

MID ATLANTIC REAL ESTATE JOURNAL

NEW JERSEY-PENNSYLVANIA-DELAWARE-MARYLAND-VIRGINIA

Friday August 22, 2008

Volume 20, Issue 15

ASK AN EXPERT

Ask an Attorney

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I am interested in purchasing a PA property on which there are several underground and above ground storage tanks. The owner of the property was unable to provide me with any paperwork regarding the tanks. How should I proceed? Do these tanks need permits?



Bridget Dorfman

The first thing to determine is whether the tanks on the property are regulated. The Pennsylvania Department of Environmental Protection ("PADEP") regulations for underground storage tanks ("USTs") and aboveground storage tanks ("ASTs"), found in Chapter 245 of the Pennsylvania Code, only apply to tanks used to store a "regulated substance." In general, this means (1) petroleum or (2) hazardous substances as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. However, in November 2007, Pennsylvania issued changes to

its tank regulations that expanded the definition of "regulated substances" to include non-petroleum oils, such as biodiesel, synthetic oils, and wood-derivative oils, and pure ethanol. Note that there are exceptions to the definitions of USTs and ASTs that may exempt the tanks from regulation. For instance, tanks used to store propane gas are exempt from regulation under PADEP's tank program, as are most tanks that are used to store heating oil (as long as the heating oil is used to provide heat for people on the premises, and is not used in an industrial

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process).

Keep in mind that if you purchase the property, and if the USTs and ASTs on the property store regulated substances and do not fall within any of the exceptions in the regulations, PADEP requires registration of tanks thirty days after they are installed or thirty days after you take an ownership interest in them. Moreover, tanks may not be operated until they are properly registered and PADEP approves operating permits for them. You register the tanks by submitting a form to PADEP. PADEP will then send you an invoice for your annual tank registration fees, and upon receiving your payment will issue you a

certificate of registration. Every year thereafter, PADEP will send you an annual invoice for the renewal of the registration of all your regulated tanks.

There are other issues that you should evaluate as part of your due diligence. For instance, does PADEP's eFACTS website indicate any violations of the tank regulations at the property? Have there been any releases in the past of regulated substances? Are the tanks of a high enough quality that they will meet PADEP's stringent technical standards, or do they need to be replaced?

Finally, please note that PADEP regulations set forth stringent re-

quirements for the certification of tank installers and inspectors. As a tank owner, you must hire companies that are PADEP-certified to perform any installation, tank handling, or tightness testing activities. If not, you will likely become subject to PADEP enforcement, which may include the payment of fines.

Bridget Dorfman has been an associate with Manko, Gold, Katcher & Fox, LLP since 2004. She focuses her practice on regulatory compliance matters and real estate development transactions. She has represented industrial, commercial and non-profit clients in compliance matters. ■