



# THE ADMINISTRATIVE WATCH

ADMINISTRATIVE WATCH ADDRESSES ENVIRONMENTAL, HEALTH & SAFETY ISSUES

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## NEW FEDERAL UNDERGROUND STORAGE TANK LAW

On August 8, 2005, President Bush signed the Energy Policy Act of 2005 into law. Tucked in among the sections dealing with hybrid cars and alternative energy supplies is Title XV, Subtitle B – the Underground Storage Tank Compliance Act. The Act amends the portions of the Resource Conservation and Recovery Act relating to underground storage tanks for the first time in 19 years. Under the new law, 80% of the funds available in the federal Leaking Underground Storage Tank Trust Fund will be distributed to the states for enforcement programs and corrective action. The Act also specifically authorizes states to use federal money to remediate releases of methyl tert butyl ether (“MTBE”). Other provisions in the new law will directly affect owners and operators of regulated underground storage tank (“UST”) systems.

### INSPECTIONS

Any owner of a regulated tank who has not been subject to an UST inspection by the EPA or by an authorized state agency in this century should expect the regulatory agency to come calling within the next two years. The new law requires regulated USTs that have not been inspected since December 22, 1998 to be inspected by the state or the EPA by August 8, 2007. Any affected owner/operator may want to conduct its own compliance assessment to identify and address any issues ahead of time to reduce the potential for civil penalties and/or administrative orders.

Once the regulatory agency finishes inspecting tanks that have not been inspected since 1998, the new law requires that on-site inspections of all regulated tanks be conducted once every three years. It remains an open question as to whether the money allocated to the state agencies will allow the states to inspect each regulated tank every three years. The law allows EPA to extend the required inspection frequency by one year to account for a lack of state resources.

### OPERATOR TRAINING

Within two years, EPA is required to publish guidelines to specify training requirements for persons with on-site responsibility for operation and maintenance of UST systems. Employees who have responsibility for addressing emergencies caused by a spill or release will also require training. After the EPA publishes its guidelines,

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states have two more years to develop their state-specific training requirements. Once the training program is underway, training will need to be repeated if inspections reveal that the UST system is out of compliance. Both the states and EPA are required to take a number of practical factors into account in developing the training requirements, including programs already in place and the nature of the business in which tank operators are engaged (e.g., high employee turnover in retail fuel sales).

## **DELIVERY PROHIBITION**

Beginning in two years, the law imposes a prohibition on the delivery of fuel or any other regulated substance to an UST designated as ineligible by the regulatory agency. EPA is directed to publish guidelines within one year on the specific procedures to be used, but some states already have so-called “red-tagging” regulations. For instance, Pennsylvania prohibits deliveries to regulated tanks that have not been registered with the Pennsylvania Department of Environmental Protection. Fuel tanks located in rural and remote areas may be exempt from the prohibition if red-tagging would jeopardize the availability of fuel.

If you have any questions on the recently enacted Underground Storage Tank Compliance Act or other tank issues, please contact Susanne Herald at 412-394-6590 or [sherald@bccz.com](mailto:sherald@bccz.com) or any of the other attorneys in the Environmental, Health and Safety Group at Babst, Calland, Clements and Zomnir, P.C.