

Underground Storage Tanks

In the 1970s and early 1980s we became aware of a serious threat to health and safety and it was due to our longtime use of automobiles. Refineries, petroleum distributors and gasoline stations had filled our land with underground storage tanks. As those tanks aged they began to leak and threaten our sources of water. Not only had we built tanks that were not protected against leaking as they aged, we failed to create provisions to monitor or test those tanks. We clearly needed a massive effort to identify the tanks, test them, retrofit or abandon them, and clean up the damage already done to our groundwater systems. The problem, which crossed state borders, had to be handled nationally. The federal government empowered the Environmental Protection Agency (EPA) to oversee the solution.

Eventually, government action required each owner or operator of an Underground Storage Tank to notify the EPA or a cooperating state agency of the existence of any such tank, to take steps to detect leaks, keep records of regular maintenance, report any release of material from within a tank, take specific corrective action in case of a problem, close unfit tanks, prove financial responsibility for the damage that may occur and the corrective action required should a tank leaks.

A key provision of environmental legislation was the requirement concerning financial responsibility for USTs that cause harm. Almost every commercial property owner or operator of an Underground Storage Tank (UST) containing petroleum products is required to prove financial responsibility in connection with those USTs. Although small tanks servicing farms and homes are exempt, there are very few other exceptions. For instance, there are no exemptions or immunities for governmental entities, Indian tribes, or small owners/operators that only own a single tank. The need for an insurance product to provide compliance is extensive.

The legislation applies not only to the obvious property owners that have retail or wholesale gas, fuel oil, or other petroleum product sales or distribution; it includes many other operations that have an underground petroleum tank.

Examples:

- Acme Truck Rentals keeps a tank to provide fuel for its vehicle fleet.
- The Oldeplace, an ancient multi-story apartment building, has a huge underground tank for heating oil.
- Bigtyme Builders, a general contractor, has an underground tank in its yard to provide gasoline for its equipment.
- Modertowne Taxi Co. has several underground tanks for gasoline or diesel fuel.

Owners or operators of USTs containing petroleum products must show proof they are financially able to pay both the cost of third-party liability in case of leakage, and the cost of any corrective action required by the EPA to repair or clean up after leakage.

Keep in mind that the rules represent minimums. Meeting these minimums does not limit the owner's/operator's liability from a party claiming that they have been harmed by a UST owner or operator. One standard insurance program, called the Underground Storage Tank (UST) Policy Program, was developed to address this hazardous situation.

The UST Program was developed for owners and operators of underground storage tanks containing petroleum products that are involved in petroleum marketing, production, or refining; however, it is not limited to only this category but is available to any owner or operator of an UST for petroleum products. Please refer to PF&M Section 276.2, UST Eligible Businesses for further details.

The UST Program has two coverage parts. Coverage A provides Bodily Injury and Property Damage Liability Coverage for damage caused by a UST incident. The policy defines a UST incident as a release (further defined as any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from a UST into ground or surface water, or subsurface soils) from a covered tank. A continuous or repeated release from the same covered tank is considered to be a single incident.

Coverage B is for corrective action costs the insured will incur under the regulations because of a UST incident. The UST incident must be confirmed and reported to the insurer and/or the EPA. A very important and favorable coverage consideration is that incidents on the premises are covered, not just off-site cleanup operations.

If your business includes an underground storage tank, it is critical that you evaluate this exposure and any necessary coverage need with a qualified insurance professional.

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