

**Agenda Item: 14-14 Request for 30-day Waiver and Request to Proceed to Public Notice on proposed changes to underground storage tank rules 15A NCAC 02N .0304 and 15A NCAC 02N .0904 based on legislative amendments in SL 2011-394 and SL 2013-413**

**Explanation:**

Session Law (SL) 2011-394 [Sections 11.4(c), 11.6(a), 11.6(b) and 11.7(a)] directed the EMC to adopt several changes to rules (15A NCAC 02N) governing UST systems. SL 2011-394 stated that the rule changes must be substantively identical to the provisions of the Act. SL 2013-413, Section 36 clarified the universe of USTs subject to the rule change directed by SL 2011-394, Section 11.6(a). The rule changes are summarized below:

(1) SL 2011-394, Section 11.4(c) - Rule 15A NCAC 02N .0904(f)

15A NCAC 02N .0904(f) currently states that when existing piping (piping that does not meet the secondary containment standards in .0900 and including single-walled piping) is replaced or extended, the entire piping run must meet the secondary containment requirements in .0900. Section 11.4(c) eliminates this requirement. Therefore, only the replaced section of pipe (as opposed to the entire piping run) must meet the secondary containment standards in .0900.

(2) SL 2011-394, Section 11.6(a) and SL 2013-413, Section 36 - Rule 15A NCAC 02N .0304(a)(5)

Section 11.6(a) pertains to the secondary containment upgrade schedule contained in 15A NCAC 02N .0304 for UST systems located between 100 and 500 feet of a well serving a public water supply, between 50 and 100 feet of any other well used for human consumption and within 500 feet of surface water classified as High Quality Water, Outstanding Resource Water, Shell fishing, Water Supply I or Water Supply II. The original 1991 version of these setback/construction/upgrade requirements (15A NCAC 02N .0301 and .0302) required that all existing tank systems be upgraded with secondary containment by December 22, 1998 and that all new tank systems installed after January 1, 1991 had to have secondary containment at the time of installation. However, because so many tanks were not in compliance by 1998, the rules were amended (15A NCAC 02N .0304 was added) with a new set of upgrade deadlines that were based on the age of the UST systems and the type of UST system (fiberglass versus bare steel). Tank owners and operators could only use the extended deadlines if they conducted enhanced leak detection monitoring. Enhanced leak detection monitoring consisted of more frequent and rigorous release detection monitoring of tanks and piping and if a public or residential well was involved, annual sampling for constituents of petroleum. All of the

upgrade deadlines have now passed except for the last one – January 1, 2016. Rule 15A NCAC 02N .0304(a)(5) currently states that tanks installed after January 1, 1991 (and before April 1, 2001) must be upgraded with secondary containment by January 1, 2016. Section 11.6(a) changes the rule to further extend the last deadline from January 1, 2016 to January 1, 2020. SL 2013-413, Section 36 then clarified the rule by explicitly stating that extension only applied to tanks installed after January 1, 1991 and prior to April 1, 2001.

**Recommendation:**

That the Commission approve the 30 day waiver, proposed rule amendments and fiscal note along with authorizing public notice on these items.