

***Regulating Hazardous Substances—New Jersey Underground Storage Tank Act—Environment—1986 N.J. Sess. Law Serv. 102 (West).***

New Jersey's groundwater faces a hidden threat. Aging underground storage tanks which have begun to corrode and leak have caused significant groundwater contamination. To quell the discharge of hazardous substances from underground tanks, the New Jersey Legislature enacted the New Jersey Underground Storage Tank Act in 1986.<sup>1</sup>

This extensive and seemingly thorough piece of legislation can be broken down into five basic components: (1) identification and registration of existing underground facilities, including development of a list of hazardous substances which qualify for regulation; (2) a permit program to license underground storage tanks; (3) development of an underground storage tank monitoring system; (4) program and administrative funding; and (5) the creation of the State Underground Storage Tank Improvement Fund.<sup>2</sup>

All owners or operators of underground storage tanks are required to register with the Commissioner of the Department of Environmental Protection (DEP) within one hundred eighty days after the effective date of this Act.<sup>3</sup> The DEP has the discretion to extend this period for an additional one hundred eighty days. A registration must include the following information: (1) the name and address of the owner or operator; (2) a site plan which includes the location of one or more existing storage tanks; (3) the date of installation of each tank; and (4) any other relevant information required by the DEP. The owners or operators of these facilities must make an annual certification that the information provided in the registration remains unchanged.

The legislature has precisely defined the types of underground storage tanks and their contents that will be subject to regulation under this Act.<sup>4</sup> The Act also lists the types of under-

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<sup>1</sup> 1986 N.J. Sess. Law Serv. 102 (West) [hereinafter Storage Tank Act or Act].

<sup>2</sup> See *supra* note 1 at § 17(a)-(c).

<sup>3</sup> See *supra* note 1 at § 3(a). The effective date of the Storage Tank Act is September 3, 1986.

<sup>4</sup> See *supra* note 1 at § 2(p). The term "underground storage tank" includes one or more tanks, including appurtenant pipes, lines or fixtures, used to contain hazardous substances, the volume of which is ten percent below the ground.

ground storage tanks that will be exempted from regulation. Exemptions include tanks of 1,100 gallon capacity or less used to store motor fuel, tanks of 2,000 gallon capacity or less used to store heating oil for residential and nonresidential buildings, and septic tanks installed in compliance with The Realty Improvement Sewerage and Facilities Act of 1954.<sup>5</sup> The Act also exempts pipelines regulated under the Natural Gas Pipeline Safety Act of 1968,<sup>6</sup> the Hazardous Liquid Pipeline Safety Act of 1979,<sup>7</sup> intra-state pipelines regulated under state law, and a host of other underground collection systems.

The hazardous substances covered under this Act are motor fuels and certain liquid compounds, including petroleum products.<sup>8</sup> The DEP is required to adopt a list of regulated hazardous substances that shall be consistent with federal hazardous substance lists adopted by the U.S. Environmental Protection Agency (EPA).<sup>9</sup> Sewage and sewage sludge will not be considered hazardous substances under the Act.

Any owner or operator of an underground storage tank facility who plans to replace, install, expand, or modify a facility must obtain a permit from the DEP. Issuance of a permit will depend upon compliance with the building material and construction requirements of the State Uniform Construction Code,<sup>10</sup> and with all other rules and regulations adopted by the DEP under the Act.

In order to obtain a permit, a permittee must equip the underground storage facility with an approved method of secondary containment, or a monitoring system.<sup>11</sup> Monitoring systems

<sup>5</sup> N.J. STAT. ANN. §§ 58:11-23 to -73 (West Supp. 1987).

<sup>6</sup> Pub. L. No. 90-481, § 2, 82 STAT. 720, 49 U.S.C. § 1671 (West 1982).

<sup>7</sup> Pub. L. No. 96-129, Title II, § 202, 93 STAT. 1003, 49 U.S.C. § 2001-2014 (West Supp. 1987).

<sup>8</sup> See *supra* note 1 at § 2(e).

<sup>9</sup> The lists were adopted pursuant to the Resource Conservation and Recovery Act of 1976, Pub. L. No. 94-580, § 2, 90 STAT. 2806, 42 U.S.C. § 6921; the Federal Water Pollution Control Act of 1972, Pub. L. No. 92-500, § 2, 86 STAT. 856, 33 U.S.C. § 1317 (1977); and the Comprehensive Environmental Responses, Compensation and Liability Act of 1980, Pub. L. No. 96-510, Title I, §§ 101, 102, 94 STAT. 2767, 42 U.S.C. §§ 9601, 9602 (West Supp. 1987).

<sup>10</sup> State Uniform Construction Code Act, N.J. STAT. ANN. § 52:27D-123 (West 1986).

<sup>11</sup> A "secondary containment" means an additional layer of impervious material creating a space which would permit detection of a leak of hazardous substances

must be installed, maintained, and operated properly, and each monitoring system must be inspected monthly. Owners or operators are also required to maintain inventory records for each underground tank which must record daily hazardous substance transfers, and a weekly periodic average. These records are to be kept on site for at least one year.

If these inventory records or monitoring systems reveal a loss of one percent of the storage capacity of an underground tank, or forty gallons, whichever is smaller, the owner or operator must notify the DEP and local health agencies within twenty-four hours after detection of the loss of volume. After notification, the DEP shall inspect the site to determine if the loss of volume represents a leak or discharge. If the DEP determines that a leak or discharge exists which is not an imminent threat to groundwater resources, it shall establish a date by which the owner or operator must remove, replace, or repair the damaged underground storage tank. If the DEP finds that the leak or discharge has entered, or threatens, groundwater resources, the DEP shall order the owner or operator to remove the tank completely, and to take appropriate action to abate, contain, or remove the discharge. Any costs incurred by the DEP in mitigating a leak or discharge must be reimbursed by the owner or operator of the defective tank.

To enforce the Act, the DEP is authorized to enter any property or place of business where underground storage tanks are or may be located. All entries must be made at a reasonable hour and for the purpose of inspection of tanks, or records of owners or operators; to obtain samples of hazardous discharges, or air, soil, surface water, or groundwater samples; and to monitor or test any storage tank or its surrounding air, soil, surface water or groundwater.

The Act also authorizes the DEP to collect registration fees from owners or operators based upon the size, contents, and location of their underground storage tanks. These registration fees are to be deposited in a general fund out of which the legislature will annually appropriate to the DEP a sum equivalent to

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from an underground storage tank before it enters the environment. *See supra* note 1 at § 2(m). A "monitoring system" means a system capable of detecting leaks and discharges from underground storage tanks. *See supra* note 1 at § 2(g).

the amount that the DEP anticipates it will collect from registration fees in the given year. This annual appropriation will be used to administer the Act.

In this Act the legislature has made an initial grant of \$5,000,000 to the DEP for the establishment of the State Underground Storage Tank Improvement Fund.<sup>12</sup> The Fund will provide loans to owners or operators who must replace or repair one or more underground storage tanks and who must install monitoring systems. The loans offered through this fund will bear interest at not more than 6% per year, and shall be for a term of no longer than ten years. All loans are to be repaid to the Improvement Fund. The DEP shall establish criteria for the administration and allocation of loans under the Improvement Fund, taking into account the degree of economic hardship suffered by prospective loan recipients. After five years, the Improvement Fund is to terminate and surplus loan money is to revert to the general fund.

Two years after the enactment of the Underground Storage Tank Act, the DEP must submit to the legislature a report outlining the progress of implementation, and the economic impact that the Act has had upon owners and operators of underground storage tank facilities. It is contended that this two year review and report will either show the Underground Storage Tank Act to be an excessively burdensome regulation whose cost outweighs its benefits to public health, or a prudent, timely measure that a responsible and environmentally concerned legislature should have implemented years ago.

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<sup>12</sup> See *supra* note 2.