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## *New Federal UST Regulations Going Into Effect Soon in California*

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On July 15, 2015, the Environmental Protection Agency (hereinafter, "EPA") published its final rule in the Federal Register adopting revisions to the federal regulations governing underground storage tanks ("USTs"). These changes are the first significant revisions to the UST regulations since 1988.<sup>1</sup> The updated regulations are designed to reduce the incidence and impact of the more than 6,000 releases discovered annually from USTs.<sup>2</sup> To this end, the EPA added comprehensive new operation and maintenance requirements, as well as new secondary containment provisions aimed at preventing and detecting UST releases. The revisions are effective October 13, 2015, and include a series of phased compliance deadlines extending from 2015 to 2018.

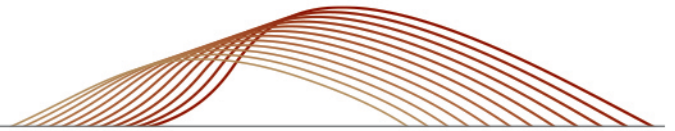
Importantly, the revised regulations add substantive requirements for existing USTs operated in California that apply in parallel to and in certain instances go beyond the requirements of California's existing UST program. This unique dual application of both federal and state requirements results because California has not obtained formal EPA approval for its UST program, instead traditionally enforcing its own historically more stringent state requirements.<sup>3</sup> As detailed further by the State Water Resources Control Board in an August 20 letter addressing the new regulations, owners and operators of existing USTs in California should prepare immediately to comply with the requirements described below, which must be met starting after October 13 of this year.<sup>4</sup>

### **Float Valves as Overfill Prevention**

As part of the federal revisions, the EPA modified its overfill prevention equipment requirements by prohibiting the use of flow restrictors in vent lines for overfill prevention purposes.<sup>5</sup> Also known as ball float valves or float-vent valves, vent line flow restrictors can be ineffective at preventing overfill and can over-pressurize tanks when they engage.<sup>6</sup> This pressurization may compromise tank integrity and result in spray-back when delivery hoses are disconnected.<sup>7</sup> Under the revised rule, owners and operators are not required to retrofit existing vent line flow restrictors with new forms of overfill prevention technology immediately.<sup>8</sup> Instead, the restriction applies only upon *installing or replacing* overfill prevention.<sup>9</sup> Flow restrictors not in vent lines are not affected by the rule and can continue to be used to meet overfill prevention requirements under the revisions.<sup>10</sup>

### **Renewable Fuel Compatibility**

Several requirements under the revised federal rules are aimed at ensuring tank compatibility with renewable fuels, such as those containing greater than 10 percent ethanol and greater than 20 percent biodiesel (*e.g.*, those with greater ethanol content than E10 and greater biodiesel content



than B20).<sup>11</sup> The existing federal UST regulations were issued in 1988, long before fuel content began aggressively shifting towards higher blends of ethanol and biodiesel.<sup>12</sup> Recognizing that these fuel mixtures have characteristics that can cause greater degradation to system equipment and components than petroleum fuel alone, the updated regulations impose strict compatibility requirements.<sup>13</sup>

Importantly in California, the new regulations require owners and operators to provide at least 30-day notice *prior* to switching tank contents to these substances.<sup>14</sup> Owners and operators must also maintain records documenting UST system compatibility, which includes tanks, piping, containment sumps, pumping equipment, release detection equipment, spill equipment, and overfill equipment.<sup>15</sup> These records must be maintained as long as the substance is stored in the UST.<sup>16</sup>

## Follow-up Testing After Repair

A series of repair and testing requirements contained in the federal revisions will also have unique application in California. Although California already requires testing of tanks and pipes for tightness within 30 days following a repair, the California regulations define “repair” more narrowly than under the new federal definition, which “removes the link that a repair is only associated with a release” and instead defines it as including any restoration following a failure to function properly.<sup>17</sup>

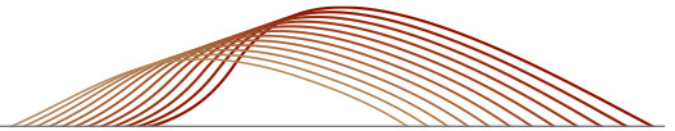
Under the federal revisions, within 30 days following repair to secondary containment areas of tanks and piping used for interstitial monitoring and to containment sumps used for interstitial monitoring of piping, owners and operators must have the secondary containment tested for tightness.<sup>18</sup> A 30-day tightness test is also required for repairs to tanks and piping themselves.<sup>19</sup> Finally, spill or overfill prevention equipment must be inspected or tested to ensure it is operating properly within 30 days following any repair.<sup>20</sup> Owners and operators should account for these requirements when repairing malfunctioning system components.

## Phased Requirements

A variety of additional requirements come into effect over the next several years that will apply in addition to existing state requirements. These include, for instance, an operator training program effective in 2018 that will apply in parallel to California’s existing program, and which adds class-based operator designation requirements for each UST and mandatory retraining following instances of non-compliance.<sup>21</sup>

Also starting in 2018, owners and operators conducting equipment inspection walkthroughs must account for new tasks and timeframes codified in the federal revisions. Every 30 days,<sup>22</sup> for instance, owners and operators must visually check spill prevention equipment for damage, remove liquid and debris, check fill pipes for obstructions, ensure fill caps are securely fitted on fill pipes, and—for double-walled equipment with interstitial monitoring—check the interstitial area for leakage.<sup>23</sup> Similarly, on an annual basis, owners and operators must visually check containment sumps for damage, leaks, and releases; must remove liquid and debris; and—for double walled sumps with interstitial monitoring—check for leaks in the interstitial area.<sup>24</sup>

Additionally, replacing more than 50 percent of a piping run will trigger secondary containment requirements under the federal revisions. Starting after April 11, 2016, when piping other than safe suction piping is “replaced”—defined as the removal of 50 percent or more of a piping run and installation of other piping<sup>25</sup>—the entire run must be secondarily contained with interstitial monitoring.<sup>26</sup>



## Looking Ahead

As these new federal regulations come into effect for California owners and operators, the State Water Resources Control Board is considering proposing statutory and regulatory amendments to codify the revisions into the state UST program, and anticipates releasing detailed compliance guidance in the near future.<sup>27</sup> Paul Hastings will be monitoring these steps closely as the process unfolds. In the interim, owners and operators should immediately prepare to comply with the requirements going into effect next month.



*If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings San Francisco lawyers:*

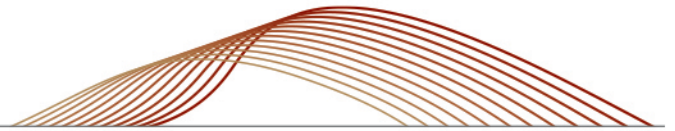
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- <sup>1</sup> Revising Underground Storage Tank Regulations—Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training (July 15, 2015) 80 Fed. Reg. 41,566.
  - <sup>2</sup> 80 Fed. Reg. at 41,567. *See also* U.S. EPA, Semi-Annual Report of UST Performance Measures, End of Fiscal Year 2014 (2014), <http://epa.gov/oust/cat/ca-14-34.pdf>.
  - <sup>3</sup> California is one of only 12 states without U.S. EPA program approval. In contrast, owners and operators within the 38 states *with* program approval can comply with existing state-level UST regulations already in place as the state reapplies for approved status over a three-year window. *See* 40 C.F.R. § 281.51(a) (2015).
  - <sup>4</sup> *See* State Water Resources Control Board, 2015 Revised Federal Underground Storage Tank Regulations (Aug. 20, 2015), [http://www.waterboards.ca.gov/water\\_issues/programs/ust/adm\\_notices/fed\\_regs\\_comp\\_deadline.pdf](http://www.waterboards.ca.gov/water_issues/programs/ust/adm_notices/fed_regs_comp_deadline.pdf). In addition to the changes described here, new requirements will also go into effect for airport hydrant fuel distribution systems, field-constructed tanks, and emergency generator tank systems, with various compliance deadlines starting after October 13, 2015, and extending to 2018.
  - <sup>5</sup> *See* 40 C.F.R. § 280.20(c) (2015) (adding the new Section 280.20(c)(3) which specifies that “[f]low restrictors used in vent lines may not be used to comply with [overfill prevention requirements] when overfill prevention is installed or replaced after October 13, 2015”).
  - <sup>6</sup> 80 Fed. Reg. at 41,600.
  - <sup>7</sup> *Id.*
  - <sup>8</sup> *Id.*; 40 C.F.R. § 280.20(c)(3) (2015).
  - <sup>9</sup> 40 C.F.R. § 280.20(c)(3) (2015).
  - <sup>10</sup> 80 Fed. Reg. at 41,600 (describing flow restrictors in fill pipes).
  - <sup>11</sup> In addition to listed renewable fuels, the regulation authorizes inclusion of additional fuels in the future, such as new fuels when they enter the market, like biobutanol. 40 C.F.R. § 280.32(b) (2015). *See also* U.S. EPA, UST System Compatibility with Petroleum-Biofuel Blends: A Brief Guide to the 2015 Federal UST Regulations for Owners and Operators of USTs Located on Tribal Lands (2015), <http://epa.gov/oust/pubs/compatbrochure.pdf>.
  - <sup>12</sup> 80 Fed. Reg. at 41,602.
  - <sup>13</sup> *Id.*; 40 C.F.R. § 280.32(b) (2015).
  - <sup>14</sup> 40 C.F.R. § 280.32(b) (2015).
  - <sup>15</sup> 40 C.F.R. § 280.32(b)(1)(i)-(ii); (c) (2015).
  - <sup>16</sup> 40 C.F.R. § 280.32(c) (2015).

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<sup>17</sup> 80 Fed. Reg. at 41,605. *Compare* Cal. Code. Regs. tit. 23, § 2611 (“‘Repair’ means to restore a tank or underground storage tank system component that has caused a release of a hazardous substance from the underground storage tank system”) with 40 C.F.R. § 280.12 (2015) (“‘Repair means to restore to proper operating condition a tank, pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment or other UST system component that has caused a release of product from the UST system or has failed to function properly”).

<sup>18</sup> 40 C.F.R. § 280.33(d) (2015).

<sup>19</sup> *Id.*

<sup>20</sup> 40 C.F.R. § 280.33(f) (2015).

<sup>21</sup> *Compare* Cal. Code Regs. tit. 23, § 2715 with the new federal Subpart J (40 C.F.R. §§ 280.240 – 280.245 (2015)).

<sup>22</sup> Under the California program, inspections are required on a “monthly” basis. *See* Cal. Code Regs. tit. 23, § 2715(c).

<sup>23</sup> 40 C.F.R. § 280.36(a)(1)(i)(A) (2015).

<sup>24</sup> 40 C.F.R. § 280.36(a)(1)(ii)(A) (2015).

<sup>25</sup> 40 C.F.R. § 280.12 (2015).

<sup>26</sup> 40 C.F.R. § 280.20 (2015).

<sup>27</sup> State Water Resources Control Board, 2015 Revised Federal Underground Storage Tank Regulations (Aug. 20, 2015), [http://www.waterboards.ca.gov/water\\_issues/programs/ust/adm\\_notices/fed\\_regs\\_comp\\_deadline.pdf](http://www.waterboards.ca.gov/water_issues/programs/ust/adm_notices/fed_regs_comp_deadline.pdf).