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Environmental Protection
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Office of Underground Storage Tanks

Environmental Fact Sheet

1998 Financial Responsibility Compliance Deadline For Indian Tribes That Own Underground Storage Tanks On Indian Lands: Final Rule

Background

Subtitle I of the Resource Conservation and Recovery Act (RCRA) requires owners and operators of underground storage tanks (USTs) to show through insurance coverage or other acceptable financial mechanisms that they can pay for cleanups and third-party damages resulting from any leaks that may occur.

EPA issued final regulations on October 26, 1988 that phased in the financial responsibility requirements for USTs. The phased-in approach was designed to balance the need to ensure financial capability for UST releases and the time owners and operators need to obtain assurance mechanisms. The phased-in approach set different compliance deadlines for four compliance groups. Group 1, consisting of petroleum marketers owning 1,000 or more USTs and non-marketers with more than $20 million in tangible net worth, was required to comply with the financial responsibility requirements as of January 1989. The regulations required Group 2, consisting of petroleum marketers owning between 100 to 999 USTs, to show financial responsibility in October 1989. Group 3, consisting of petroleum marketers owning between 13 and 99 USTs, was required to comply by April 26, 1991. Group 4, consisting of marketers with 1 to 12 USTs at more than one facility or fewer than 100 USTs at a single facility and non-marketers with net worth of less than $20 million, was required to comply by December 31, 1993. On February 18, 1993, EPA promulgated four additional assurance mechanisms for local government entities (58 FR 9026) to comply with the financial responsibility requirements; this rule extended the compliance deadline for local governments to February 18, 1994.

On August 10, 1993 EPA proposed a rule that would allow certain members of Group 4 (i.e., petroleum marketers, local governments, Indian tribes) to become part of a new compliance group subject to a new financial responsibility compliance deadline (December 31, 1998) if they met certain federally determined criteria.

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Action Taken

On February 18, 1994, EPA finalized a rule to extend the financial responsibility compliance deadline from February 18, 1994 to December 31, 1998 for federally recognized Indian tribes that own USTs on Indian lands if those tanks comply with all current technical requirements (such as leak detection requirements).

EPA is not changing the financial responsibility deadline for petroleum marketers and local governments. The compliance deadline for petroleum marketers remains December 31, 1993. The compliance deadline for local governments remains February 18, 1994.

Discussion

This final rule allows federally recognized Indian tribes to become part of a new compliance group subject to a new financial responsibility compliance deadline of December 31, 1998, if they meet a technical compliance criterion. The technical compliance criterion has been included to protect human health and the environment on Indian lands. This 1998 compliance deadline corresponds with the date by which all underground storage tanks must be upgraded or replaced.

Rationale For This 1998 Compliance Deadline

Many individuals and companies rely on state assurance funds to comply with the financial responsibility requirements. (As of January 1994, 39 states have funds that are considered financial assurance mechanisms.) Because of jurisdictional issues, Indian tribes are unable to rely on these state assurance funds. In addition, many tribes cannot buy private insurance because they cannot afford to upgrade their underground storage tanks to meet insurers' underwriting criteria. A 1998 compliance deadline will provide regulatory relief to Indian tribes unable to obtain a financial assurance mechanism. The additional time will also allow EPA, the Bureau of Indian Affairs, and Indian tribes to explore options for solving the root problem of lack of funding for past contamination on Indian lands and further assist tribes with future technical requirements (such as upgrading underground storage tanks).

Contact

For more information, contact EPA's RCRA/Superfund Hotline, Monday through Friday, 8:30 a.m. to 7:30 p.m. EST. The national toll-free number is 1 800 424-9346; for the hearing impaired, the number is TDD 1 800 553-7672.