



DNREC —Tank Management Section
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Delaware Department of Natural Resources and Environmental Control

Changes in Cleanup Liability Associated with Underground Storage Tanks Effective January 1, 2016

Background: The Delaware Underground Storage Tank Act (DUSTA) was enacted in 1985. Delaware's statute and regulations assign cleanup liability to responsible parties that cause and contribute to releases from underground storage tanks (USTs). Owners and operators of USTs may be considered responsible parties and are required by regulation to maintain a financial responsibility mechanism such as insurance, letter of credit, bond, or self-insurance to pay for corrective action and third party damages associated with a release. Based on a 1991 court interpretation, the DNREC has to prove that a responsible party caused the release before a responsible party can be held liable for the cleanup.

Since many UST facilities in Delaware have had multiple owners and operators, as well as multiple releases over the years, it has become very difficult for the DNREC to determine the timeframe when a release occurred, and which responsible party may have caused the release. Also, as responsible parties leave the business, they often do not have the means to perform the necessary work, and no longer maintain their financial assurance. Other issues such as bankruptcy and continuing compliance violations can also complicate situations, making it increasingly difficult for DNREC to hold responsible parties liable for the cleanup of releases. These issues have resulted in DNREC using limited State funds to perform the necessary cleanup actions.

Strict, Joint and Severable Liability in effect after January 1, 2016: In order to address this problem, Governor Jack Markell signed changes to the UST law on October 6, 2014. These changes provide more certainty to the regulated community, and allow DNREC to fairly apportion costs to those responsible for contamination from leaking tanks. Beginning on January 1, 2016, the liability for petroleum releases at a facility becomes strict, joint, and severable, similar to the liability imposed in the Hazardous Substances Cleanup Act in the Delaware Code, Chapter 91 or Title 7. This means that a person can be considered a responsible party simply by their ownership or operation of a UST facility. There are some exceptions such as when an owner and/or operator carried out "All Appropriate Inquiry or AAI" prior to the purchase of the property and were unaware of a previous release; as well as when a seller has expressed due care in addressing the liability prior to selling the property. Also, a person will not be held as a responsible party if they can demonstrate that the release was caused by an action of a third party other than an employee, or a contractor working for the UST facility's owner or operator.

To satisfy all appropriate inquiry for a commercial property, a buyer of a UST facility must perform an environmental site assessment in accordance with ASTM standard E1527-13. The Department is considering amending its regulations to clarify these changes and add an AAI standard for residential properties.

Public Workshops to discuss these matters will be held on:

Monday September 21st at 10:00am at DNREC's Office, 391 Lukens Drive, New Castle, DE 19720

Tuesday September 29th at 10:00am at DNREC's R&R Building, 89 Kings Highway, Dover, DE 19901

To view the draft regulations go to: <http://www.dnrec.delaware.gov/tanks/Pages/default.aspx>

If you have any questions please contact Alex Rittberg at 302-395-2500, Alex.Rittberg@state.de.us