Loss Control Bulletin

ENVIRONMENTAL & POLLUTION LIABILITY INSURANCE

Essential Information for Owners and Operators of Fuel Storage Tanks

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The topic of environmental liability has been a source of great debate and interest over the past several years, both in the media and the courtroom. In today's world, all levels of government and the public at large expect businesses involved with the handling and storage of fuel to provide quality, specialized services, while maintaining the highest possible standards of environmental care. Given these expectations, it is important to implement loss prevention measures that will assist in reducing the risk of costly fuel release cleanups. These measures should include routine maintenance procedures and standard safety practices during the dispensing, handling and storage of fuel. This Bulletin highlights some of the issues that storage tank system owners or operators should be mindful of to protect their financial assets and reputation, and the environment itself.

What is a release?

A "release" is often defined in an environmental liability insurance policy and is generally the discharge or escape of a contaminant from a storage tank system resulting in a "pollution condition."

The causes of a release can vary and may include, among others, corrosion, crushing, settlement, impact or human error. The age of the tank, the related tank equipment (such as piping and leak detection equipment), as well as the construction (e.g., fibreglass or steel) are factors that could make a storage tank system susceptible to the effects of wear and tear over time. The importance of protecting against releases stems from the legal responsibility and obligations of property ownership. The individual property owner is obligated to ensure, and can be held responsible financially or otherwise for, cleanup of any pollutant on his or her property, regardless of its origin. In particular, fuel stored on a property is regarded as inherently dangerous and environmental legislation throughout Canada gives rise to significant duties and obligations on persons and corporations.

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In order to limit the liability exposure created by a potential release, property owners who have fixed fuel storage tank systems on their premises should strongly consider the protection afforded by an Environmental Cleanup and Liability Insurance for Storage Tanks policy.

Forward planning and risk management strategies are effective preventative tools that storage tank system owners and operators should use to limit the potential risk of a release. Some of these strategies include:

1. A systematic process to ensure consistent and regular:
    - Visual inspection of above ground storage tank systems
    - Maintenance protocols of all storage tank systems, whether above or below ground
2. An automatic leak detection system
3. An inventory management system in order to track sales and purchases daily, including dip tests for water detection and associated maintenance logs
4. Precision tests on the storage tank system by a certified expert at regular intervals to conform with codes and laws that apply in their jurisdiction

As soon as a release is noticed, or if the owner or operator of a facility believes they may have environmental contamination, there are a number of important steps that should be followed in order to mitigate the potential damage.

1. The local authority responsible for tank oversight in the area should be notified as soon as possible. In this regard, many areas will be served by the Ministry of the Environment hotline, or its equivalent.
2. In order to minimize further damage, the owner or operator should arrange for emergency cleanup measures upon consultation with and, as necessary, under the supervision of the local authority having jurisdiction.
3. Further, in order to ensure accurate records are maintained of the incident, photos and documentation should be recorded as soon as possible.
4. The owner or operator should contact their insurance broker in order to discuss issues of liability and to notify their insurer of the incident. In the event the broker cannot be reached, most insurers have an emergency claims hotline, as do most independent adjusters. By reaching out for emergency assistance, the insured can quickly get access to expert advice and direction in times of crisis.

Taking emergency measures to prevent further contamination is encouraged on an as-needed basis. But proceed with caution as these measures can also occasionally come with risk. For example, while it may be necessary to divert the flow of contaminants from nearby water bodies or wells, disturbing the soil unnecessarily can worsen the damage as the diverted contaminants may leach into inaccessible areas making cleanup more costly and difficult.

In order to initiate a claim and receive the value under most environmental liability insurance policies for storage tank systems, the insured is typically obligated to establish when and how the release occurred. The mere presence of pollutants in the soil does not in and of itself trigger coverage under the insurance policy. The exact steps to be taken depend on the policy; however, they often include:

1. An investigation of the storage tank system's integrity (or lack thereof), often confirmed through a system tightness test
2. A site check in the case of above ground tanks
3. An engineer's report or other such procedures recommended and approved by the local authority responsible for storage tank system oversight in the area

The insurance policy that provides coverage for on-site cleanup is triggered upon confirmation from the insured that a release has occurred from the storage tank system which resulted in a "pollution condition." The specific meaning and definitions of such terms are contained within the policy wording. Examples of a potential loss include corrosion, improper installation of the storage tank system, vehicle impact or an earthquake resulting in a ruptured line. Just as in any first party environmental policy, the insured is responsible for triggering the on-site cleanup coverage of his or her policy. This is done by notifying the insurer, confirming the release and identifying when it first became known to the insured. The "pollution condition" must commence during the policy period and on or after the retroactive date indicated on the Declarations page of the insurance policy. The insured must ensure that they maintain appropriate documentation and preserve evidence when a release occurs in order to assist the insurer's investigation of the potential on-site cleanup or claim.

For instance, it will be difficult to verify that a release has occurred if the storage tank system has been removed and disposed of prior to notifying the insurer.

Are you upgrading or removing a storage tank system?

When upgrading or removing a storage tank system, consideration should first be given to the integrity of the tanks and associated piping **prior** to any work being performed. This can be done by having a qualified firm conduct a precision leak test on both the tank and the piping. This test determines the integrity of the storage tank system by monitoring changes in pressure, sound or water level. The following additional actions should also be taken.

1. In order to assist in determining if there are any discrepancies in fuel inventory, a review of recent automatic leak detection records should be performed.
2. Notification should be provided to the government authority (local, municipal or otherwise) that is responsible for the oversight of storage tank systems in the jurisdiction of the facility.
3. Before removing the storage tank system, the insurance broker should also be notified as there may be certain requirements in the insurance policy that need to be addressed such as the review of leak detection records or precision tests.

Other factors may need to be taken into consideration when removing a tank or piping, and owners or operators should familiarize themselves with local laws and regulations in their area prior to considering such a removal. For example, a clean closure report is typically required by the local authority responsible for tank oversight in the area to confirm that no contamination exists at the facility following the removal of tanks or piping. Similarly, if contaminated soil is discovered during the removal of a storage tank system, the owner or contractor will be required to provide specific notification to the authority having jurisdiction. In addition, if this contamination resulted from a release from the storage tank system, the insurer must also be notified so that they can arrange to inspect the storage tank system and related equipment prior to its disposal.

Conclusion

While environmental protection is everyone's responsibility, this is primarily true for businesses involved in the handling and storage of fuel. Environmental spills have significant long-term impacts, are complex to manage, and can be very costly to assess and remediate. The costs associated with investigating and cleaning up releases, in addition to the potential costs of defending lawsuits from third party plaintiffs, can swiftly deplete the assets of individuals and companies. With ever-increasing litigation resulting in larger damage awards, it's more crucial than ever for owners or operators of storage tank systems to safeguard their businesses from allegations of negligence arising from pollution exposures. Victor's team of in-house claims management professionals coupled with our Canada-wide network of seasoned adjusters and lawyers have the required industry knowledge and experience to assist you in managing your operational risks through insurance coverage.

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