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June 2, 2017

Samantha K. Dravis
Associate Administrator for Policy
Office of Policy, United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Room 3513A
Washington, D.C. 20460

RE: Evaluation of Existing Regulations (EPA-HQ-OA-2017-0190)

VIA ELECTRONIC SUBMISSION

Dear Associate Administrator Dravis,

The Petroleum Marketers Association of America (PMAA) is pleased to submit the following comments to the EPA's Regulatory Reform Task Force. The EPA is asking for suggestions on regulations appropriate for repeal, replacement or modification (*Evaluation of Existing Regulations*, 82 Fed. Reg. 17793 (April 13, 2017)).

BACKGROUND

The Petroleum Marketers Association of America is a federation of 46 state and regional trade associations representing approximately 8,000 independent small business petroleum marketers nationwide. PMAA members are engaged in the shipment, storage and sale of petroleum products including gasoline, diesel fuels, kerosene, jet fuel, aviation gasoline, propane, racing fuel, lubricating oils, and home heating oil at both the wholesale and retail level. PMAA members own, operate, lease, or provide fuel to over 90 percent of the retail gasoline stations nationwide.

COMMENTS

Underground Storage Tank Regulations

Delay Compliance Deadline to October 13, 2024 - The EPA's Office of Underground Storage Tanks (OUST) published regulatory amendments to the federal underground storage tank regulations on July 15, 2015 (*Revising Underground Storage Tank Regulations*, 80 Fed. Reg. 41566 (July 15, 2015)). The amendments add to the 1988 federal underground storage tank (UST) regulations by increasing requirements for operating and maintaining underground storage tank (UST) systems.

Imposing High Compliance Costs -The current deadline for compliance with the 2015 UST amendments is October 13, 2018 for states and territories without state UST program authority. States with UST program authority may opt for the October 13, 2018 federal deadline or push compliance out to October 13, 2021. PMAA worked closely with OUST throughout the rulemaking process providing small business regulatory impact information and alternative compliance methods designed to reduce the economic impact of the amendments on petroleum marketers. The EPA adopted a number of PMAA's recommendations. However, the final UST requirements still impose a significant burden on small business petroleum marketers. PMAA estimates that the final rule will impose \$530,444,189.00 in new compliance costs across the industry. The maximum one time compliance costs and annual reoccurring compliance costs imposed by the 2015 amendments will vary widely per site, but remain significant in all cases.

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Marketers will be required to make costly investments in UST infrastructure, equipment, employee training, record keeping and third party vendor services in order to meet the new federal UST requirements. It is essential for small business marketers to spread out these compliance costs over a longer period of time than offered under the 2015 amendments to ensure they remain financially sound. An extension of the compliance deadline would significantly ease the compliance burden imposed on small business petroleum marketers by the 2015 UST amendments.

Creating an Unfair Competitive Disadvantage – It is important to recognize that the UST amendments apply to petroleum marketers who have *voluntarily* made important release prevention, overfill protection and leak detection upgrades to their UST systems. However, tank owners who have not made similar upgrades, or no upgrades at all, are required to do nothing under the UST amendments. These tank owners can continue to operate and maintain their UST systems at a lower standard and do nothing until equipment fails and requires replacement. This disparity in application of the new requirements not only provides a strong economic incentive for tank owners to avoid upgrading UST systems, but also puts those who have upgraded at a competitive disadvantage. Those who upgraded voluntarily made costly investments to make their UST systems safer. The 2015 UST amendments reward these efforts by imposing significant new compliance costs to inspect, test and maintain equipment not required in the first place. The competitive disadvantage that the rule imposes on those who chose to upgrade voluntarily should not be made greater by requiring costly investments over a needlessly short compliance time frame. Small business marketers who upgraded to double walled tanks and piping, under dispenser containment, containment sumps, and interstitial monitoring should be rewarded for their initiative, not punished by imposing an unreasonable financial burden. Extending the compliance deadline would not eliminate the competitive disadvantage imposed on those who chose to upgrade their UST systems voluntarily. But, it would help level the playing field if they were able to spread investment in compliance over a longer period of time by extending the compliance deadline for the 2015 UST amendments.

More Time Needed for State Implementation - State UST administrators require more time to adopt state regulations that implement the 2015 UST amendments. Currently, only one state has submitted their final regulations to OUST for approval. Under federal law states must adopt regulations that are equally protective of the environment as EPA requirements in order to receive federal grant assistance. State programs use these grants to cover approximately 85% of their administrative costs, primarily for employee salaries. State regulators have fallen behind on implementing the 2015 UST amendments due to a steep learning curve regarding the full scope of the new federal UST requirements. Lingering confusion persists among state regulators over the scope of the new federal requirements because they are written as general performance standards rather than a prescriptive list of affirmative requirements.

As a result, the 2015 UST amendments impose affirmative regulatory requirements without any specific guidance on how to achieve compliance. Instead, compliance details are left to third party industry standards. Unfortunately, the only two industry standards currently available for this purpose impose significantly more regulatory requirements than the 2015 UST amendments. This regulatory dissonance is problematic for many state regulators who are bound by state law from adopting regulations more stringent than federal requirements. These states now face the difficult and time consuming task of reconciling complex industry standards with the federal UST regulatory requirements without violating statutory limits on their authority. This is an arduous task that requires time, highly specialized technical expertise and financial resources that many state UST authorities simply don't have. Consequently, states are falling behind in their implementation schedules which creates tremendous regulatory uncertainty among those required to pay for and comply with the 2015 UST amendments. The compliance deadline is approaching but there are few regulations in place for petroleum marketers to follow. This means marketers will be forced into a compressed compliance schedule that will create more competition for equipment and third party vendor services. The resulting rush for compliance will cause a significant rise in the cost for equipment and services.

PMAA is also concerned that ongoing uncertainty among state regulators will cause them to overlook cost saving alternative compliance methods that were built in to the final rule and interpretive guidance to benefit small business petroleum marketers. OUST adopted many of PMAA's cost saving alternative compliance methods into the final

UST requirements and subsequent interpretive guidance. Often these alternative methods are nuanced and not fully apparent due to the performance standard framework of the 2015 amendments. PMAA's low level liquid alternative integrity test for containment sumps, will save marketers approximately \$6,000 in compliance costs and be more protective of the environment than sump test methods provided in industry standards. OUST only approved PMAA's alternative integrity test method in May of 2017. Many state regulators are not fully aware of the alternative test method or how it works. PMAA's state petroleum marketers associations need time to explain and promote this and other important cost saving alternative test and inspection methods to their state regulators. Without additional time to explain the compliance flexibility available in the new UST requirements, small business petroleum marketers would lose valuable tools designed to make compliance easier and far less costly. A deadline extension is vital for this reason.

CONCLUSION:

PMAA believes neither of the compliance dates provided under the 2015 UST amendments take into consideration the full scope of the compliance burdens imposed on small business petroleum marketers or the complex and lengthy regulatory challenges state UST program authorities must overcome to implement them. For these reasons, PMAA is requesting that the EPA provide regulatory relief by extending the compliance date for all requirements under the 2015 UST amendments to October 13, 2024. At a minimum, any compliance date delay should be applicable to testing and inspection requirements for containment sumps, spill buckets, and overfill prevention equipment as required under the 2015 amendments. The deadline extension will provide sufficient time for states to adopt thoughtful and flexible regulations that offer small business petroleum marketers the most cost effective regulatory framework possible.

Please let me know if I can provide any additional information. Thank you for your consideration of this important issue.

Sincerely,



Rob Underwood, President
Petroleum Marketers Association of America