

***Environs* Hot Sheet -- Breaking Developments in Environmental Law**

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New Energy Bill Adopts Changes to Underground Storage Tank Regulations

Tucked into the 1,700-plus pages of the new Energy Policy Act of 2005, signed by President Bush on August 8, is the first major overhaul of the federal underground storage tank (“UST”) rules since 1988. Although the provisions in the Underground Storage Tank Compliance Act of 2005 received almost no attention in the popular press, they contain many new federal requirements that will affect owners and operators of 11,000 active USTs in Washington, nearly 6,000 underground tanks in Oregon and 1,775 USTs in Alaska. The biggest changes in the law are mandates for inspections, equipment upgrades and training.

The new federal law requires inspections within two years for all USTs that have not been inspected since December 12, 1998, when the previous federal law required upgrading or closing all existing tanks in commercial service. Beginning in 2007, after completion of the first round of inspections, states would have to inspect all USTs at least once every three years. Washington, Oregon and Alaska each currently have some form of inspection requirement in their existing regulations. All three states require inspections every three years, in Alaska this requirement applies to all tanks, but in Washington and Oregon it applies only to tanks that have some form of corrosion protection system. For Washington and Oregon tanks that are lined, inspections are required only every five years after the first ten years from lining. Thus, it appears under the new federal law that, from here on out, all USTs will be treated the same for inspection purposes. In addition, secondary containment is now a federal requirement for all new and replacement tanks and piping.

In conjunction with the inspection requirement, the federal law has added a civil penalty provision for anyone who delivers or accepts delivery of a regulated substance, such as gasoline, into a UST that has not passed inspection. The delivery prohibition is similar to existing regulations in Washington, Oregon and Alaska, but it adds a requirement that each state keep a roster of prohibited delivery sites to be developed within two years and make it readily accessible on-line. The federal law also contains a rural or remote areas exemption, where treating a UST as ineligible for delivery would jeopardize the availability or access to fuel for the community.

The states may have some flexibility in how they conduct inspection programs, since the new law provides for adoption of alternatives to traditional inspection programs after the states and federal Environmental Protection Agency (“EPA”) have gathered information about compliance assurance methods.

The new federal law also contains training requirements for each of the following categories: operators, managers, and employees. Within two years EPA is to develop guidelines for training each category, and the states would then have two years after that to develop state-specific

training requirements consistent with the federal guidelines. The states are directed to develop their rules in cooperation with tank owners and operators, and to take into account owners' and operators' existing training programs. This provision represents a significant expansion of obligations for Washington, Oregon and Alaska. At this time, neither Washington nor Alaska have any current training requirements, and Oregon has a mandatory training program only for a designated UST operator at each site.

For the first time, USTs owned by federal, state and local government agencies will be subject to regulation. The law also will apply to USTs on Indian tribal lands.

How all of this will play out is unclear. Funding for the new mandates may be the biggest issue, although Congress did authorize the use of up to 80 percent of the Underground Storage Tank Trust Fund to implement the new requirements. That in itself is a change from the previous statute that allowed the funds to be used only for cleanups. It is clear, however, that in the next two- to four-years, as most older UST sites are cleaned up and closed, the law will direct the focus shift from cleanup to prevention through inspection and equipment upgrades.

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