A) "Company" means any person who contracts to test an underground storage tank system for a third party.

(B) "Tester" means an individual or company who tests underground storage tank systems in Arkansas; and

(C) "Test" or "testing" means the work involved in assessing the integrity of an underground storage tank system, including associated piping, in order to determine whether or not it is capable of meeting the tightness testing performance standards of 40 CFR 280.43(c) and 280.44(b).

Reg.12.603 Applicability

(A) This Chapter applies to all persons who perform testing on underground storage tank systems in Arkansas, including officers or employees of owners or operators, except as provided in Subsections 12.603(B) and 12.603(C).

(B) The provisions of this Chapter do not apply to the

testing of the following underground storage tanks:

- (1) Wastewater treatment tanks;
- (2) Sumps;
- (3) Underground storage tanks containing radioactive waste;
- (4) Electrical equipment tanks;
- (5) Hydraulic lift tanks; and
- (6) Any underground storage tank with a capacity of one hundred ten (110) gallons or less.

(C) The provisions of this Chapter do not apply to the testing of any underground storage tank system holding hazardous wastes listed or identified under the Resource Conservation and Recovery Act (RCRA) of 1976 as amended, or the Arkansas Hazardous Waste Management Act of 1979, as amended.

Reg.12.604 General Requirements

(A) (1) No person shall test underground storage tank systems in Arkansas unless the person is, or employs, an individual who has been licensed by the Department to perform such testing.

(2) No person shall exercise supervisory control over a test unless that person is licensed by the Department to perform such testing.

(B) No tester shall perform or agree to perform a test unless he or she is licensed as an individual or has in his or her employ one or more licensed individuals who:

(1) will exercise responsible supervisory control over any testing undertaken;

(2) will, at a minimum, be physically present on the site during all preparations for the test and during the actual test itself;

(3) is certified by the test method manufacturer to perform the particular test method utilized; and

(4) has adequate knowledge of appropriate materials, technical requirements and testing procedures for such testing.

(C) (1) No tester shall affix his or her signature or license number to certify any testing for which he or she lacks competence.

(2) No tester shall certify to an owner or operator that a test is complete unless the test complies with this Regulation.

(3) If a test is performed for an owner or operator on a contract basis, both the individual and the company for whom the individual works are responsible for the accuracy of any representations made concerning such test.

(D) The requirements of this Chapter are not intended to prohibit the employment of apprentices or helpers so long as a licensed individual exercises responsible supervisory control and is physically present on site during all preparations for the test and during the actual test itself.

(E) The requirements of this Chapter are in addition to, and not in lieu of, any other licensing and registration requirements imposed by local, state, or federal laws or regulations.

(F) The provisions of this Chapter do not relieve the owner or operator of any obligations or liabilities under any other applicable state and federal laws or regulations.

Reg.12.605 Surety Requirement

(A) No person shall test any underground storage tank system unless that person or the contractor by whom he or she is employed has purchased a surety bond, letter of credit, or cash bond in the amount of at least twenty-five thousand dollars (\$25,000), which provides that the Department is the obligee or payee of the instrument, and otherwise complies with the regulations promulgated under this subchapter.

(B) Persons whose testing activities are limited to their own or their employers' companies' underground storage tank systems are exempt from the surety requirement of Subsection 12.605(A).

(C) In the event the licensee or contracting company fails to properly test any underground storage tank pursuant to state law or regulation, the Director shall commence proceedings to collect on the surety bond, letter of credit or cash bond.

(D) The Department shall notify the licensee or contracting company in writing of the collection against the surety, and the licensee or contracting company shall be given an opportunity for a hearing as provided herein.

Reg.12.606 Company Licensing

(A) An applicant for a company license must meet all of the following requirements in order to be licensed by the Department:

(1) The applicant must file an application with the Department on a form furnished by the Department, accompanied by a

non-refundable fee of three hundred dollars (\$300);

(2) The applicant, if an individual, must be at least eighteen (18) years of age;

(3) The applicant need not, for purposes of this Regulation, be a resident of Arkansas;

(4) The applicant must demonstrate that:

(a) It is in good standing with all licensing authorities by whom licensing is required, given the nature and scope of its business;

(b) It holds a current contractor's license, if required by local, state, or federal laws or regulations; and

(c) It has not had a business or occupational license suspended or revoked in Arkansas or any other state, except as provided in Subsection 12.606(B);

(5) At least one active officer, partner, owner, or designated managerial representative of the company must pass Part One of the licensing examination described in Section 12.511; and

(6) The applicant must attest in the application that on any job involving the testing of an underground storage tank system, a licensed individual will exercise responsible supervisory control over the work and will be physically present on the site during all preparations for the test and during the actual test itself.

(7) An application filed with the Department will remain pending for one (1) year from the date of the application. If, during that year, a license is not issued to the applicant, the

applicant must file a new application, complete with the appropriate fee, in order to obtain a license from the Department.

(B) Notwithstanding the provisions of 12.606(A)(4)(c), the Department may grant a license to an applicant who has had a business or occupational license or certificate suspended or revoked if the suspension or revocation, by reason of its date or nature or because of other considerations, is not relevant to the applicant's competence to test underground storage tank systems.

Reg.12.607 Individual Licensing

(A) An applicant for an individual license must meet all of the following requirements in order to receive a license from the Department:

(1) The applicant must file an application with the Department on a form furnished by the Department, accompanied by a non-refundable fee of one hundred fifty dollars (\$150);

(2) The applicant must be an individual and must be at least eighteen (18) years of age;

(3) The applicant need not, for the purposes of this Regulation, be a resident of Arkansas;

(4) The applicant must demonstrate that he or she is in good standing with all licensing authorities by whom licensing is required, given the nature and scope of the applicant's work, and that he or she has not had a business or occupational license or certificate suspended or revoked in Arkansas or any other state, except as provided in Subsection 12.607(B);

(5) The applicant must meet the experience requirements of Section 12.609;

(6) The applicant must provide the Department with certification by the manufacturer of the testing method to be used by the applicant that the method will meet the federal performance standard as stated in 40 CFR 280.43(c) and 280.44(b);

(7) At the time application for the license is made, the applicant must provide the Department with certification from the manufacturer of the test method to be used by the applicant that the applicant has received training, been examined, and satisfactorily shown proficiency in the use of the chosen testing method; and

(8) The applicant must pass Part One of the licensing examination described in Section 12.511.

(9) An application filed with the Department will remain pending for one year (1) from the date of the application. If, during that year, a license is not issued to the applicant, the applicant must file a new application, complete with the appropriate fee, in order to obtain a license from the Department.

(B) Notwithstanding the provisions of 12.607(A)(4), the Department may grant a license to an applicant who has had a business or occupational license or certificate suspended or revoked if the suspension or revocation, by reason of its date or nature or because of other considerations, is not relevant to the applicant's competence to test underground storage tank systems.

(C) (1) If an individual chooses a test method that is different from that for which he or she is licensed, the individual must provide proof to the Department that he or she has met the requirements of 12.607(A)(6) and 12.607(A)(7) for the chosen method. Upon receipt of adequate documentation, the Department shall update its file on that license to reflect the change in method.

(2) The requirements of 12.607(C)(1) must be met before the individual performs any testing as a licensed tester using a method different from that for which the existing license was issued.

(3) If the change in test method is made before the expiration of the existing license, no additional fee is required to update that license.

Reg.12.608 Company/Individual Licensing

A person who is seeking to be both the company and the sole licensed individual exercising supervisory control, as required by 12.606(A)(6), under that company's license need only pay the company licensing fee required by 12.606(A)(1). Such person must meet all of the requirements for an individual license set forth in Section 12.607 except for the fee requirement of 12.607(A)(1).

Reg.12.609 Experience Requirements

To qualify for an individual license under Section 12.607, an applicant must demonstrate that he or she has had, within the three (3) years immediately prior to making the application, one (1) year of field experience in testing.

Reg.12.610 Renewal of Licenses

(A) Any license issued under Section 12.606 or Section 12.607 must be renewed every two (2) years.

(B) (1) At least thirty (30) days before the expiration date of a license, the Department shall mail a renewal application form to the licensee, at the licensee's address of record with the Department.

(2) The licensee shall renew the license on a timely

basis regardless of whether an application form has been received from the Department. A form may be requested from the Department if it has not been received by mail.

(C) To qualify for renewal, a licensed company must:

(1) Apply for renewal on a form furnished by the Department and accompanied by a non-refundable fee of three hundred dollars (\$300); and

(2) Attest in its renewal application that on any job involving the testing of an underground storage tank system, a licensed individual will exercise responsible supervisory control over the work and will be physically present on the site during all preparations for the test and during the actual test itself.

(D) To qualify for renewal, a licensed individual must:

(1) Apply for renewal on a form furnished by the Department accompanied by a non-refundable fee of one hundred fifty dollars (\$150);

(2) Demonstrate that he or she has completed at least (3) three tests during the two (2)-year period preceding the renewal application; and

(3) Demonstrate that he or she has completed continuing education in the test method chosen for use by that individual and received recertification by the manufacturer of such test method.

(E) Any license which is not renewed prior to its expiration date shall be considered lapsed and shall not be used in the solicitation or performance of any test.

(F) (1) A license should be renewed prior to its

expiration but may be renewed up to two (2) months after the date of expiration if the following requirements are met:

(a) A late fee of twenty-five dollars (\$25) in addition to the renewal fee must be paid; and

(b) The requirements for renewal must be satisfied.

(2) Licenses which have not been renewed within two (2) months after the date of expiration shall be considered lapsed and invalid and applications for renewal will not be accepted after such time.

(3) Any individual or company whose license has lapsed as provided in 12.610(F)(2) must submit an application for a new license under Section 12.606 or 12.607 and comply with the requirements therein.

Reg.12.611 Denial of Licenses

(A) No license required by this Chapter shall be issued or renewed if the applicant for issuance or renewal fails to meet any of the applicable licensing requirements.

(B) (1) The Department shall, by certified mail with return receipt requested, give written notice to the applicant of its decision to deny the issuance or renewal of a license.

(2) The notice of denial shall state:

(a) The specific reasons for the denial;

(b) That in order to appeal the denial, the applicant must submit a written request for a meeting with the Director to review the Department's decision;

and

(c) That the request for a meeting with the Director must be received by the Department no later than ten (10) days following the applicant's receipt of the notice of denial.

(C) (1) An applicant shall be afforded an opportunity to appeal to the Director a decision of the Department to deny the license.

(2)(a) In order to appeal the Department's decision to deny the license, an applicant must submit to the Director a written request for a meeting to review the Department's decision.

(b) The request must be received by the Director no later than ten (10) days following the applicant's receipt of the notice described in Subsection 12.611(B).

(c) If no request is received by the Director within the time specified in 12.611(C)(2)(b), the decision of the Department shall be final and may not be appealed.

(3) The Director, or his or her designee, shall arrange a meeting to discuss the denial of the license within fifteen (15) days of the Director's receipt of the applicant's request pursuant to 12.611(C)(2)(a) and (b).

(D) (1) Following a meeting held pursuant to 12.611(C)(3), the Director shall issue a written decision to issue or deny the license in accordance with Regulation No. 8 (Administrative Procedures).

(2) The decision of the Director shall be final; however, it may be appealed to the Commission by filing a Request for Commission Review and Adjudicatory Hearing in accordance with Regulation No. 8.

(E) During the pendency of an appeal pursuant to Section 12.611, the denial of a license shall stand.

Reg.12.612 Department Approval of Training and Continuing Education

(A) (1) The types of training and continuing education required by this Chapter which may be eligible for approval include instructional courses, seminars or conferences sponsored by the Department, the Environmental Protection Agency, educational institutions, independent professional or trade associations, manufacturers, or firms engaged in underground storage tank system testing.

(2) Course content must be reasonably related to work performed by persons testing underground storage tank systems.

(B) Evidence of participation by the individual must be furnished to the Department by the organization sponsoring the approved training or continuing education.

Reg.12.613 Violations

(A) (1) The Department may undertake such investigations as it deems necessary to ensure compliance with the provisions of this Chapter.

(2) (a) The Department may take such actions as it deems necessary to ensure compliance with the provisions of this Chapter, including issuing compliance orders, assessing penalties, and revoking or suspending licenses.

(b) The Department may, in order to effectuate the actions described in 12.613(A)(2)(a), commence civil or administrative actions under the provisions of Arkansas law or Chapter ~~Eight~~ Nine of this Regulation.

(B) The Department may suspend or revoke the license for an individual or contractor upon grounds that the individual or contractor:

(1) Exercised fraud, misrepresentation or deception in obtaining a license;

(2) Exhibited gross incompetence in the performance of a test;

(3) Was derelict in the performance of a duty as a licensed individual or company; or

(4) Knowingly violated any provision of this Regulation.

CHAPTER SEVEN: ~~RESERVED~~ OPERATOR TRAINING

Reg.12.701 Purpose

The purpose of this Chapter is to provide for the training or certification of persons operating and maintaining underground storage tank systems which contain regulated substances in order to assure that the systems are operated and maintained in a manner which will protect the public health and the lands and waters of the State of Arkansas.

Reg.12.702 Definitions

The following definitions, in addition to the definitions in Chapter One, apply to this Chapter:

(A) "Operator" means any person in control of, or having responsibility for, the daily operation of the underground storage tank system. This term shall not include contractors or consultants performing compliance monitoring, testing, emergency response, or other services on an underground storage tank system for a tank owner or operator.

(1) "Class A Operator" means any operator having primary responsibility for onsite operation and maintenance of underground storage tank systems.

(2) "Class B Operator" means any operator having daily onsite responsibility for the operation and maintenance of underground storage tank systems.

(3) "Class C Operator" means a daily, onsite employee having primary responsibility for addressing emergencies presented by a spill or release from an underground storage tank system.

(B) "Unmanned facility" means any facility that does not have an operator onsite during operation of the underground storage tank system.

Reg.12.703 Applicability

(A) This Chapter applies to all persons who are responsible for operating or maintaining underground storage tank systems in Arkansas as defined in Reg. 12.702.

(B) The provisions of this Chapter in no way relieve the owner or operator, as defined in 40 CFR 280 and this regulation, from any legal responsibility mandated by federal and state underground storage tank laws and regulations.

Reg.12.704 General Requirements

(A) (1) As soon as possible, but no later than August 8, 2012, each facility with an underground storage tank system must have a Class A, Class B, and Class C operator designated for that facility who has been trained or certified in accordance with the requirements of this Chapter.

(2) Separate individuals may be designated for each class of operator, or one individual may be designated to more than one operator class provided he or she is trained in accordance with Department requirements for the class or classes designated.

(3) At least one Class C operator must be present onsite during all hours of operation of an underground storage tank facility with the exception of:

(a) unmanned facilities with an emergency generator tank(s) only; or

(b) unmanned facilities that meet the

compliance requirements of the Arkansas State Fire Code.

(B) The Department may accept Class A or Class B operator certification from another state with an EPA-recognized operator training program.

(C) An owner or operator must maintain records documenting the training or certification for all Class A, Class B, and Class C operators at the underground storage tank facility, immediately available for inspection by the Department, or at a readily available alternative location and provided for inspection to the Department upon request.

(D) If the Department determines an underground storage tank facility has been identified as ineligible for fuel delivery pursuant to this Regulation, both the designated Class A operator and the designated Class B operator for that facility must complete Department-provided retraining and be recertified within forty-five (45) days of the facility being identified as ineligible for fuel delivery.

(E) Certification required by this Chapter may be denied by the Department if the individual fails to meet any of the applicable operator training or certification requirements.

(F) A denial of certification will be considered a final decision of the Director for purposes of appeal.

Reg.12.705 Class A Operator Certification

(A) At a minimum, a Class A operator must be Department-certified in the following areas:

(1) A general knowledge of applicable federal and state underground storage tank system requirements for operation, maintenance, and recordkeeping including, but not limited to:

(a) Release prevention;

(b) Release detection;

(c) Emergency response; and

(d) Product compatibility;

(2) Financial responsibility requirements;

(3) Notification requirements;

(4) Release and suspected release reporting requirements;

and
(5) Temporary and permanent closure requirements;

(6) Operator training requirements.

(B) After August 8, 2012, Class A operators must be certified within thirty (30) days after assuming operation and maintenance responsibilities for an underground storage tank system.

Reg.12.706 Class B Operator Certification

(A) At a minimum, a Class B operator must be Department-certified in the following areas:

(1) An in-depth knowledge of underground storage tank system requirements for day-to-day operation, maintenance, and recordkeeping including, but not limited to:

(a) Release prevention;

(b) Release detection;

(c) Components of underground storage tank systems;

(d) Materials of underground storage tank system components;

(e) Emergency response;

(f) Product compatibility;

(g) Reporting and recordkeeping requirements; and

(h) Class C operator training requirements.

(B) After August 8, 2012, Class B operators must be certified within thirty (30) days after assuming operation and maintenance responsibilities for an underground storage tank system.

Reg.12.707 Class C Operator Training

(A) At a minimum, a Class C operator must be trained in:

(1) Delivery controls and monitoring of the dispensing or sale of regulated substances;

(2) Initial response to alarms or releases; and

(3) Appropriate actions to be taken in response to spills or releases from an underground storage tank system.

(B) (1) A Class C operator must be trained by a Department-certified Class A or Class B operator, and the training must be specific to the facility at which the Class C operator is employed.

(2) Training for Class C operators must be

documented on forms provided by the Department.

(C) An up-to-date list of trained Class C operators and training documentation must be maintained on site at the facility or at a readily available alternative site for inspection by the Department upon request.

(D) Class C operators must be trained before assuming responsibility for responding to emergencies.

(E) Department-certified Class A and Class B operators meet the training requirements of a Class C operator.

Reg.12.708 Operator Examination

(A) To be certified as a Class A or Class B operator under Sections 12.705 or 12.706, an individual shall pass a written examination given by the Department, covering the requirements of those sections, with a score of seventy percent (70%) or higher.

(B) In order to take the exam to be certified as a Class A or Class B operator under the provisions of this regulation, an individual must be at least eighteen (18) years of age.

(C) At least one week prior to the date of examination, a registration form along with a non-refundable examination fee of twenty-five dollars (\$25) for each examination taken must be received by the Department.

(D) Any individual taking a Class A or Class B operator exam must, at the time of the exam, declare on forms provided by the Department, the facility identification number of each underground storage tank facility for which the individual will be the designated Class A or Class B operator.

Reg.12.709 Violations

(A) (1) The Department may undertake such investigations as it deems necessary to ensure compliance with the provisions of this Chapter.

(2) (a) The Department may take such actions as it deems necessary to ensure compliance with the provisions of this Chapter, including issuing enforcement actions, assessing penalties, and revoking certifications.

(b) The Department may, in order to effectuate the actions described in 12.709(A)(2)(a), commence civil or administrative actions under the provisions of Arkansas law or Chapter Nine of this Regulation.

(B) The Department may revoke the certification for an individual upon grounds that the individual:

(1) Exercised fraud, misrepresentation or deception in obtaining certification;

(2) Exercised fraud, misrepresentation or deception in the training, certification or documentation of training for other operators as defined in this Chapter;

(3) Exhibited gross negligence regarding the operation, maintenance, or recordkeeping of an underground storage tank facility or Class C operator training requirements.

Reg.12.710 Disclosure Exemption

Any certification required by this Chapter is exempt from the disclosure requirements of A.C.A. § 8-1-106 and Regulation No. 8.

CHAPTER EIGHT: CONFIDENTIALITY

Reg.12.801 Requests for Confidentiality

(A) (1) Any information submitted to the Department may be claimed as confidential.

(2) Any such claim must be asserted at the time of submission.

(3) No information shall be eligible for protection as confidential information under Section 12.805 unless it is submitted in accordance with the provisions of this Chapter.

(B) If no claim of confidentiality is made at the time of submission, the Department may make the information available to the public without further notice.

(C) If a claim of confidentiality is asserted at the time of submission, the Director shall make a determination of eligibility for protection as confidential information in accordance with Section 12.803.

Reg.12.802 Submission Procedures

(A) Any person claiming information as confidential under the provisions of Section 12.801 shall:

(1) Clearly mark each page containing such information with the word "CONFIDENTIAL"; and

(2) Submit an affidavit setting forth the reasons that the person believes the information is entitled to protection as a trade secret.

(B) (1) Any information submitted to the Department for

which a claim of confidentiality is made shall be submitted in a sealed envelope marked "CONFIDENTIAL" and addressed to the Director.

(2) The information shall be submitted in two separate parts as follows:

(a) The first part shall contain all information which is not deemed by the submitter to be confidential and shall include appropriate cross references to the second part; and

(b) The second part shall contain data, words, phrases, paragraphs or pages and appropriate affidavits containing or relating to the information which is claimed to be confidential.

Reg.12.803 Prerequisites for Protection

(A) No information shall be protected as confidential unless:

(1) It is submitted in accordance with the provisions of this Chapter; and

(2) The Director finds that the information would constitute a trade secret under Arkansas law.

(B) If the Director determines that information which is properly submitted does constitute a trade secret, then the information shall be kept confidential in accordance with Section 12.805.

Reg.12.804 Acceptability of Information

(A) The Director shall give written notice to any person submitting information for which confidentiality is claimed of his

or her decision on whether the information has been accepted as confidential.

(B) All information which the Director determines is entitled to protection shall be marked with the term "ACCEPTED" and shall be protected in accordance with Section 12.805.

(C) (1) If the Director finds that the information submitted does not meet the requirements of Section 12.803, he or she shall promptly notify the person submitting the information of this finding. The Director shall give the person reasonable opportunity to further justify his or her claim that the information deserves protection as a trade secret or to limit the scope of information for which the request for protection is made.

(2) If the person fails to satisfactorily demonstrate to the Director that the information submitted meets the criteria of Section 12.803, the information shall be marked with the term "REJECTED" and promptly returned to the person submitting the information.

Reg.12.805 Security

(A) (1) All information which is accepted by the Director as confidential shall be stored in locked filing cabinets.

(2) No person shall have access to confidential information unless the person requires such access in order to carry out his or her responsibilities under the Regulated Substance Storage Tank program, the Petroleum Storage Tank Trust Fund Act, or this Regulation.

(B) No person shall disclose any confidential information except in accordance with applicable state law.

CHAPTER NINE: ENFORCEMENT AND ADMINISTRATIVE PROCEDURES

Reg.12.901 Enforcement

(A) Violation of any provision of this Regulation, or of any order issued by the Department pursuant thereto, shall be considered a violation of this Regulation and shall be subject to the penalty provisions of the Regulated Substance Storage Tank program.

(B) The provisions of Regulation No. 7 (Civil Penalties) shall apply to enforcement actions taken pursuant to this Regulation.

Reg.12.902 Administrative Procedures

The provisions of Regulation No. 8 (Administrative Procedures) shall apply to administrative licensing, operator training and certification, or enforcement actions taken pursuant to this Regulation. Additionally, all administrative hearings and appeals arising under this regulation shall be conducted in accordance with the procedures described in A.C.A. § 8-7-804 and Regulation No. 8.

CHAPTER TEN: SEVERABILITY

If any provision of this Regulation or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Regulation which can be given effect without the invalid provision or application, and, to this end, provisions of this Regulation are declared to be severable.

CHAPTER ELEVEN: EFFECTIVE DATE

This regulation is effective ten (10) days after filing with the Secretary of State, the State Library, and the Bureau of Legislative Research.

APC&EC REGULATION NO. 12 EXECUTIVE SUMMARY

The Arkansas Pollution Control & Ecology Commission met on July 24, 2009, and approved the initiation of rulemaking proceedings to amend Commission Regulation No. 12: Storage Tanks.

The proposed revisions are designed to make Regulation No. 12 comply with state and federal legislation affecting the state's Regulated Storage Tanks Program, specifically Act 264 of the 2007 Arkansas General Assembly, and Act 282 of the 2009 Arkansas General Assembly, and the Federal Energy Policy Act of 2005.

Areas of proposed revision to Regulation No. 12 include:

- 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 clarifying 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 establishing a timeframe for requesting review by the Arkansas Petroleum Storage Tank Advisory Committee involving ADEQ determinations on Trust Fund reimbursement eligibility or costs. Based upon a comment received during the public hearing on the rule, a clarification of where and how to submit a request for review has been included with the proposed timeframe language in 12.302(E). Revisions are indicated on the markup in red.
- Changes to Chapter 3 establishing 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. Based upon a comment received during the public comment period on the rule, a federal language requirement inadvertently omitted in the initial draft rule was inserted as 12.706(A)(1)(g). Revisions are indicated on the markup in red.

