

EPA Proposes Revisions to Underground Storage Tank Regulations

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The U.S. Environmental Protection Agency ("EPA") is proposing a sweeping set of changes that would extend the reach of regulation over underground storage tanks ("USTs") to systems and entities not previously regulated, as well as require for the first time operator training for all regulated USTs. Regulations that previously applied primarily to owners and operators of USTs used to store gasoline for vehicle fueling would be extended under the proposed rule to also cover USTs storing fuel for emergency power generators. In so doing, the rule would for the first time bring a range of entities – such as hospitals and universities – under regulatory control, requiring them to install leak detection systems and adopt other measures aimed at prevented releases.

Beginning in 1988, EPA first regulated USTs that store petroleum products – such as those found at gas stations – in order to prevent, detect, and clean up petroleum releases into the environment from tank systems (i.e., actual USTs and piping leading to them). The proposed rule would close a perceived gap in that regulatory structure by mandating for the first time its proper operation or maintenance.

EPA is currently seeking comments to the proposed rule, which are due by April 16, 2012.

Updating Deferrals

The proposed rule would eliminate “deferrals” that until now have exempt certain tank systems from the UST rules. Specifically, emergency power generator UST systems, airport hydrant fuel distribution systems, field-constructed tanks, and certain waste-water treatment tank systems currently do not have to comply with EPA’s UST regulations. Parties who may be unfamiliar with UST regulation, including hospitals, universities, and communication utilities, would have to undertake the same leak detection and spill prevention measures as, for example, gas stations. Others, such as military installations, airports, and natural gas extraction companies, may be subject to UST regulations for the underground portions and to other regulatory regimes for other portions of the UST system, that previously were deferred from regulation.

New Regulations

The proposed rule would add multiple requirements for regulated UST owners and operators. Covered entities – from those engaged in fuel-based industries to those currently exempt under a deferral – may be subject to all or portions of the UST regulations.

Training. The proposed rule would add training requirements for three classes of operators. UST owners and operators would have to ensure employees are trained and pass tests before assuming

their managerial, maintenance, or day-to-day operational duties. EPA believes these requirements would ensure all operators are trained according to their level of responsibility to prevent, detect, and address releases into the environment.

Secondary Containment Systems. The proposed rule would add requirements for secondary containment and interstitial monitoring for new and replaced tanks and piping. Secondary containment would not be required for certain suction piping or piping associated with field-constructed tanks or airport hydrant fuel distribution systems.

Under-dispenser Containment. The proposed rule also would mandate that UST systems have under-dispenser containment for new dispenser systems, such as new gas stations or gas pumps. These containments would have to be liquid tight on their sides, bottom, and any penetrations through the containment.

Inspections and Monitoring. The proposed rule would expand inspections and monitoring of all equipment to include visual inspections and continuous monitoring of certain parts of the system. EPA also is proposing changes to detection methods. The proposed rule would phase out the use of vapor monitoring and groundwater monitoring as release detection methods and update the list of Codes of Practice. Although the list is not itself a federal regulation, UST owners and operators are required to comply with them.

Compatibility. The proposed rule would amend how "regulated substances" stored in UST systems are treated under the rules. EPA is concerned that the chemical and physical properties of ethanol and biodiesel can be more degrading to certain UST system materials than petroleum alone. To address this issue, the proposed rule would require that any regulated substance blended with greater than 10 percent ethanol or greater than 20 percent biodiesel be stored in a compatible UST system. The compatibility requirements would apply to both newly installed and replaced equipment and components.

Notification and Recordkeeping. EPA would like to inventory all UST systems. The proposed rule would require entities that are subject to the rule to provide EPA with a one-time notification of how many USTs they have, where they are located, when they were installed, and other identifying and compliance information. Specifically, in addition to maintaining records on spills, near spills, overfills, proposed clean ups, and protective actions, owners also would have to maintain records on employee training, UST system compatibility, and the rest of the new regulations provided for in the proposed rule.

State Program Approval Requirements. EPA intends to harmonize its state program approval regulations with the new UST regulations and the 2005 Energy Policy Act. Instead of prescribing that states mandate identical federal requirements, states would be able to implement regulations that are no less stringent than the new federal requirements. The proposed rule would require currently approved states to submit a revised application within three years of the finalized rule.

Conclusion

The proposed rule has the potential to reshape UST regulations and applicability. During this review period for the proposed changes, EPA has invited the public to submit comments on any or all issues raised within its notice of proposed rulemaking, as well as responses to specific questions listed throughout the proposed rule. The filing deadline for comments is April 16, 2012. Please contact us if we can be of assistance in the preparation of comments on your behalf.

Kelley Drye & Warren LLP

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