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UST Owners and Operators Should Start Planning for NJDEP's Proposed Financial Responsibility Requirements

The New Jersey Department of Environmental Protection ("NJDEP") recently proposed regulations that would make federal financial responsibility requirements applicable to all owners and operators of state-regulated underground storage tanks ("UST"). The proposed regulations would extend federal financial assurance requirements to state-regulated USTs that are not regulated under the federal UST program. Owners and operators of non-residential USTs with an aggregate capacity of greater than 2,000 gallons containing heating oil for on-site consumptive use and USTs of any size that contain non-petroleum hazardous substances and hazardous wastes are those most likely to be affected by the proposed rule.

Under federal and state regulations, all USTs were required to be in compliance with upgrade and operational leak detection requirements by December 22, 1998 and must satisfy strict regulatory requirements upon closure. NJDEP's proposal will increase the regulatory burden on owners and operators of regulated USTs by requiring the establishment and maintenance of financial responsibility assurance. This financial assurance may be utilized for any necessary remedial action associated with a UST discharge and for compensation of third parties for bodily injury and property damage caused by a discharge. The required assurance amounts range from \$500,000.00 to \$2,000,000.00 depending on the number of tanks owned, facility use, substance stored and potential volume of discharge. These requirements will apply on a pre-occurrence basis.

Owners and operators of federally regulated USTs that are presently subject to financial responsibility requirements need only to continue to satisfy those requirements. State and federal government entities are exempt under the proposal. Persons subject to regulation will need to satisfy strict reporting and notification requirements. In the event of non-compliance, penalties may be applicable to both owners and operators of USTs.

Giordano Halleran & Ciesla's experienced team of environmental attorneys have counseled commercial, industrial and residential clients on UST upgrades, closures and financial assurance requirements under the federal and state programs, as well as remediation issues related to UST discharges. For further information regarding current federal or state UST regulations, or to discuss the potential applicability of NJDEP's proposed financial assurance requirements to your UST, please contact Steven M. Dalton or Andrew B. Robins at (732) 741-3900.