



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
LAND AND EMERGENCY
MANAGEMENT

MEMORANDUM

SUBJECT: Underground Storage Tank Insurance Policies – Voluntary Exclusions and Self-Insured Retentions

FROM: Tony Raia, Director 
Release Prevention Division, Office of Underground Storage Tanks

TO: UST Industry Stakeholders
State UST, LUST, and Fund Program Contacts
Tribal UST Contacts

I am writing to provide you with important information about underground storage tank (UST) insurance policies, specifically whether voluntary exclusions and self-insured retentions meet the financial responsibility (FR) requirements of 40 CFR 280. I request that you please share this information with UST owners and operators (referred to as owners) in your states, territories, and Indian Country.

As you know, insurance provides a critical role in providing financial responsibility for underground storage tank owners and operators in many states and Indian Country. To ensure owners are buying and retaining appropriate coverage for their UST systems, it is important that they understand and be attentive to the underlying language, terms, and conditions of their UST insurance policies. Several people asked EPA to evaluate certain provisions in UST insurance policies. Below I discuss whether voluntary exclusions and self-insured retentions meet the financial responsibility requirements of 40 CFR 280, talk about certificates of insurance, and provide additional resources about insurance.

Voluntary Tank Removal And Voluntary Tank Site Investigation Exclusions In UST Insurance Policies

Insurance policies may include language that lists certain conditions or situations where the insurance company is not required to pay a claim. These circumstances are listed as exclusions. Some exclusions, such as non-payment for claims to pay a state fine for non-compliance meet

the federal financial responsibility requirements of 40 CFR 280. Exclusions for payments for voluntary tank removals and voluntary tank site investigations do not meet the FR requirements. There is no standard voluntary tank removal or voluntary site investigation insurance language. The definitions of voluntary tank removal and voluntary investigation are unique to each insurance carrier.

If a tank removal or tank site investigation reveals contamination from an UST release, the UST insurance policy must not exclude insurance coverage for the cleanup of the release or any third-party damages that may result. If such an exclusion is part of the insurance policy, the insurance policy does not meet the federal financial responsibility requirements of 40 CFR 280, Subpart H.

Examples Of Exclusion Language for Voluntary Tank Removal And Voluntary Tank Site Investigation

“any claim arising out of, caused by, resulting from, contributed to, or in any way related to any pollution incident discovered during any voluntary tank removal of any underground storage tank system”

“This policy does not apply to any claim arising out of or discovered as a result of any removal or replacement of any underground storage tank system.”

“any claim arising out of release arising from, discovered, or exacerbated as a result of a voluntary investigation of environmental conditions or any storage tank system.”

Examples Of Voluntary Tank Removal And Voluntary Tank Site Investigation Definitions

“Voluntary removal means the removal of any underground storage tank system whether in part or in its entirety with no prior knowledge of a failure in or pollution incident from the underground storage tank system.”

“Voluntary investigation means any investigation of environmental conditions or storage tank system undertaken, instigated, or directed by the insured of any actual or prospective tenant, landlord, lessor, lender, lessee, purchaser or agent thereof of a scheduled facility utilizing sampling or testing of soil, groundwater, or surface water.”

Self-Insured Retentions In UST Insurance Policies

A self-insured retention is the dollar amount an owner must pay before the insurance policy starts paying. Under a self-insured retention policy, an owner pays the cleanup, third party damage, and legal costs until the total amount of the self-insured retention limit is reached. Only after that point does the insurance provider pay for costs covered by the policy. This is different from a deductible, in that the deductible is part of the policy coverage limit. The federal UST regulation requires insurance providers pay first dollar coverage for deductibles without waiting for the insured to pay that amount. The insurance provider may then collect the deductible from the owner. The reason is so corrective action is not delayed. However, since self-insured

retentions are not part of the policy coverage limits, they are not covered by the protection of the first dollar coverage provision.

For example, for a \$1 million policy with a \$100,000 self-insured retention, an owner pays the first \$100,000, which is the self-insured retention amount; only after that full amount has been paid will the insurer pay up to \$1 million under the policy. If the owner does not or cannot pay the self-insured retention amount, the insurance coverage is not activated; this effectively nullifies financial responsibility coverage for the release. Whereas, if an owner has a \$1 million policy with a \$100,00 deductible, the insurance provider is immediately required to pay for corrective action costs even if the owner has not spent \$100,000 in costs. The insurance provider then collects the amount of the deductible from the owner.

EPA determined that an insurance policy with a self-insured retention may be only a partial financial responsibility mechanism. If the self-insured retention is applied to a claim made after the inception date, it does not fulfill the financial responsibility requirements of 40 CFR 280 on its own. Instead, an owner would have to use a combination of mechanisms to comply with financial responsibility requirements. An owner would have to show proof of financial responsibility for the amount of the self-insured retention.

If the self-insured retention is applied only to claims during the period prior to the inception date or back to the retroactive date, the policy fulfills the financial responsibility requirements of 40 CFR 280, Subpart H, since coverage is only required for the current policy period. Though EPA strongly encourages owners use policies with retroactive dates.

Verification

The federal UST regulation at 40 CFR 280, Subpart H requires owners or operators to keep a signed certificate of insurance. This certificate, when signed by the insurance provider, verifies that the insurance policy provides the required first dollar coverage and extended reporting period. However, the certificate of insurance form in 40 CFR 280 does not show whether the policy is subject to a self-insured retention or any exclusions. Owners must have the actual policy or declarations statement to determine if the policy is subject to payment of a self-insured retention or contains any exclusions. Owners and operators must verify that an insurance policy used to comply with FR requirements contains only acceptable exclusions. An EPA or state inspector may require an owner to submit the policy and document acceptable financial responsibility.

Resources About UST Insurance

I recommend the Association of State and Territorial Solid Waste Management Officials' (ASTSWMO's) *Guide to Tank Insurance* for information about other important policy provisions. This guide presents examples of UST insurance policy language that could impact the extent of coverage under the policy; see <http://astswmo.org/guide-to-tank-insurance/>.

Another helpful resource is EPA's *List of Known Insurance Providers for Underground Storage Tank Owners and Operators* at

<https://www.epa.gov/ust/list-known-insurance-providers-underground-storage-tank-owners-and-operators>. This document contains contact information for insurance companies, brokers, and agents offering UST insurance.

For More Information

If you have questions about the federal requirements for UST insurance, please contact Cho-Yi Risher at risher.choyi@epa.gov or 202-564-0672.

cc: ASTSWMO
EPA Regional UST Program Managers