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Environmental Law

New Underground Storage Tank Operator Requirements Arrive in Massachusetts

As of August 8, 2012 operators of facilities with underground storage tanks ("USTs") will need to have passed an exam. In accordance with 310 CMR 80.01 and 80.02 (the "UST Regulations") implemented by the Massachusetts Department of Environmental Protection ("MADEP") on February 3, 2012, facilities with USTs must have a Class A, B, and C operator on staff by the August deadline. To achieve the designation, Class A, B and C operators must demonstrate a "general knowledge and understanding" of UST systems and applicable regulations. The UST Regulations are intended to comply with similar, federal requirements.

Most states will require UST operators to complete a training program to comply with federal standards, but MADEP takes certification a step further for Class "A" and "B" designations. In order to demonstrate a "general knowledge and understanding" of UST systems, the new regulations require Class A and B operators to take and pass an online exam (and pay a fee). In part, this examination concerns the federal and state requirements for proper and safe operations of the UST system and emergency response techniques. The examination goes on to test (but is not limited to): (1) tanks and piping, (2) regulated substances stored, (3) leak detection, (4) spill prevention, (5) overfill prevention, (6) emergency response procedures, (7) financial responsibility, (8) registrations, licenses and permits, and (9) UST testing requirements. One person may serve as the Class A, B and C operator for a facility, but certification must be obtained by the August 2012 deadline. Class C operators, who "shall be the Owner or Operator of the facility or an employee of the Owner or Operator", are not required to pass the examination but must demonstrate the standard of knowledge required by the UST Regulations.

Exemptions do apply. The UST Regulations do not apply to systems that: (1) are part of certain storm water or wastewater treatment systems, (2) hold hazardous wastes listed under M.G.L. c. 21C (except those systems holding waste oil), (3) contain de minimus concentrations of regulated substances, (4) contain radioactive material, (5) are part of an emergency generator system at a nuclear power generation facility, (6) are comprised of consumptive use tanks (heating oil), (7) are used for landfill leachate, (8) consist of farm or residential tanks of 1,100 gallons or less used for the storage of motor fuel, (9) are comprised of equipment or machinery that contain regulated substances for non-consumptive operational purposes (i.e. hydraulic lift tanks and electrical equipment tanks), (10) are used as emergency spill or overflow containment UST systems, or (11) hold a capacity of 110 gallons or less. Owners should review the UST Regulation exemptions carefully.

Finally, Class A and B operators certified outside the Commonwealth are not entirely exempt; they must demonstrate they were trained in accordance with the UST Regulations and pass the Massachusetts-specific portion of the exam.

Please be alert as to this regulation as enforcement is soon to follow. For more information, we encourage you to talk to Ronald W. Ruth or Ani E. Ajemian.

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