



NOTICE OF PROPOSED RULE ADOPTION

STATE OF MISSISSIPPI
Mississippi Commission on Environmental Quality
Mississippi Department of Environmental Quality

Mississippi Commission on Environmental Quality
c/o Theodore D. Lampton III, Senior Attorney
Department of Environmental Quality
Post Office Box 20305
Jackson, Mississippi 39289-1305
(601) 961-5573
Ted_Lampton@deq.state.ms.us

Specific Legal Authority Authorizing the promulgation of Rule:
Miss. Code Ann. Section 49-17-413 (Rev. 2003) and Miss. Code Ann. § 49-2-9(1) (Rev. 2003).
Reference to Rules repealed, amended or suspended by the Proposed Rule : amends Underground Storage Tank Regulations (UST-2).

Explanation of the Purpose of the Proposed Rule and the reason(s) for proposing the rule: The purpose of the proposed amendment to the State of Mississippi Underground Storage Tank Regulations (UST-2) is to comply with federal regulations and the mandates of the National Energy Policy Act of 2005 (EPACT, 42 U.S.C. 15801) as authorized by Mississippi Senate Bill 2376 (Regular Session 2008) and to make additional changes to enhance and protect human health and the environment.

This rule is proposed as a [X] Final Rule, and/or a [] Temporary Rule (Check one or both boxes as applicable.)

Persons may present their views on the proposed rule by addressing written comments to the agency at the above address. Persons making comments should include their name and address, as well as other contact information, and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

Oral Proceeding: Check one box below:

- [X] An oral proceeding is scheduled on this rule on
Date: August 12, 2008
Time: 5:00 p.m.
Place: Commission Hearing Room, MDEQ Central Office, 515 E. Amite Street, Jackson, MS 39225

If you wish to be heard and present evidence at the oral proceeding you must make a written request to the agency at the above address at least five (5) days prior to the proceeding to be placed on the agenda. The request should include your name, address, telephone number as well as other contact information; and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

- [] An oral proceeding is not scheduled on this rule. Where an oral proceeding is not scheduled, an oral proceeding will be held if a written request for an oral proceeding is submitted by a political subdivision, an agency or ten (10) persons. The written request should be submitted to the agency contact person at the above address within twenty (20) days after the filing of this notice of proposed rule adoption and should include the name, address and telephone number of the person(s) making the request; and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

Economic Impact Statement: Check one box below:

- [] The agency has determined that an economic impact statement is not required for this rule, or
[X] The concise summary of the economic impact statement required is attached.

The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.

Date Rule Proposed: July 8, 2008

Proposed Effective Date of Rule: October 1, 2008

Theodore D. Lampton III, Senior Attorney

Economic Impact Statement
Amendments to Underground Storage Tank Regulations
Mississippi Commission on Environmental Quality Regulation UST-2
Mississippi Department of Environmental Quality
July 8, 2008

I. Introduction

The Mississippi Department of Environmental Quality (“MDEQ”), on behalf of the Mississippi Commission on Environmental Quality (“Commission”), prepares this Economic Impact Statement out of an abundance of caution as the majority of the proposed regulation amendments are mandated by the National Energy Policy Act of 2005 (EPACT, 42 U.S.C. 15801) and are exempt from this statement pursuant to Miss. Code Ann. §25-43-3.105(7) (Rev. 2006). This Economic Impact Statement is submitted in accordance with Miss. Code Ann. §25-43-3.105 (Rev. 2006) as the remaining changes to the Underground Storage Tank Regulations, also known as Commission Regulation UST-2, represent a significant amendment. A “significant amendment” means any amendment to a rule for which the total aggregate cost to all persons required to comply with the rule exceeds One Hundred Thousand Dollars (\$100,000).

Those amendments to the Underground Storage Tank Regulations not directly mandated by the National Energy Policy Act of 2005 are: Secondary containment on new/replacement submersible pumps {280.20 (i)}; Annual shear valve testing {280.20 (j)}; Annual spill prevention equipment testing {280.30 (c)}; Annual overflow prevention equipment inspection {280.30 (d)}; Automatic line leak detector functionality testing {280.44 (a)}; Annual automatic tank gauging inspection {280.43 (d)}; and Leak Reporting requirement {280.50}. An analysis of the factors specified in Miss. Code Ann. §25-43-3.105 (2) follows.

II. Analysis

(a) A description of the need for and the benefits which will likely accrue as the result of the proposed action.

Each year dozens of releases into the environment are reported to MDEQ related to underground storage tank (“UST”) systems. These releases require MDEQ to expend state taxpayer dollars out of the Mississippi Groundwater Protection Trust Fund (“Trust Fund”) in order to address, assess, characterize, and remediate the releases. MDEQ and the Commission serve as stewards of the Trust Fund. The amendments will lead to enhanced protection of human health, safety and the environment. The amendments will further lead to improved operation and maintenance of UST systems with fewer releases into the environment and protection of groundwater resources which will result in less expenditure out of the Trust Fund thus saving taxpayer resources.

A major threat of contamination to groundwater resources are underground storage tanks. It is estimated that some ninety percent of Mississippians rely and depend on groundwater resources for their everyday water needs. The proposed amendments will better protect our groundwater resources from the significant threat posed by releases from leaking and inadequately managed underground storage tank systems. MDEQ has administered the UST program for twenty years, and the initial UST-2 Regulation was adopted by the Commission on March 22, 1989. The proposed amendments are the first since the regulations were originally adopted over nineteen (19) years ago. MDEQ's experience and the evolution of technology and the UST industry have compelled the necessity for the proposed amendments.

(b) An estimate of the cost to the agency, and to any other state or local government entities, of implementing and enforcing the proposed action, including the estimated amount of paperwork, and any anticipated effect on state or local revenues.

The costs to MDEQ associated with the implementation of these regulation changes will be negligible. MDEQ already conducts routine inspections of the approximately 8,500 active UST systems in the State of Mississippi. MDEQ will not require additional staff or resources to administer these revisions to the regulations. An estimate of the cost of paperwork is approximately \$ 20,000. MDEQ does not foresee any impact on local government entities associated with the implementation of these regulations as the local governments are not involved in the regulation of UST systems.

(c) An estimate of the cost or economic benefit to all persons directly affected by the proposed action.

Regarding new or replacement installations, no new equipment will be required and thus no additional costs to the tank owner/operator. In the case of replacement of existing submersible pumps the cost of secondary containment installation is estimated to be \$2750 per tank. It is believed that less than 100 such submersible pump replacements will occur per year. Therefore, the total cost of this requirement should not exceed \$275,000 per year. In the case of shear valve testing, it is estimated that the cost of this requirement will be \$300 per facility. As there are approximately 2000 affected facilities, the total cost of this requirement is estimated to be \$600,000 per year. In the case of spill containment testing, it is estimated that the cost per facility will be \$240. As there are approximately 2850 facilities that will be required to perform this testing, the total cost of this requirement is estimated to be \$684,000 per year. In the case of overfill prevention equipment inspection, it is estimated that this requirement will cost \$240 per facility. As there are approximately 2850 facilities that will be required to have these inspections accomplished, the total cost of this requirement is estimated to be \$684,000 per year. In the case of the requirement that automatic tank gauging equipment be inspected, it is estimated that the cost will be \$75 per facility. As it is estimated that there are 500 affected facilities, the total annual cost of this requirement is approximately \$37,500. Additional negligible costs

may be associated with the more stringent monitoring requirements and the record keeping associated with the additional monitoring requirements. The total annual cost of all the proposed additional requirements is approximately \$2,280,500. As there are approximately 2850 facilities operating in the state, this represents an average expenditure of approximately \$800 per facility.

(d) An analysis of the impact of the rule on small business.

UST owners and operators may be required to perform additional monitoring and will be required to perform additional testing. Regarding the monetary impact on small businesses see paragraph (c). In order to comply with the amendments, owners/operators will be required to spend a minimal amount of additional time evaluating their systems. The proposed amendments will result in a cost of approximately \$ 800 per facility, but will lead to enhanced protection of public health, safety, and the environment. The additional safeguards may result in the owners/operators losing less product from releases representing a potential savings.

(e) A comparison of the costs and benefits of the proposed rule to the probable costs and benefits of not adopting the proposed rule or significantly amending an existing rule.

MDEQ has been charged with the duty of assessing and addressing UST sites since 1988. In those 20 years, 731 project sites have been assessed and addressed. Millions of state taxpayer resources have been expended in addressing those sites. The Mississippi Groundwater Protection Trust Fund is funded by taxpayer resources and is used by MDEQ to address and assess sites across Mississippi. Since its inception, over \$123,000,000.00 has been expended on remediation of UST sites. The average expenditure per site that has required remediation is approximately \$138,000.00.

The status quo will result in a continued and steady number of UST releases into the environment. MDEQ believes there is significant room for improvement and the regulations have not been amended since 1989. MDEQ further believes that the proposed amendments to the regulations will greatly reduce the amount of releases into the environment and result in the exhaustion of fewer taxpayer resources. Additionally, the amendments will enhance protection of public health, safety, and the environment.

(f) A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule where reasonable alternative methods exist which are not precluded by law.

After spending in excess of twenty (20) years administering the UST program, MDEQ believes a less costly method does not exist and there is no reasonable alternative method for achieving the purpose of the proposed regulation changes.

Through our practical experience, MDEQ believes that the amendments will lead to enhanced protection of human health, safety and the environment. The amendments will further result in more efficient UST systems with fewer and less intrusive releases into the environment. The releases will be discovered in a more prompt manner which will minimize the impact to the environment and save taxpayer dollars.

(g) A description of reasonable alternative methods, where applicable, for achieving the purpose of the proposed action which were considered by the agency and a statement of reasons for rejecting those alternatives in favor of the proposed rule.

See paragraph (f).

(h) A detailed statement of the data and methodology used in making estimates required by this subsection.

In order to arrive at estimated costs for the proposed rule changes, MDEQ relied on its technical expertise and three respected UST contractors were contacted. The proposed rule changes were explained to the contractors in detail in order to ensure that everyone had a clear understanding of what is being proposed. After it was established that the requirements were clearly understood, the contractors were asked to provide an estimate of what it would cost someone to perform the proposed testing and inspection activities. Cost estimates for each of the proposed requirements were received from all three contractors. The costs that are utilized in this statement represent the average of the three contractor quotes and are believed to be representative of what the costs will be to the regulated community.

III. Conclusion

The proposed regulation amendments will result in more efficient UST systems. These minimal changes will result in fewer releases of petroleum into the environment and thus lessen the amount of MDEQ time and resources necessary to address leaks into the environment. The changes will also result in detecting releases much sooner which will enhance response time and provide MDEQ with the ability to minimize the impact on the surrounding environment. These changes will provide further protection to the groundwater resources in Mississippi and lessen the expenditures from the Mississippi Groundwater Protection Trust Fund which leads to less of a burden on the taxpayers.