

Think Tanks! AST Compliance Deadline - August 12, 2008 - Quietly Approaching

March 27, 2008

The Michigan Department of Environmental Quality (MDEQ) overhauled, and in effect dramatically expanded, Michigan's Storage and Handling of Flammable and Combustible Liquids Rules, regulating aboveground storage tanks (ASTs).

These newest rules -- promulgated in 2003 with a five-year grace period -- impose new standards for spill, overfill and corrosion protection for all "new," and perhaps more importantly, all "existing" ASTs ("new" ASTs were or are installed after August 13, 2003, while "existing" ASTs were installed prior to August 13, 2003).

The grace period will expire on, and compliance must be achieved by, August 12, 2008. The MDEQ rules apply to all ASTs containing flammable or combustible liquids -- tanks of any size and irrespective of the date of original installation or construction. Stories are beginning to surface of owners or operators facing expensive fixes to meet these rules, forcing some to close shop.

Owners and operators are advised to promptly review the new rules and determine their AST regulatory compliance status. Achieving compliance may be disruptive to business, time-consuming and costly if advance assessment and planning are not done. For example, as the deadline further approaches, fewer AST contractors or suppliers may be available.

By August 12, 2008, new and existing tanks must be (1) upgraded with mandatory spill, overfill and corrosion protection; (2) removed and replaced with compliant systems; or (3) permanently closed. Spill protection requirements prevent releases at the point of transfer; overfill protections vary based upon whether the AST is filled by pipeline or marine vessel and is single or double walled; and corrosion protection applies to tanks installed on grade.

Responsible parties who decide against installing required upgrades must either replace or permanently close such non-compliant ASTs. Replacement and/or closure requirements include: (1) notifying the MDEQ at least 30 days in advance; (2) assessing the area for the presence of a release to the environment; and if confirmed by sight, smell or analytical methods, taking corrective action to remediate the release; (3) properly emptying the liquid contents or sludge from the system, and finally; (4) safeguarding the tank against future potential trespassers, or, instead removing the AST for proper disposal. As a first step, parties may wish to consider retaining counsel to assist with conducting a privileged compliance audit under available laws.

Failure to meet the August 12, 2008 deadline may lead to citations, fines or even "red tag" status, requiring one to cease operations pending compliance.

If you own or operate ASTs containing flammable or combustible liquids of any capacity in Michigan and wish to discuss the requirements or your options under the State's Storage and Handling of Flammable and Combustible Liquids Rules, please call or contact environmental attorney Gregory J. Parry at 248.267.3207.

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Parry is senior attorney in the firm's Troy office. He will receive a Master's Degree in Homeland Security Leadership from the University of Connecticut, in partnership with the U.S. Naval Post-Graduate School, in August, 2008.