

NJDEP Proposes New Rules for Underground Storage Tanks

By: Timothy I. Duffy, Heidi S. Minuskin and Perri L. Hom

November 6, 2017

New amendments raise the question if the storage of materials in Underground Storage Tanks just got more costly in New Jersey.

On May 15, 2017, the New Jersey Department of Environmental Protection ("NJDEP") published its proposed rules and amendments affecting regulated Underground Storage Tanks (UST) that store motor fuel, liquid petroleum products, waste oil, or other hazardous substances, and UST systems that store heating oil containing 2,001 gallons or more for on-site consumption at businesses or commercial operations. The NJDEP previously proposed amendments to N.J.A.C. 7:14B in May 2015 to ensure compliance with and implementation of the Federal Energy Policy Act of 2005 and the applicable United States Environmental Protection Agency's ("USEPA") guidelines. This new round of amendments comes after USEPA's final regulations and requirements were promulgated regarding Secondary Containment and Operating Training.

Discharges from UST systems have the potential to cause severe harm to public health, safety and the environment. In order to combat these threats, the proposed amendments require that all new UST systems have secondary containment and interstitial monitoring. These amendments are projected to have little effect on federally registered UST systems, which required secondary containment starting on April 11, 2016. The proposed rules would apply to regulated heating oil tank systems that are installed on or after 180 days after the operative date of the proposed amendments.

The new rules also implement the USEPA's Operating Training Guidelines. UST facilities would have to designate UST operators as a Class A, Class B, and Class C operator, and ensure the proper training.

To encourage compliance with the new rules, civil administrative penalties have been proposed.

Violations would be classified as either minor or non-minor, and for each violation, there would be a specific base penalty assessed, ranging from \$1,750 to \$15,000. For non-specified violations, the NJDEP will determine a penalty based upon a matrix of different factors

Other significant changes to the rules are:

Release Detections

- Deletion of the exemption to the rules for UST systems used to store motor fuel solely for use by emergency power generators.
- Testing of the release detection equipment would need to be conducted annually beginning no later than October 13, 2018.

Operation and Maintenance Walk-through Inspections

- An operation and maintenance walk-through inspection of the UST system would have to be conducted at least once every 30 days to be sure that spill prevention equipment is working properly.

Registration and Record Keeping

- A UST facility would have to be registered every year, rather than every three years.
- All new records, including record keeping related to monitoring and testing, would have to be maintained

for a period of 5 years.

Out-of-Service Underground Storage Tank Systems and Closure of Underground Storage Tank Systems

- The owner and operator of out-of-service USTs would be required to submit an amended New Jersey Underground Storage Tank Facility Questionnaire within seven days after the UST system is placed out of service.
- Only UST systems with secondary containment could remain out of service for more than 12 months. Single wall UST systems that have been out of service for more than 12 months and UST systems with secondary containment that do not meet the criteria must be closed.

Should you wish to discuss the impact of these new requirements, please do not hesitate to contact us.