Arkansas Underground Storage Tank Program: U.S. Environmental Protection Agency Public Notices Approval of Revisions



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01/08/2021

The United States Environmental Protection Agency ("EPA") published a January 7th Federal Register Notice stating that it is taking direct final action to approve revisions to the State of Arkansas's underground storage tank ("UST") program. See 86 Fed. Reg. 977.

EPA also is codifying approval of the state program's incorporation by reference of certain regulations that were determined to meet the requirements for approval.

Subtitle I of the federal Resource Conservation and Recovery Act previously required EPA in 1988 to issue design, construction, installation, and compatibility standards for USTs as well as requirements concerning leak detection, recordkeeping, reporting, closure, corrective action, and financial responsibility applicable to most USTs. Congress also encouraged states to develop their own UST programs, provided that the state standards are at least as stringent as the federal provisions.

USTs are used on a wide variety of properties. Approximately 52 percent of the USTs containing petroleum are found in the retail motor-fuel industry, which includes gas stations, convenience stores, refiners, and petroleum wholesalers. Many other entities store petroleum products in USTs for use in their own vehicles. This category includes local governments, schools, utility companies, and car dealerships and rental agencies, to name just a few. Heating-oil USTs are used in many commercial properties, including office buildings, apartment houses, and shopping centers. The recent addition of retail motor fuel pumps at many hypermarkets and grocery store chains has required the installation of USTs at such facilities.

EPA initially published two sets of UST requirements codified at 40 C.F.R. Parts 280 to 281 in 1988.

The revisions promulgated in 2015 were the first set of comprehensive changes since the original 1988 promulgation. The 2015 rule was intended to:

- Improve operation and maintenance along with the reduction of petroleum releases
- Address certain UST systems that were deferred in the 1988 regulations
- Update the regulations to include new technologies and fuel blends
- Provide regulations for previously unregulated areas

Arkansas, like most states developed their own UST regulatory programs and has therefore been delegated this authority by EPA. The Arkansas General Assembly enacted legislation in 1989 that provided the then Arkansas Department of Pollution Control and Ecology the statutory authority to regulate USTs

and develop the necessary program elements. The state agency subsequently promulgated Arkansas Pollution Control and Ecology Commission Regulation 12 to implement this UST legislation. Also enacted was legislation setting up a petroleum storage tank trust fund to provide assistance to tank owners and operators to meet the federal EPA financial responsibility requirements.

As a result, the State of Arkansas has at least 30 years of experience regulating USTs.

EPA's 2015 revision of the federal UST regulations required that the delegated states reapply in order to retain their program approval status. Arkansas submitted program revisions to address the 2015 federal EPA rule.

EPA has determined that such submitted revisions satisfied all requirements needed for program approval. They were determined to be no less stringent than the corresponding federal requirements in Subpart C of 40 C.F.R. Part 281. In addition it was determined that the Arkansas program provides for adequate enforcement and, therefore, the state was granted approval to operate its UST program with the changes described in the Arkansas program revision application.

EPA states that it is publishing a direct final rule because it views the action as noncontroversial and anticipates no adverse comment.

Components of the preamble to the EPA Federal Register Notice addresses issues such as:

- Why are revisions to State programs necessary?
- What decisions has EPA made in this rule?
- What is the effect of this approval decision?
- Why is EPA using a direct final rule?
- What happens if the EPA receives comments that oppose this action?
- For what has Arkansas previously been approved?
- What changes is EPA approving with the action?/webfiles/Fed_Reg_977.pdf
- Where are the Arkansas revised rules different from the federal rules?
- Broader in scope provisions
- More stringent provisions
- What is codification?
- What is the history of codification of Arkansas's UST program?
- What codification decisions has EPA made in the rule?
- What is the effect of Arkansas's codification on enforcement?
- What state provisions are not part of the codification?

A copy of the Federal Register Notice can be downloaded here.