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Underground Tanks at Your Facility in Connecticut? Beware Potential Approaching Deadlines for "Financial Assurance" and Release Reports to the Tank Fund

More than a few companies in Connecticut have or used to have underground storage tanks (USTs) at their industrial or commercial facilities. Some of these USTs store (or stored) heating oil for on-site consumption; these USTs must comply with various regulations regarding construction, useful life, operation, release prevention, and remediation. However, USTs that store or previously stored other material—such as gasoline, diesel, used oil, or solvents—may be subject to more complex requirements, including "financial assurance" for potential release remediation costs. As many companies have painfully learned, leaks or other releases from USTs can be hard to detect and costly to clean up.

A company with five or fewer properties (in Connecticut or elsewhere) on which USTs store or previously stored potentially hazardous material other than heating oil consumed on-site should be aware of important impending deadlines that relate to the dismantling of Connecticut's Tank Fund (officially known as the "UST Petroleum Clean-up Program").¹ The deadlines apply to (1) obtaining alternative "financial assurance" for potential UST release clean-up costs, (2) reporting releases to the Tank Fund, where a company wants to apply for Tank Fund reimbursement for cleanup costs, and (3) submitting reimbursement applications to the Tank Fund before it closes its doors.

The Tank Fund is essentially a state-run insurance program administered by the Connecticut Department of Energy & Environmental Protection (DEEP) that reimburses UST owners and operators for certain costs of investigating and cleaning up UST releases and compensating injured third parties. Eligible USTs include those used to store various regulated materials other than heating oil consumed on-site. Many UST owners and operators in Connecticut have relied on the Tank Fund to satisfy their financial assurance obligations under state and federal UST regulations.

That is about to change. **A state law passed last year set a schedule for the Tank Fund to sunset, after which it can no longer be used to meet financial assurance requirements.** For a company that owns or operates USTs on five or fewer properties, either within or outside of Connecticut, the Tank Fund can no longer be used to meet UST financial assurance obligations on or after October 1, 2013. **As a result, such companies must line up another means of financial assurance before October 1, 2013.**

The state UST regulations specify the standards for financial assurance, including minimum coverage limits (ranging from \$500,000 to \$1,000,000 per occurrence and \$1,000,000 to \$2,000,000 in the aggregate, depending on certain factors). The regulations also provide several options for financial assurance, including private insurance, letter of credit, surety bond, a trust fund, a standby trust fund, a guarantee from a corporate parent that can meet certain net worth tests, or self-insurance for a company that can meet such tests on its own. For each of these options, the regulations specify detailed criteria, such as the language for the various documents to establish the financial assurance mechanism. The company must annually certify its compliance with financial assurance requirements to DEEP.

For further information regarding UST financial assurance requirements, see the [DEEP website](#).

Related to the transition to alternative financial assurance and the closure of the Tank Fund, a company with five or fewer UST properties also faces two other deadlines: (1) Any new release must be reported to DEEP before October 1, 2013, if the company wants to be eligible to seek Tank Fund reimbursement of cleanup costs; and (2) Any applications to the Tank Fund, whether for newly reported releases or for previously reported releases already in the Tank Fund process, must be submitted before October 1, 2014. (Caution: For purposes of these deadlines, the "five or fewer UST properties" criterion is determined as of the date of the company's first application to the Tank Fund).²

Given these deadlines, many UST owners and operators may want to consider whether to assess their sites for any UST releases that may be eligible for Tank Fund coverage and whether to report any such releases, or any releases already known, before the October 1, 2013, deadline. Consideration should be given to whether there might be positive or negative impacts on property value and marketability, and the potential for discovery of compliance-sensitive conditions that may trigger mandatory reporting or other requirements to DEEP under other programs. A further consideration is the potential for a delayed recovery and/or the inability of the financially constrained Tank Fund to make any payments approved.

Lastly, where a company has already submitted applications to the Tank Fund for a release, a relatively limited time remains before the October 1, 2014, final application deadline to conduct any further eligible investigation and/or remediation work and to prepare and submit a final application.

With these deadlines approaching, if your company owns or operates USTs in Connecticut, now is the time to consider your company's options and ready it for the changes ahead.

¹For parties with more than five UST properties in Connecticut or elsewhere, different deadlines apply, and many have passed.

²Here too, different deadlines apply to a party with more than five UST properties at the time of its first Tank Fund application. Many of these deadlines have already passed.

FOR MORE INFORMATION

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