

FINANCIAL RESPONSIBILITY FOR UNDERGROUND STORAGE TANKS

The Storage Tank and Spill Prevention Act (Act 32 of 1989, as amended) requires every owner or operator of a regulated underground storage tank (UST) to meet the financial responsibility requirements established by the Department of Environmental Protection (DEP). Specific financial responsibility regulations, Chapter 245, Subchapter H, titled “Financial Responsibility Requirements for Owners and Operators of Underground Storage Tank Facilities,” were adopted on December 24, 1994, at 24 Pa. B. 6515. Also, U.S. Environmental Protection Agency (EPA) regulations (40 CFR Part 280) require owners or operators of regulated underground storage tanks to meet financial responsibility requirements.

Financial responsibility means that an owner or operator of a regulated UST must ensure that there will be adequate money available to pay for corrective actions and any related third-party liability in the event of a leak from the tank. The EPA regulations set specific amounts that UST owners or operators must have for both cleanup and third-party liability coverage. Tank owners or operators must provide for the coverage prior to a leak. In Pennsylvania, the Storage Tank and Spill Prevention Act created the Underground Storage Tank Indemnification Fund (USTIF) to help UST owners meet this financial responsibility obligation for regulated USTs within the state. Also, any owner of a UST of 3,000 gallons or more used for storing heating oil for consumptive use on the premises where stored may elect to participate in the USTIF.

Owners of regulated USTs must assume responsibility for a release unless there is a written agreement between the owner and operator setting forth a different arrangement for financial responsibility.

Owning or operating an underground storage tank involves the risk that releases could contaminate soil and water and cause harm or injury to third parties. Corrective action and third-party liability for bodily injury, property damages, or both can be very high. For that reason, federal regulations (40 CFR Part 280, Subpart H) require owners or operators to demonstrate the financial capacity to cover:

- \$1 million per occurrence with a \$1 million annual aggregate for owners or operators of 100 or fewer underground storage tanks handling more than 10,000 gallons of petroleum per month;
- \$1 million per occurrence with an annual aggregate of \$2 million for owners or operators of more than 100 underground storage tanks handling more than 10,000 gallons of petroleum per month; or
- \$500,000 per occurrence at UST facilities not engaged in petroleum production, refining or marketing with an average monthly throughput of 10,000 gallons or less, and \$1 million annual aggregates for owners and operators of 100 or fewer petroleum underground storage tanks.

USTIF was established to assist UST owners or operators in meeting the required coverage levels identified above. This fund, which started in February 1994, is financed through fees assessed to UST owners or operators. An independent board, known as the Underground Storage Tank Indemnification Board (USTIB), administers the fund.

Owners or operators of a UST obtain coverage by:

- Continually participating (paying annual fees assessed by USTIB) in the USTIF unless the Environmental Quality Board has determined that the underground storage tank is exempt; and
- Continually having sufficient financial resources available to meet USTIF deductibles for both corrective action and third-party liability as set forth in 25 Pa. Code, Chapter 245, Administration of the Storage Tank and Spill Prevention Program.

Chapter 245, Section 245.707 lists the minimum financial resources required to be maintained by the owner or operator of USTs:

(1) For corrective action:

<i>Number of tanks</i>	<i>Amount of required coverage</i>	<i>Number of tanks</i>	<i>Amount of required coverage</i>
1 - 6	1 x USTIF deductible	43 - 48	8 x USTIF deductible
7 - 12	2 x USTIF deductible	49 - 60	9 x USTIF deductible
13 - 18	3 x USTIF deductible	61 - 100	10 x USTIF deductible
19 - 24	4 x USTIF deductible	101 - 200	11 x USTIF deductible
25 - 30	5 x USTIF deductible	201 - 300	12 x USTIF deductible
31 - 36	6 x USTIF deductible	301 - 600	13 x USTIF deductible
37 - 42	7 x USTIF deductible	over 600	14 x USTIF deductible

(2) For third-party liability:

<i>Number of tanks</i>	<i>Amount of required coverage</i>
1 - 100	1 x USTIF deductible
over 100	2 x USTIF deductible

As with any insurance program, the covered person (owner or operator) is responsible for providing the deductible amounts (currently \$5,000 for each cleanup and \$5,000 for each third-party claim). USTIF will provide coverage above the deductibles up to the USTIF established limits of liability. Coverage for deductibles and costs outside of USTIF coverage for USTs can be obtained through one or a combination of the following mechanisms: commercial insurance, guarantee, surety, bond, letter of credit, self-insurance, indemnity contract, or risk retention coverage.

It is the owner's or operator's responsibility to demonstrate compliance with USTIF claims eligibility requirements. The following eligibility requirements must be satisfied:

- The claimant is the owner or operator of the regulated tank subject to claim;
- USTIF fees for the tank are current;
- The tank is properly registered and permitted with DEP and permit requirements for the tank have been met;
- The release occurred after the initial USTIF fee payment due date (February 1, 1994); and
- A claim is filed with USTIF within 60 days of discovering the release.

Eligible activities include:

- Corrective action measures including any emergency response measures, testing, site assessment, and removal/treatment of contaminated soil/groundwater in response to known releases; and
- Third-party damages including bodily injury and property damages.

In the case of underground storage tanks, which are exempt from state requirements, federal financial responsibility requirements may be applicable. Tank owners or operators must meet the financial responsibility requirements in 40 CFR Part 280, Subpart H.

The Indemnification Fund

USTIF is located in the Pennsylvania Department of Insurance and operates like an insurance fund providing cleanup and third-party liability coverage to underground storage tank owners and operators. The USTIB, which administers the fund including establishing fees, deductible amounts and eligibility requirements, consists of fourteen members – the Secretary of DEP; the State Insurance Commissioner; and representatives of local government (1 member), the public (1 member), and the regulated community/industry (6 members). Actions taken by USTIF are appealable to the board. For more information, contact USTIF at:

Underground Storage Tank Indemnification Fund
901 North 7th Street
Harrisburg, PA 17102
Telephone: 800-595-9887 (in PA) or 717-787-0763

For more information, visit www.dep.pa.gov, Businesses > Land > Storage Tanks.