Risks Rising for Storage Tank Owners

Changing regulations and insurance markets add uncertainties for owners and operators of underground storage tanks

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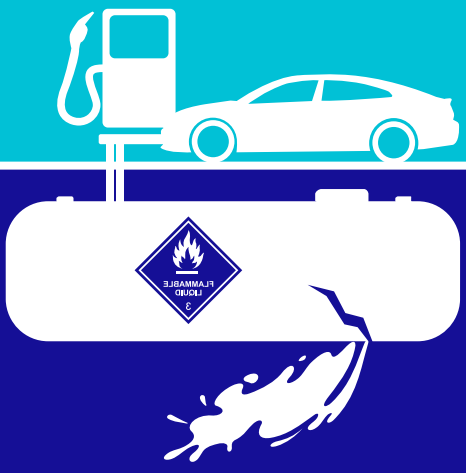

Stricter regulations and increased compliance requirements pose new challenges for underground storage tank owners and operators as they seek to mitigate their pollution exposures and meet growing responsibilities. Changes in regulations at the federal level mandate more spill-resistant tanks and piping, more frequent inspection and testing, as well as more extensive training. Tank operators also must pay greater attention to compliance due to new record-keeping and reporting requirements put in place by the U.S. Environmental Protection Agency as part of a 2015 update of its regulations. On top of the new federal regulations, individual states may have varying, and stricter, requirements.

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Tank owners already bear substantial financial responsibilities stemming from existing or potential spills or releases. At a basic level, federal law requires owners to be able to pay for any clean-up or cover any third-party liability. While the average cost of cleanup is estimated at $130,000, more extensive work can exceed $1 million.[1] Across the country, tens of thousands of older tanks that do not meet the new federal standards remain in place, but even newly installed tanks can experience problems that require expensive cleanups. Managing these exposures and complying with all the applicable regulations can be difficult but working with an insurer that understands the risks and can provide help in training, risk engineering and spill response can make the difference.

Financial Liabilities

The EPA requires tank owners to be able to demonstrate a minimum of $1 million in financial responsibility, whether through state funds dedicated to tank cleanup, private insurance or other means. Tank owners should be aware that the EPA recently advised that language pertaining to voluntary tank removals and voluntary tank site investigations found in some financial responsibility polices does not meet the federal requirements.[2]

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Since the EPA began regulating underground storage tanks in 1984, more than 1.8 million tanks have been properly closed around the country. Today, the EPA regulates more than 558,000 active underground storage tanks (USTs) at around 200,000 sites.[3] Of the nearly 541,000 releases reported since the beginning of the UST program, nearly 88 percent have been cleaned up, leaving about 67,000 confirmed releases awaiting cleanup.

Smaller operations with fewer than five storage tanks may prove especially vulnerable because those businesses often lack risk management expertise and may not have the financial resources and knowledge to adequately maintain, monitor and register their tanks or even properly report spills or leakages. Single-location businesses account for a large portion of U.S. gasoline sales. Convenience stores sell about four out of every five gallons of fuel in the United States, and single-store operators make up about 58 percent of the more-than 122,000 convenience stores that sell motor fuels, according to the National Association of Convenience Stores.[4]

A Partial Backstop

To address storage tank problems, 36 states have established funds to help defray cleanup costs, including Michigan, which restarted its fund several years ago. Those state funds meet the EPA requirements for financial responsibility, but some are financially stressed. In five states, including Florida and Texas, the funds now only pay for cleanups already underway. Nine states, including Maryland, New Jersey and Washington, don't have funds that provide the required financial responsibility. In these 14 states, owners must rely on private insurance or provide substantial financial guarantees to meet the EPA-required $1 million minimum. Even in states with dedicated funds, the liabilities can easily exceed the reimbursement provided.

The active state programs differ from private insurance in that they will typically cover tanks regardless of age or location. If testing does not show that the tank has caused significant enough contamination or doesn't pose a threat to drinking water, however, the state funds may decide not to provide funding. California, for instance, has a low-threat case closure policy for petroleum storage tanks.[5] Tank owners may still be legally required to conduct a cleanup and can subsequently seek reimbursement from the state, which may decide to provide funding at a lower level or not at all.

State funds may not provide sufficient certainty for tank owners. In Michigan, for example, claims are paid in the order in which they are received and in the case of insufficient funds, the fund is not liable for work invoices or requests for indemnification. Additionally, the fund will only reimburse costs up to the spending threshold that would be required to close a site using a restrictive covenant, or other risk-based approach.

Because of the potential exposures, more tank owners around the country are purchasing or considering private insurance even in states with cleanup funds.

In New York, the state oil spill fund qualifies as financial compliance for the EPA. The state fund covers local government entities and other UST owners with 99 or fewer underground storage tanks and a net worth less than $20 million.[6] The fund, however, does not provide insurance to tank owners and, should it pay for a storage tank cleanup, it will attempt to recoup the money spent, plus interest and penalties where warranted, including putting a lien on the property.

Aging Tanks

While leaks and spills are a risk wherever a storage tank is located, the exposures still vary according to location and from state to state. Earthquakes can break or disconnect the piping and fracture brittle fiberglass tanks. Flood water seeping into a tank can displace some, or all, of the petroleum products inside, resulting in a more widely dispersed spill. Areas such as Florida, with high water tables, can be particularly vulnerable. In addition, rising waters can float tanks that aren't properly secured.

Aging tanks are a national problem. Underground storage tanks have a useful life expectancy of about 30 years. New fuel blends may not be compatible with some older tanks. Older steel tanks are more susceptible to rust and corrosion. Vibrations over time can loosen fittings, which can lead to small leaks that gradually become more significant problems. The older the tank, the more likely it is to experience small releases. Owners of newer tanks, however, should not overlook the potential for problems. New to one-year-old tanks tend to have a higher rate of problems with leaking that may be related to construction defects.

Because of the problems associated with the corrosion of aging single-walled steel tanks, a number of states are seeking to eliminate their use more quickly. Massachusetts, for instance, was requiring single-walled steel tanks to be removed or permanently closed in place by July 1, 2018,[7] and Rhode Island set a deadline of December 22, 2017, for removal or permanent closure of single-walled tanks or piping installed prior to May 8, 1985, or within 32 years of installation for tanks and piping installed after that date.[8] Under a recently passed law, California is mandating the closure of all single-walled underground storage tanks by the end of 2025.[9]

Stricter regulations

The EPA's comprehensive 2015 update of its 1988 UST regulations added requirements for tank construction, containment and overfill equipment, operation, maintenance, testing, operator training and record-keeping. The regulatory requirements have a three-year implementation time frame from October 13, 2015 to October 13, 2018. The updated regulations cover currently regulated tank systems and those previously deferred from compliance rules, such as emergency generators and airport hydrant systems. Twelve states follow federal regulations verbatim, while 38 states, Washington D.C. and Puerto Rico have approval to operate in lieu of the federal program. Nine states have operational and inspection requirements more stringent than federal standards. Those states include Connecticut, Illinois, Michigan, Missouri and Wisconsin.[10]

The updated federal rules require new and replacement tanks to be double-walled with double-walled piping. If more than half of the piping for an existing tank is being replaced, the new piping must also be double-walled. The rules require interstitial monitoring for new double-walled tanks and piping, as well under-dispenser containment for new dispenser systems. Tanks that rely on an internal lining as the sole means of corrosion protection must be replaced if the lining fails inspection and cannot be repaired.

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The EPA is requiring a variety of "walk-through" inspections every 30 days and annually. Spill prevention and release detection equipment should be checked every 30 days. Annual inspections should include containment sumps and any hand-held release detection equipment such as gauging sticks and bailers as well as other requirements. Beginning October 13, 2018, the final phase of the regulatory implementation will include:[11]

- Spill prevention and release testing
- Overfill prevention and equipment inspections
- Containment sump testing for sumps used for piping interstitial monitoring
- Release detection equipment testing
- Walkthrough inspections
- Operator Training
- Site assessment for groundwater and vapor monitoring

Tank owners may want to work with an insurer with affiliates that can offer risk engineering experts who can provide the legally required training and guidance on required testing and compliance.

The new EPA rules require testing after repairs of spill and overflow equipment as well as testing of secondary containment areas of piping and containment sumps. Records for all repairs must be kept until the tank is closed or there is a change in service. Tank owners must be able to demonstrate that all tanks and systems were installed by certified installers in compliance with all applicable rules; that the tanks are properly registered; that the applicable work permits were secured for any installations, repairs, upgrades, replacements or closures; and that all releases have been reported and addressed.

Tank operators and other employees must be trained in line with their responsibilities. Workers such as station attendants and store clerks, who would be expected to be the first line of defense to respond to a spill, must receive the basic level of training for "Class C" operators. More comprehensive training is required for "Class B" operators who have day-to-day responsibility for the site, and "Class A" operators, such as the owners of a smaller operation or a corporate environmental officer, who have primary responsibility to operate and maintain the system.

Working Together to Mitigate Exposures

On top of the financial exposures linked to any pollution incident, the regulations add a greater compliance burden tied to the requirements for training, walk-through inspections and documentation. To deal with those requirements more efficiently, tank owners may want to work with an insurer with affiliates that can offer risk engineering experts who can provide the legally required training and guidance on required testing and compliance. Insurers can also help identify tank management experts that can help manage systems to reduce exposures and to strengthen spill prevention measures and response plans. Tank owners should look for a carrier that has dedicated claims handlers experienced in tank releases and other environmental incidents.

In the event of an incident, owners may want to work with an insurer that can identify qualified contractors to mount a more timely and efficient response to help mitigate damages and the eventual losses. Reporting requirements can prove challenging as the owner may be required to report incidents in a timely manner to a variety of local, state and federal authorities. Tank owners may want to take advantage of carrier-provided alert systems that enable incident reporting via phone, internet or mobile device around the clock and that assist with regulatory reporting requirements, based on the specific incident, to help avoid fines and penalties.

Besides tighter federal regulations, tank operators must navigate changes at the state level and in the insurance marketplace, where some major carriers have stopped offering coverage in recent years. That's why it's important to work with a carrier that has a long, established track record in UST and environmental coverage and that can provide expertise in mitigating the exposures, assist in reporting and handle claims efficiently. Tank owners play an important role in safeguarding the local environment, but the regulatory and compliance requirements can prove challenging. An experienced insurer can help tank owners and operators meet those challenges more effectively and efficiently.

To learn more about Chubb Tanksafe®, visit **www.chubb.com/us/tanksafe**

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Mr. Winterburn is also responsible for TankSafe®, Chubb's fully-automated internet based system that provides commercial underground and aboveground storage tank insurance.

With more than twenty-five years of experience in the Insurance, Contracting and Environmental Regulatory industries, Mr. Winterburn has held various positions including environmental claims, underwriting and risk engineering. Prior to his years in insurance, he was a regulator for over seven years with New Jersey Department of Environmental Protection as an Emergency Response Specialist and Remediation Manager within the Bureau of Underground Storage Tanks. Additionally, Mr. Winterburn spent several years as a Project Manager for an environmental contracting firm that specialized industrial maintenance and environmental remediation projects. Mr. Winterburn holds a Bachelor of Science in Environmental Science from Stockton University.

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Prior to entering the environmental insurance industry over 25 years ago, Steve began his career as an environmental engineer with the New Jersey Department of Environmental Protection where he was involved with the emergence of critical regulations that remain in effect today. Mr. Piatkowski joined Legacy ACE at the inception of the environmental unit in 2002, Mr. Piatkowski is also a frequent presenter at environmental industry, academic and legal conferences, and has published papers on environmental exposures and solutions.

Mr. Piatkowski received his Bachelor of Science in Chemical Engineering from Rutgers University and his Masters in Engineering from Stevens Institute of Technology. He holds numerous certifications and memberships such as; California Registered Environmental Assessor, Green Real Estate Training Association, Texas Loss Control Representative and New Jersey Engineer In Training.

Footnotes

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09/2018