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Arkansas Department of Environmental Quality Stakeholders Meeting: August 24th – Underground Storage Tanks

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The Arkansas Department of Environmental Quality (“ADEQ”) held a stakeholder meeting to address underground storage tank (“UST”) issues on August 24th.

The focus of the meeting was what (if any) Arkansas legislative changes might be necessitated by the revisions to the federal UST rules.

As previously noted, the United States Environmental Protection Agency (“EPA”) promulgated the first set of significant revisions to their UST rules since they were originally established. See links to prior discussion of the federal revisions below:

[Underground Storage Tanks: Doug Ford, P.E., Pollution Management, Inc. Summarizes Federal Revisions at Arkansas Environmental Federation Regulated Waste Workshop](#)

[Underground Storage Tanks: Mark S. Morgan \(Regulatory Counsel/Petroleum Marketers Association of America\) Memorandum Addressing the Revisions to the Final Federal Rule](#)

Arkansas has primacy and has been delegated UST regulatory authority for many years. Therefore, as a delegated state, Arkansas must amend its rules to meet the federal baseline requirements. The failure to do so within the required timeframe would risk the state losing its ability to operate the program and place it back into the hands of EPA. As a result, there is significant interest at both the agency and in the regulated community to ensure that there is a coordinated effort to meet EPA programmatic requirements for maintenance of state delegation.

The ADEQ Director (Becky Keogh) and Associate Director for Land Resources (Tori Gordon) attended the August 24th stakeholder meeting. The meeting discussion was led by ADEQ Office of Land Resources Branch Chief, Linda Perry. Ms. Perry is one of the three original members of the former Regulated Storage Tank Division staff and has been involved in almost every facet of the state’s UST program. A number of other ADEQ staffers were also present. Organizations represented at the meeting included the Arkansas Oil Marketers Association, Arkansas Petroleum Council and Arkansas Environmental Federation.

ADEQ management expressed appreciation of the fact that the meeting was heavily attended by members of the previously referenced organizations from all over the state. The interest in this program is understandable. USTs are utilized by hundreds of governmental and non-governmental entities around the state. They are often a key part of the infrastructure at many small businesses. This is of particular importance in a rural state such as Arkansas which has areas that may have very few facilities supplying

gas for a large area. Changes in regulations that produce additional costs can be a critical issue in these areas.

This initial ADEQ stakeholder meeting had a limited focus. The key initial issue addressed was whether legislation needed to be submitted to the upcoming Arkansas General Assembly to accommodate federal regulatory revisions. Specifically, Arkansas has existing legislation that specifies when the replacement of UST piping triggers a requirement to install secondary containment for the system's piping. See Ark. Code Ann. 8-7-816 stating:

(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. . .

The federal regulations provide ADEQ and the other states the option to use a different standard. The question ADEQ and the stakeholders are considering is whether to use this different option (i.e., a 50 percent test) which triggers replacement based on a percentage or to retain the current standard. If the alternative standard is chosen, this would necessitate changes in the previously referenced Arkansas legislation. Therefore, there was significant discussion on the merits of either alternative.

Regardless of the choice in regard to the piping replacement issue, ADEQ indicates that it will be deleting some language in Ark. Code Ann. 8-7-816 (a)(b) and (c) which references USTs within 1000 feet of an existing community water system or an existing potable drinking water well. This language is now irrelevant and the consensus is that it should be stricken.

ADEQ management noted that the purpose of focusing on legislation at this initial meeting was the fact that the agency's proposed legislative package was due to the Governor's Office by the end of September.

The stakeholders also raised the issue of operator training. ADEQ has had in place for a number of years various requirements for training facility personnel that operate USTs. In the change to the federal rules states are provided discretion in how they structure this program. Stakeholders raised the possibility of the agency providing additional opportunities for personnel training/testing around the state and/or through online testing. ADEQ personnel noted security/logistical issues with some aspects of these requests but noted that these issues could be discussed in upcoming stakeholder meetings.

Future stakeholder meetings will focus on certain regulatory choices that the State of Arkansas can make in regards to the federal UST revisions. In other words, there are several aspects of the federal revisions that allow the states to make choices in terms of sump testing, walk-through inspections, etc. The agency noted that these choices will need to be made and revisions will need to be promulgated pursuant to Arkansas Pollution Control and Ecology Commission Regulation 12. Agency staff emphasized that the key deadline for maintaining state delegation is October 2018 when the state program approval package will have to be submitted to EPA for approval. In order to meet this deadline the relevant Arkansas legislative and regulatory changes will have to be expeditiously undertaken in the interim.

Stakeholders also raised a non-UST potential legislative issue at the meeting. The issue involves above ground storage tanks ("ASTs") that are between 1,320 and 40,000 gallons holding petroleum. Such tanks are required by Arkansas statutes to be registered with ADEQ and pay annual fees. Further, delivery of petroleum products to such ASTs is prohibited in the absence of registration. The requirement for registration is related to such ASTs potential inclusion in the Arkansas Petroleum Storage Tank Trust Fund.

Certain stakeholders noted that various ASTs in this size range around the state are part of wastewater treatment systems. Some wastewater treatment chemicals that are placed in such ASTs may include substances derived from or consisting of petroleum products. A concern had been expressed by a chemical supplier that placement of such chemicals in these ASTs is prohibited unless they are registered. Certain ASTs are exempted from this registration requirement but they do not encompass wastewater related tanks. The question posed by certain stakeholders was whether such ASTs should be included

within this registration requirement and, if not, an exemption or some other language crafted that addressed the issue. The issue was deemed worthy of further discussion.