



The Leaking Underground Storage Tank Fund: Still Alive and Well

While the Dry Cleaner Fund Gets Underway

Homerun with the bases loaded! Well maybe not exactly, but the Illinois Leaking Underground Storage Tank Fund is a big hit. Since 1988, the LUST Fund has paid out over \$375 million for more than 12,000 underground tank remediations and it's still going strong.

Why are underground storage tanks a concern? Leaks can lead to serious soil and ground water contamination. It's no surprise that underground tanks can jeopardize even the most attractive real estate deal.

LUST Scorecard

When the LUST program was launched in 1988, the Illinois EPA estimated that there were about 60,000 registered tanks actively in use and about 60% were "leakers" that could be cleaned up using the \$6 million in proceeds from a \$100 registration fee.

"That was over \$300 million ago," remembers Bill Child, Manager of the IEPA's Bureau of Land. "In fact, we figure that we still have about \$400 million more to spend over the next 10 to 20 years. What we didn't anticipate was the huge number of unregistered tanks and others that have been abandoned and forgotten about."

Fortunately, the Tiered Approach to Cleanup Objectives or TACO has substantially lowered cleanup costs. "Before TACO, the average cost of a cleanup was \$127,000; today it is about \$35,000. Risk based standards just give people more alternatives," says Child.¹

Congress Mandates Tank Upgrades

When Congress amended the Resource Conservation and Recovery Act in 1986, the federal government launched an ambitious program to upgrade millions of existing underground storage tanks and set minimum

standards for newly installed tanks. Congress mandated that all existing tank systems be upgraded by 1998. As part of the program, tank owners had to show the financial muscle to pay for cleanups if leaking tanks were discovered.

When the insurance market failed to provide adequate coverage at affordable rates, the petroleum industry, representing primarily independent gas station owners, successfully lobbied state governments to establish Leaking Underground Storage Tank Funds to reimburse cleanup costs. These funds operate much like insurance programs with deductibles and caps on payments.

In Illinois, a motor fuel tax (\$.003 per gallon) and an environmental impact fee (\$.008 per gallon) generated nearly \$80 million each of the last two years, while reimbursement payments averaged about \$40 million each year. These taxes are due to expire in 2013 and 2003 respectively, so there is concern over whether there will be enough money for future cleanups. Currently, the Illinois Petroleum Marketers' Association is working to extend the existing funding mechanisms.

Getting the Money²

Carlson's Ken James, who has been supervising tank removals and cleanups since the Federal program began, makes the following suggestions to maximize the amount of money reimbursed by the State:

1. Satisfy the Basic Requirements.

Be able to clearly document:

- a. *When the tank was last used.* Tanks last used prior to January 1, 1974 are not eligible.
- b. *If and when the tank was registered with the State Fire Marshal.* Registration dates

¹ See the CARLSON REPORT (Oct. '00) "The No Further Remediation Letter," for more on TACO.

² The Office of the State Fire Marshal registers and regulates tanks, determines eligibility for reimbursement and amount of the deductible. IEPA approves work plans for cleanups, budgets and payment claims.

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determine the amount of the deductible (see table below).

Deductible	Requirement
\$10,000	All tanks registered prior to July 28, 1989
\$15,000	<i>At least one</i> , but not all, tanks registered prior to July 28, 1989; notice of confirmed release received <i>after</i> this date.
\$50,000	Any tanks registered prior to July 28, 1989, and notice of confirmed release received <i>before</i> this date.
\$100,000	<i>No</i> tanks registered prior to July 28, 1989

- c. *What the tank contained.* The program covers "regulated" substances, i.e. gasoline, aviation fuel, heating oil, and kerosene.
 - d. *A release.* You must provide documentation that a leak occurred using records of inventory discrepancies or, more commonly, through soil testing or physical evidence during a tank removal.
 - e. *An Incident Number.* If a release is documented, it must be reported to the Illinois Emergency Management Agency and an Incident Number assigned. This is your identity as far as this program is concerned.
2. **Paperwork is Critical.** In addition to an Incident Number, you get a lot of paperwork to fill out (e.g. 20- and 45-day reports). *Pay particular attention to the process of submitting budgets to IEPA for proposed cleanup work.* After work is completed and reimbursement requests are submitted, IEPA staff compares expenses to approved budgets. They frown on excess spending.
 3. **Consider Soil Testing Prior to a Tank Removal.** If a release has occurred and is documented *prior* to a tank removal, the tank removal will probably be eligible for reimbursement. If the release is discovered during a tank pull, it will probably not be eligible. In both cases, however, subsequent cleanup costs will be eligible for reimbursement.
 4. **Document Expenditures.** Just like an insurance claim, you must be able to demonstrate how the money was spent. This applies to subcontractors (i.e. labs, contractors) as well as the consultants who hire them. "Incomplete documentation," says Ken James, "is the most frequent reason for turning down a claim."
 5. **Seek Partial Reimbursement Along the Way.** Remember that reimbursement is on a "first come, first serve" basis. As stages of the cleanup project are completed, submit claims to the IEPA. The maximum payout is \$1 million per occurrence.

Ken James cautions not to expect every penny back. "Based on our experience," he says, "clients receive anywhere from 60% to 90% of their expenses, not including the deductible."

The Steady March of Progress

While the LUST Fund program may be called a homerun, the game is far from over. "There are still plenty of leaking tanks out there, but we are getting closer to where we want to be," says Doug Clay, manager of the LUST remediation division.

Resources

Mel Smith, Illinois Office of the State Fire Marshal (217) 785-5878, www.state.il.us/osfm

Doug Clay, IEPA, Bureau of Land, (888) 299-9533 www.epa.state.il.us/land/lust/index.html

The Illinois Dry Cleaner Fund

Dry cleaners who use perchloroethylene or "perc" in their plants have often been the source of releases to soil and ground water. The growing number of sites that have required cleanups prompted the dry cleaning industry to lobby the Illinois legislature to create the Illinois Drycleaner Environmental Response Trust Fund in 1997.

After a startup year and a public education campaign, the Fund is gaining momentum. Patrick Eriksen, of Williams & Company Consulting, Inc., is the Fund administrator. "We've approved budgets for about 100 Phase I assessments," he explains, "and of these, 45 have shown contamination. Companies are filing claims and the Fund is making payments. We expect more activity in the future."

The Fund has three core parts: licensing, insurance, and remediation. The licensing program is mandatory and all member businesses must pay annual fees between \$500 and \$1,500 based on the amount of solvent purchased. The insurance program provides up to \$500,000 in liability coverage for future spills with a \$10,000 deductible. The remedial program pays for spills discovered after July 1, 1997 and before June 30, 2004.

Resources

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Illinois Drycleaner Environmental Response Trust Fund at www.cleanupfund.org

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