

## ALERTS

# Environmental Law Alert - New UST Regulations Impose Significant Expanded Obligations

July 16, 2015 | [Atlanta](#) | [Chicago](#) | [Columbus](#) | [Dallas](#) | [Delaware](#) | [Elkhart](#) | [Fort Wayne](#) | [Grand Rapids](#) | [Indianapolis](#) | [Los Angeles](#) | [Minneapolis](#) | [South Bend](#)

On July 15, the Environmental Protection Agency (EPA) published a final rule in the *Federal Register* that contains significant revisions to EPA's 1988 Underground Storage Tank (UST) regulations. This rule becomes effective on October 13, 2015. Some of the changes were made to align the requirements for USTs nationwide, including Indian country, to those made pursuant to the 2005 Energy Policy Act (EPAAct), which only applies to states obtaining federal UST money. Other changes update the 1988 regulations by now including specific requirements regarding proper operation and maintenance of UST systems. According to EPA, its final rule is a logical evolution of the current requirements to use spill prevention and leak detection equipment. Overall, the new rule imposes significant requirements on UST owners and operators.

## Operator Training

The rule includes a new Subpart J, Operator Training, which expands the operator training requirements in the EPAAct to apply nationwide, including in Indian country. The operator training requirements take effect three years after rule's effective date.

## Secondary Containment and Interstitial Monitoring

The rule expands the secondary containment requirements in the EPAAct and requires that owners and operators install secondary containment and interstitial monitoring for all new and replacement USTs, including petroleum USTs, and new and replacement piping (except safe suction piping) as well as under-dispenser containment for new dispenser systems. This requirement applies regardless of the system's proximity to a community water system or drinking water well. For piping, secondary containment and interstitial monitoring must be provided for the entire piping run when 50 percent or more of the piping is replaced.

## Operations and Maintenance

The new regulations include many expanded and additional requirements for inspections and testing to ensure proper operation and maintenance of UST systems:

- Walkthrough inspections must be conducted every 30 days and include (1) visual checks of the spill prevention equipment for damage and to remove liquid or debris; checking for and removing obstructions in fill pipes; and checking for leaks in the interstitial area for double wall spill prevention equipment with interstitial monitoring; and (2) checking release detection equipment to ensure there are no alarms or unusual operating conditions; and reviewing release detection testing records to ensure they are

## RELATED PEOPLE



### Tammy L. Helminski

Partner

Grand Rapids

P 616-742-3926

F 616-742-3999

[tammy.helminski@btlaw.com](mailto:tammy.helminski@btlaw.com)



### Jeffrey S. Longworth

Partner

Washington, D.C.

P 202-408-6918

F 202-289-1330

[jeffrey.longworth@btlaw.com](mailto:jeffrey.longworth@btlaw.com)



### Michael T. Scanlon

Partner

Indianapolis

P 317-231-7387

F 317-231-7433

[michael.scanlon@btlaw.com](mailto:michael.scanlon@btlaw.com)

## RELATED PRACTICE AREAS

Environmental

current.

- New annual inspections include: (1) checking containment sumps for damage and leaks to the containment area or releases to the environment; removal of liquid and debris; and checking for leaks in the interstitial area for double wall containment sumps with interstitial monitoring; and (2) checking hand held release detection equipment (e.g., groundwater bailers and tank gauge sticks) for operability and serviceability.
- New requirements to test spill prevention equipment (using vacuum, pressure, or liquid methods) every three years unless the equipment is double-wall spill prevention equipment and both walls are periodically monitored for integrity. Integrity monitoring must be performed at least once every 30 days.
- For overfill equipment, the rule requires the equipment to be inspected to determine if it is operating properly and will activate at the correct level. Inspections must be performed once every three years.
- The rule includes a three-year testing requirement (using vacuum, pressure, or liquid methods) for containment sumps used for interstitial monitoring of piping unless the containment sumps are double wall and the integrity of the walls is periodically monitored. Integrity monitoring must be performed at least once every 30 days.
- The rule requires annual operation and maintenance tests on electronic and mechanical components of release detection equipment to ensure they are operating properly. This includes automatic tank gauge systems and other controllers, probes and sensors, automatic line leak detectors, vacuum pumps and pressure gauges, and handheld electronic sampling equipment associated with vapor and groundwater monitoring.

Each of these requirements is accompanied by certain specific implementation timeframes and record-keeping obligations that must be carefully reviewed and understood for a particular facility's UST systems.

## **Coverage of Previously Deferred Systems**

The new rule ends the prior deferred regulation of and provides new requirements for UST systems storing fuel for use by emergency power generators, Field Constructed Tanks (FCT) and Airport Hydrant Systems (AHS). For UST systems that were installed on or before the new rule's effective date and that supply fuel solely for use by emergency power generators, EPA now is requiring that owners and operators meet the release detection requirements in subpart D within three years after the rule's effective date. For FCTs and AHSs, the rule removes the deferral and requires the UST systems to comply with the new subpart K requirements (specifically for FCTs and AHFs) as well as the requirements in subparts A (exclusions), F (release response), H (financial responsibility), and I (lender liability), as applicable.

In addition, EPA established a "partial exclusion" to replace its previous deferral for wastewater treatment tank systems that are not part of a wastewater treatment facility regulated under Clean Water Act Sections

402 or 307(b). Those wastewater treatment tank systems, as well as UST systems containing radioactive material regulated by the Atomic Energy Act and UST systems that are part of an emergency generator system at nuclear power generation facilities licensed and regulated by the Nuclear Regulatory Commission, are excluded from the requirements in subparts B (installation and notification), C (operating), D (release detection), E (release reporting), G (closure), J (training), and K (FCTs and AHS). However, like FCT and AHS UST systems, they are subject to the requirements in subparts A (exclusions), F (release response), H (financial responsibility), and I (lender liability), as applicable. Of particular note, the preamble to the final rule states that wastewater treatment tanks subject to the partial exclusion are not subject to the financial responsibility requirements in Subpart H, which is not reflected in the actual rule language in the new 40 CFR 280.10(c).

## **Changes in Technology**

The new EPA regulations include obligations that reflect EPA's assessment regarding UST system technology advances that have occurred since 1988. For example, the rule eliminates flow restrictors in vent lines as an option for owners and operators to meet the overfill prevention equipment requirements for newly installed UST systems and when overflow prevention equipment is replaced. Vent line flow restrictors in use before the rule's effective date can continue to be used so long as they operate properly by restricting flow into the UST when activated and are periodically inspected. The rule also revises the internal lining requirement requiring owners and operators to permanently close tanks using internal lining as the sole method of corrosion protection if the internal lining fails the periodic inspection and cannot be repaired according to a code of practice. The rule also incorporates several newer technologies into the regulations including clad and jacketed tanks, non-corrodible piping, continuous in-tank leak detection, statistical inventory reconciliation and updates the codes of practice listed in 40 CFR Part 280.

## **Notifications**

All owners of previously deferred FCT and AHS UST systems must submit a one-time notice to the implementing agency of a tank system's existence, within three years of the rule's effective date. They also must be able to demonstrate financial responsibility at the time the notification form is submitted. For new FCT and AHS UST systems installed after the effective date of the rule, the requirements apply at the time of installation. For all regulated UST systems, the rule also requires owners to notify the implementing agency within 30 days of any change in the UST's ownership.

## **Compatibility**

Because EPA changed the definition of "regulated substances" to clarify that UST systems containing petroleum derived from non-crude oil products are regulated, the rule requires owners and operators to demonstrate the tank system is compatible with these substances or use another option determined by the implementing agency to be no less protective than the compatibility demonstration. This applies to UST systems storing regulated substances containing greater than 10 percent ethanol, 20 percent biodiesel, or other regulated substances identified by

the implementing agency. In addition, at least 30 days before switching to one of these substances, owners and operators must notify the implementing agency that they will be making a switch.

## **Repairs**

The previous definition of “repair” only applied to restoration of a tank or UST system component that has caused a release. EPA has modified the definition of “repair” to add piping, spill prevention equipment, overfill protection equipment, corrosion protection equipment, and release detection equipment. It also provides that a repair is associated not only with a release but also if the component has failed to function properly. Finally, the rules add a requirement to perform testing or inspections, as specified in the regulations, within 30 days after a repair to spill or overfill equipment and secondary containment areas.

## **Monitoring**

EPA continues to allow vapor and groundwater monitoring as release detection options so long as owners and operators demonstrate proper installation and performance through a site assessment. The rule also revises the release reporting requirements by including liquids in interstitial spaces as an example of an unusual operating condition; clarifying that an alarm during release detection monitoring is subject to reporting; and describing exceptions to the reporting requirement. The rule also adds a requirement to the release investigation and confirmation steps section to conduct secondary containment testing, perform a site check, or perform other procedures approved by the implementing agency when a suspected release is identified. In addition, the rule clarifies the actions that must be taken if a test confirms a leak into the interstitial space or indicates a release to the environment.

## **State Approval**

The rule updates the state program approval requirements in 40 CFR Part 281 to address the changes to 40 CFR Part 280 and implements the delivery prohibition, operator training, and additional measures to protect groundwater requirements contained in the EPA Act. States with an approved UST program have three years to submit a revised state program approval package for EPA approval, and owners and operators in these states must continue to follow their state requirements until the state changes its requirements or until the state’s program approval status changes. Owners and operators in states without approved state programs must meet the federal standards according to the schedule in these 2015 UST regulations as well as any of their state-specific requirements.

## Conclusion

EPA’s new regulations expand the 1988 UST mandates and impose significant new obligations on UST owners/operators. The requirements for inspection, maintenance, and monitoring outlined above have varying implementation deadlines, frequency demands, notification requirements, and record-keeping obligations. Each owner/operator needs to carefully review the new requirements, the potential applicability to each UST system it owns/operates, how its state’s regulations compare and develop a plan for implementation.

For more information, contact the Barnes & Thornburg attorney with

whom you regularly work, or one of the following attorneys in the firm's Environmental Law Department: Mike Scanlon at [mscanlon@btlaw.com](mailto:mscanlon@btlaw.com) or 317-231-7387; Tammy Helminski at [thelminski@btlaw.com](mailto:thelminski@btlaw.com) or 616-742-3926; Jeff Longsworth at [jlongsworth@btlaw.com](mailto:jlongsworth@btlaw.com) or 202-408-6918; or Beth Davis at [bdavis@btlaw.com](mailto:bdavis@btlaw.com) or 404-264-4025.

You can also visit us online at [www.btlaw.com/environmental](http://www.btlaw.com/environmental).

*© 2015 Barnes & Thornburg LLP. All Rights Reserved. This page, and all information on it, is proprietary and the property of Barnes & Thornburg LLP. It may not be reproduced, in any form, without the express written consent of Barnes & Thornburg LLP.*

*This Barnes & Thornburg LLP publication should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own lawyer on any specific legal questions you may have concerning your situation.*

Visit us online at [www.btlaw.com](http://www.btlaw.com) and follow us on Twitter [@BTLawNews](https://twitter.com/BTLawNews).