



THE VOICE OF FOOD RETAIL

Feeding Families  Enriching Lives

April 16, 2012

The Honorable Lisa P. Jackson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, D.C. 20460

Re: Revising Underground Storage Tank Regulations—Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training; 76 Fed. Reg. 71708 (November 18, 2011)

Docket No. EPA-HQ-UST-2011-0301

Dear Administrator Jackson:

On November 18, 2011, the Environmental Protection Agency (EPA) published a proposed rule in the Federal Register which would make certain revisions to the 1988 underground storage tank (UST) technical, financial responsibility, and state program approval regulations (the “Proposed Rule”). The Proposed Rule requires adding secondary containment requirements for new and replaced tanks and piping; adding operator training requirements; and adding periodic operation and maintenance requirements for UST systems among other things. The Food Marketing Institute (FMI) appreciates the opportunity to comment on this important matter.

FMI conducts programs in public affairs, food safety, research, education and industry relations on behalf of its nearly 1,250 food retail and wholesale member companies in the United States and around the world. FMI’s U.S. members operate more than 25,000 retail food stores and almost 22,000 pharmacies with a combined annual sales volume of nearly \$650 billion. FMI’s retail membership is composed of large multi-store chains, regional firms and independent operators. Its international membership includes 126 companies from more than 65 countries. FMI’s nearly 330 associate members include the supplier partners of its retail and wholesale members.

Many FMI members operate fueling facilities that would be impacted by the Proposed Rule.

FMI has concerns about the following aspects of the Proposed Rule and respectfully submits suggestions for reducing the burdens in a manner consistent with statutory objectives.

Section 280.35—Spill Buckets

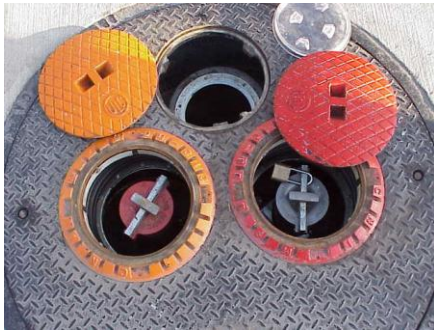
Section 280.35(a)(1)(ii) proposes to have spill buckets tested annually (hydrostatic, vacuum, etc.) or have continuously monitored double walled spill buckets. This requirement would impose a significant new burden on FMI members. Food retailers and wholesalers would incur a new burden of up to \$600 or \$700 annually or more for the hundreds or thousands of USTs they own and operate across their businesses. Retailers would face costs of \$100 to \$135 per test (assuming the testing company is already onsite for other maintenance). In addition the test is performed using water which then needs to be disposed of as hazardous waste. This typically costs \$300 to \$500 per pickup. We believe this requirement is unnecessarily burdensome and will not result in any benefits to human health or the environment.

In addition, we believe that any double wall spill bucket having a visible leakage indicator should be excluded from the annual testing as long as the gauge is checked during each fuel delivery.

FMI suggests that Section 280.35(a)(1) be amended to add the following at the end:

(iii) The spill prevention equipment is contained within a sump that is tested in accordance with §280.36(a)(3)(ii) and equipped with a liquid sensor that is tested in accordance with §280.40(a)(3)(ii) and continuously monitored by an electronic monitoring system with visual and audible alarms.

(iv) The spill prevention equipment has two walls and has a visible leakage indicator that is checked during each fuel delivery.



Spill Buckets



Sump that contains the spill buckets

EPA should also craft its rule in such a manner as to permit owners and operators to test spill buckets themselves to the greatest extent possible.

Section 280.36—Periodic Testing of Spill and Overfill Prevention Equipment

FMI believes that the use of a discriminating sensor in each piping sump or single wall sump programmed for pump shut down in the event of an alarm should be permitted in lieu of the testing requirements in 280.36(a)(2)(ii) and (3)(ii).

FMI suggests that section 280.36 should be amended to read:

280.36(a)(2)(i) The interstitial space is continuously monitored using vacuum pressure, or liquid-filled interstitial space, or a discriminating sensor in each piping sump programmed for pump shut down in the event of an alarm.

280.36(a)(3)(i) The containment sump has two walls and the space between the walls is continuously monitored or the containment sump has a single wall and contains a discriminating sensor programmed for pump shut down in the event of an alarm.

Section 280.37—Monthly Facility Inspections

While monthly inspections are useful the Proposed Rule requires containment sumps to be opened up (turbine, fill [previous pictures are a fill sump, they would have to open the large metal cover]) and inspected for the presence of liquid or debris. It should be noted that there is no reference in the regulation as to who should perform the monthly inspection (site personnel, third party, etc.). For example, in California the inspection must be performed by a certified inspector.

Section 280.37(a)(1)(ii) states:

Sumps – open and visually check for any damage, leaks to the containment areas, or releases to the environment; remove any liquid (in contained sumps) or debris; and for sumps with continuous interstitial monitoring, check for a leak in the interstitial area.

The requirement to open sumps on a monthly basis would impose a substantial labor cost. One retailer noted that the typical site has six sumps and the covers are ~42 inches in diameter. Furthermore repeated opening and closing of the sumps decreases the life span of the gaskets which leads to water intrusion (rain, snow melt, irrigation). Additionally, although the lids are hinged, opening them is physically demanding leading to an increased chance of employee injuries.

FMI believes that the requirement to open and inspect sumps monthly should be limited to sumps that, *in the past month have had an alarm for which there is no record of a service visit.* We suggest that EPA require monthly inspections only for sumps that do not have sensors.

EPA should note that California requires monthly inspections and opening sumps but only if there has been an alarm in the past month as stated above

Section 280.37(a)(1)(iii) similarly requires monthly opening of dispenser cabinets (pans). We believe this requirement also should be limited to dispenser pans that *in the past month have had an alarm for which there is no record of a service visit* to reduce burdens on FMI members.

In most states the automatic tank gauge (ATG) and its sensors need to be tested once a year. To test the sensors, all of the manhole covers need to be pulled off and the sumps inspected. EPA should consider consolidating any required inspections under the Proposed Rule with the physical inspection portion of the annual ATG testing requirement.

Small Business Impacts

The Regulatory Flexibility Act (RFA) requires agencies to consider the impacts of their rules on small firms and consider alternatives to minimize burdens. The Act requires agencies to conduct an initial regulatory flexibility analysis (IRFA) if a proposed rule will have a significant economic impact on a substantial number of small entities. The Administrator has certified that the Proposed Rule will not have a significant economic impact on a substantial number of small entities—we believe this certification is improper as the Proposed Rule indeed will have a significant impact on small firms. Many small firms have USTs and as a consequence of the Proposed Rule, would be required to add double wall tanks, spill buckets with piping, new sensors and monitoring equipment and pay for regular new inspections. We have heard from our members that this would be very expensive for small firms and impose an unworkable burden. We

Hon. Lisa P. Jackson
April 16, 2012
EPA-HQ-UST-2011-0301
Page 5 of 5

believe that the Agency must conduct an IRFA pursuant to the RFA and should exclude small firms from the scope of the Proposed Rule.

We appreciate the opportunity to comment on this important matter. Please contact me at 202-220-0614 or elieberman@fmi.org if you have any additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Erik R. Lieberman". The signature is fluid and cursive, with the first name "Erik" being the most prominent.

Erik R. Lieberman
Regulatory Counsel