

Environmental Law Advisory

Will Massachusetts' New UST Regulations Be a Game Changer?

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You can bet on it! The Massachusetts Department of Environmental Protection (DEP) issued a new set of regulations effective January 2, 2015 that will create major burdens for underground storage tank (UST) owners and operators. These regulations, codified as 310 CMR 80.00, contain expansive requirements that apply to USTs containing motor fuel, large heating oil tanks, and emergency generator tanks, and govern the design, installation, maintenance, operation, record-keeping, transfer, and removal of USTs.

For tank owners and operators, the new rules will make UST compliance more difficult, requiring greater effort and coordination, and significant increases in annual compliance costs. The top issues tank owners and operators will face include:

- the complexity of the new requirements encompassed in the 191 pages of regulation. DEP admitted in stakeholder meetings that most owners and operators will not readily understand them and will need to seek expert advice;
- a significant increase in the frequency and breadth of inspections for UST system components by tank owners and operators;
- extensive record-keeping and record retention requirements, including transfer of certain records to a new owner at time of sale;
- costly UST system upgrade requirements;
- a marked increase in the number of DEP inspections, leading to an expected increase in enforcement cases and penalties; and
- achieving and maintaining compliance with these complex rules so eligibility under various financial assurance mechanisms are not jeopardized, especially for cleanup cost reimbursement under the state's UST Fund (MGL c. 21J).

DEP's Oversight will be a "Game Changer"

DEP's 191 pages of UST regulations (310 CMR 80.00) have replaced the Department of Fire Services' 33-page set of rules (527 CMR 9.00) that for years was implemented by state and local fire officials. During development of the new regulations over the past 6 years, it was clear that DEP intended to create one of the most stringent regulatory programs in the country. DEP will issue updated forms that are expected to increase the complexity, scope, and level of detail of items that will need to be tracked and updated on a regular basis. State and local fire officials will still play a role in local permitting and removal requirements, but the day day-to-day implementation and enforcement of the program is now firmly in DEP's hands. At the insistence of the retail petroleum industry, DEP has agreed to exercise some restraint in enforcement until April 30, 2015, so owners and operators can come up to speed on the new rules.

Challenges

To meet the challenges presented and contain costs, UST owners and operators will need to develop a compliance strategy, ensuring that the right UST repair and maintenance contractors, the facilities' Class A, B,



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and C operators, and third-party inspectors are in place and function effectively as a team. After gaining control and putting its program in place, DEP is gearing up to implement inspections and enforcement at a level that has not existed to date, and will not be shy about taking enforcement action, including assessing penalties and “red-tagging” pumps to prohibit fuel deliveries until all compliance issues are resolved. If you own or operate USTs at multiple facilities, a pattern of non-compliance can lead to significant penalties. Being prepared for inspections, handling them properly, and managing enforcement outcomes will require understanding the new obligations and sufficient prior planning.

For more information on this alert please contact the author at (617) 348-3840 or follow <http://www.mass.gov/eea/agencies/massdep/toxics/ust/>.

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