

# THINK



# ANK

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## Tank Insurance – What to look for in a policy

Jill Hall

If you own or operate an underground or aboveground storage tank in the State of Delaware, you may be required to show proof of financial responsibility. The Delaware UST and AST Regulations allow you to choose from a variety of methods to comply with the financial responsibility requirements. The method most frequently used is storage tank pollution insurance.

While all policies must meet certain basic requirements to comply with the regulations, there are differences in the policies offered. All policies must provide coverage in specified amounts for taking corrective action and paying for property damage and bodily injury, and the policy must provide a separate limit for defense. After meeting these basic requirements, you will have to make choices on what type of policy you want to purchase.

Differences in policy terms will affect what premium you pay and most importantly what costs the insurance will and will not pay. To help you compare the policy choices available, there are several terms you must understand. “Claims-made” policy and “Retroactive date.”

Tank insurance is a “claims-made” policy. This means that the policy only provides coverage for claims made during the policy period. Tank insurance policies also include a “retroactive date.” A retroactive date is the date that the coverage begins. Any loss that occurs before this date will not be covered by the insurance policy. When you put together the “claims made” language with the “retroactive date” it means only losses that occur after the retroactive date and a claim is

made while the policy is in effect will be covered. While you may pay more to purchase a retroactive date that is several years back, it may be wise to do so. Tank releases are often not discovered immediately, but can be shown to have occurred in the past. If your retroactive date is a month ago, and the release can be proven to have happened a year ago, your loss is not covered.

**Confirmed Release vs. Suspected Release**  
(<http://www.customenvironmentalinsurance.com/comparing.html>)

While all tank pollution policies must provide coverage for cleanup of covered storage tank releases, many do not cover the costs of investigating potential releases, such as tank testing, soil sampling and other expenses to confirm the insured tank is leaking. The expenses necessary to confirm a release can add up to tens of thousands of dollars, and are expressly excluded in some policies. Confirmed release policies will contain exclusionary language such as “Any costs, charges or expenses incurred by the insured to confirm the existence of a release shall not be considered cleanup costs.”

If the policy insuring agreement has language such as “This insurance applies to pay for Corrective Action due to Confirmed Releases,” or your definition of cleanup cost has language such as “This insurance does not apply to claims for any costs, charges or expenses incurred to investigate or verify that a Confirmed Release has taken place,” then the policy is a confirmed release policy. The simplest way to tell if your policy is a confirmed release policy is to check the policy definitions to see if “Confirmed Release” is defined

or if the definition of Cleanup Cost includes any of the aforementioned language.

Suspected release policies do not define any such releases and will cover the costs to investigate if you have a covered release, thereby saving the insured thousands of dollars in the event of a loss.

**Natural Resource Damages Exclusions:**

(<http://www.customenvironmentalinsurance.com/comparing.html>)

Natural Resource Damages have been defined as damage to, destruction and restoration of, including the resulting loss of use or value of, land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources managed or held in trust by United States, any state or local government, or Indian tribe.

The restoration and compensatory costs for NRD can be significant, and is critical coverage that should be included in any storage tank policy. However, some UST pollution policies will have a *NRD Exclusion* expressly eliminating coverage for such damages, resulting in significantly less coverage. Policy holders should check their policy for a Natural Resource Damages exclusion.

**Non-Compliance Exclusions:**

(<http://www.customenvironmentalinsurance.com/comparing.html>)

Many UST policies contain language that may allow an insurer to deny claims for not complying with environmental regulations. The policy may contain wording such as “This insurance does not apply to claims attributable to the Insured’s willful or deliberate noncompliance with any statute, regulation, notice of violation, etc.” Intention (willful or deliberate) can be debated, and the grounds for such claims denial is open to interpretation and debate. Other policies do not contain any such language.

**Tanks Over 20 Years of Age:**

(<http://www.customenvironmentalinsurance.com/comparing.html>)

Some Insurers have made a blanket underwriting decision not to place new coverage on tanks over 20 years of age, and even more importantly, not to renew any policies with tanks in excess of 26 years of age. Other insurers, while they do not expressly prohibit placing/renewing coverage on these older tanks, will price the insurance so as not to be competitive.

These coverage parameters pose the greatest problem when a policy holder has been insured with the insurance carrier for several years, and has maintained the retroactive date from the original policy. When the carrier issues cancellation, the only options are to acquire coverage with a new carrier willing to provide the original retroactive date, for which there will be a significant charge, or issue a policy with a current retro date, thereby creating a gap in coverage. The question of excluding tanks over certain ages must be asked when first considering coverage for your storage tank operations.

**Claims Reporting Requirements:**

(<http://www.customenvironmental-insurance.com/comparint.html>)

All insurance policies list the insured’s responsibilities in the event of a claim, including when a claim should/must be reported. While most policies will say that claims must be reported “as soon as possible” or “as soon as practical,” others will be more specific and less forgiving in the event of late reporting. Some policies also require that the insurance company be notified in advance of the removal of a tank that is covered by the policy.

Sections of this article have been taken from the Custom Environmental Insurance website with their permission. Additional information, including an insurance comparison checklist, can be found at <http://www.tankcov.com>. The DNREC-TMB does not endorse Custom Environmental Insurance in any way, and no evaluation of their products has been done to determine whether they meet Delaware’s financial responsibility requirements.

**Financial Responsibility Survey –  
Look for it in the mail!**

All registered UST and AST owners will be receiving a financial responsibility (FR) survey in the mail. Please take the time to complete the survey and return it in the enclosed pre-addressed, stamped envelope. The TMB is gathering data to determine if the FR requirements in the UST Regulations are effective. This survey will assist us in determining if changes are needed to these requirements. A FR task force will be formed to draft new FR regulations if changes are needed.

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## New Operator Training Program Planned for 2009 UST Regulations Expected to Change Again

Last year, DNREC's Tank Management Branch updated our underground storage tank regulations (UST Regulations), putting in place requirements that both enabled our state to meet federal guidelines required by the 2005 Energy Policy Act (EPACT) and improve our level of environmental protection. These new requirements went into effect on January 11, 2008.

When we started our last regulation development effort the federal guidelines for establishing an operator training program as required by EPACT had not been published yet, so we could not include regulations to establish our operator training program. EPA's federal guidelines for operator training are now available and can be found at the following website: [http://www.epa.gov/OUST/fedlaws/final\\_ot.htm](http://www.epa.gov/OUST/fedlaws/final_ot.htm).

These guidelines require states to formally adopt an operator training program by August 2009 and ensure that all operators are trained by August 2012. States are given quite a bit of flexibility in designing their approach to meeting the federal guidelines.

The TMB has completed a draft of what our operator training program will look like and has posted this document on our website at: <http://www.dnrec.state.de.us/dnrec2000/Divisions/AWM/ust/>



We have defined 3 levels of operators per the federal guidelines.

- Class A Operator – means an individual having primary responsibility for the overall operation and maintenance of an UST System.
- Class B Operator – means an individual having responsibility and direct control over daily on-site operation and maintenance of an UST System.
- Class C Operator – means an individual on-site employee having primary responsibility for addressing emergencies presented by a Release from an UST System.

The TMB is proposing that each facility be required to have designated operators and that Class C operators be trained by the Class A or Class B operators at each facility. The program will likely include an option for existing operators to test out of training requirements provided they pass their regularly scheduled state compliance inspection. The program will also include a requirement that any new Class A and Class B operator that is hired after the date that our regulations go into effect receive training within 90 days of taking responsibility for the duties associated with their position. The TMB intends to allow outside organizations to fill the need for training opportunities, but may sponsor quarterly training events if this need is not addressed by private companies.

We will be holding public workshops in September 2008 relating to our Operator Training program and other changes we are considering making to the UST Regulations. Please take a look at our website in the coming months to get a preview of these proposed regulations.

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## Clarification of soil & water testing requirements for Lead, EDB and EDC

Dave Lerner

The TMB recently clarified its soil and groundwater sampling analyses requirements for lead, 1,2-Dichloroethane (EDC) and 1,2-Dibromoethane (EDB) at sites containing gasoline USTs.

Lead, EDB, and EDC analysis will be required for sites that had gasoline USTs removed or closed-in-place prior to January 1, 1988, even if the current USTs were installed after January 1, 1988. If data exists from prior investigation work at the site that indicates that Lead, EDB, and EDC are not present, a request to drop these analytes from the list of chemicals of concern can be submitted to TMB in ad-

vance for approval. Lead, EDB, and EDC analysis will not be required and no pre-approval for a sampling deviation is necessary if the USTs were installed after January 1, 1988 on a site that has no prior history of gasoline storage.

Please note that the TMB will continue to require Lead, EDB, and EDC analyses for all USTs storing aviation gasoline and may require Lead, EDB, and EDC analysis at its discretion for those USTs used to store used oil. Please contact the TMB if you have any questions.

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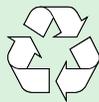
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## Announcements

*Brian Churchill* — Environmental Scientist III, has accepted a position with DNREC's Division of Water Resources in Dover after almost 8 years with the Tank Management Branch. We wish Brian well in his new endeavors!

*Ron Brown* — Environmental Scientist III, has retired after nearly 15 years with the Tank Management Branch. He plans to spend his time golfing, traveling, and spending more time with friends and family. Thank you, Ron, for all of your hard work, guidance, and camaraderie over the years. We wish you the best!

*Rebecca Keyser* — Congratulations to Rebecca for her recent promotion to Environmental Scientist III. Rebecca is a compliance project officer in the UST Program, and is the editor of the *Think Tank* newsletter.

## HELP!

It's time to update our mailing list. If you no longer wish to receive Think Tank, or are changing addresses and want to continue receiving Think Tank, please advise us of the change by emailing [rebecca.keyser@state.de.us](mailto:rebecca.keyser@state.de.us). Thank you for your help.

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