

April 23, 2014

## **NOTICE TO CLIENTS AND FRIENDS**

### ***PR Developments: Proposed Underground Storage Tanks Control Regulation***

The Puerto Rico Environmental Quality Board (“EQB”) is proposing a new Underground Storage Tanks Control Regulation (“Regulation”) for Puerto Rico. This EQB rulemaking action would annul the existing Underground Storage Tanks Regulation of 1990.

The Regulation is intended to protect the environment and human health from leaking underground storage tanks (“USTs”). It establishes minimum standards for UST systems, including requirements relating to UST installation, operation, leak detection, spill prevention and closure. The Regulation also includes requirements for notification, recordkeeping and identification of owners, as well as requirements for operators and the accreditation of training programs. These requirements will apply to “all owners and operators of a tank or a combination of tanks, including underground pipes and equipment connected, used to contain an accumulation of regulated substances (*e.g.*, gasoline, diesel, oil), and the volume of which, including the volume of underground pipes connected, is 10% or more beneath the surface of the ground”.

The Regulation updates the existing local UST minimum standards by adopting the requirements established in the U.S. Energy Policy Act of 2005 that amended Subtitle I of the Solid Waste Disposal Act (“SWDA”) governing Underground Storage Tanks. Some of the most significant amendments include:

- (i) UST operator training requirements;
- (ii) Secondary containment requirements for new USTs;
- (iii) UST inspection every 3 years by the Environmental Protection Agency (“EPA”) or EQB; and
- (iv) A prohibition to deliver to, deposit into, or accept a regulated substance (*e.g.*, fuels) into an UST at a facility that has been identified by the EPA or the EQB as ineligible for such activities.

In particular, the product delivery prohibition (“red-tag”) authorizes EQB to identify a tank or combination of tanks as ineligible for delivery, deposit or acceptance of product upon a finding of certain conditions including one of the following: (a) failure to install the required spill prevention, overfill protection, release detection, or corrosion protection equipment; (b) failure to properly operate or maintain release detection equipment or spill, overfill, or corrosion protection equipment; (c) failure to maintain financial responsibility; (d) failure to protect a buried metal flexible connector from corrosion; or (e) other conditions that the EQB deems appropriate. In order for an owner and operator of a red-tagged UST to have EQB reclassify such tank, the owner/operator must provide a written statement to the EQB indicating that the deficiencies listed in the non-compliance notice were corrected.

Other significant changes introduced by the Regulation include the following requirements: (i) public access to all UST information, records or reports presented to the EQB; (ii) EQB field citations for violations to the Regulation and (iii) the EQB may impose administrative penalties of up to five thousand dollars (\$25,000) per day for each violation for any violation of the provisions of the proposed Regulation.

On March 14, 2014, EQB held a public hearing as part of the administrative procedure to adopt the Regulation. The EQB is currently in the evaluation stage of the comments provided to the Regulation.

Given the impact of the proposed regulatory changes on the current ownership and operation of UST systems, new USTs, and the potential applicability of federal as well as local penalties/fines, please contact us should you have questions or compliance inquiries. Additionally, to further discuss or obtain additional information, learn of new regulatory deadlines as well as applicable recordkeeping and reporting obligations, please contact us at your convenience.

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