

WHY REALTORS AND BANKERS SHOULD NOT WORRY ABOUT LEAKING REGULATED STORAGE TANKS IN WYOMING

In the event of a property sale or foreclosure, environmental liability can be a concern for real estate and banking professionals. In Wyoming, environmental liability from leaking regulated storage tank systems should not be as large of a concern as in other states. As long as the regulated storage tank system owner/operator or contaminated site owner is in compliance with state law and regulation, contamination from a regulated storage tank system is eligible for remediation by the state. Remediation is managed through the Wyoming Department of Environmental Quality (WDEQ), Solid & Hazardous Waste Division (SHWD), Storage Tank Program (STP) using funds from the state's corrective action account.

What is a Regulated Storage Tank System?

Any underground storage tank larger than 110 gallons (or 1,100 gallons on a farm, ranch, or residence) is a regulated tank system if it contains petroleum or hazardous substances. Any aboveground storage tank, regardless of size, is a regulated storage tank system if it is used by a fuel dealer to sell gasoline or diesel to the public. Participation in the Wyoming STP is not optional for regulated storage tank systems operating today. Owners of tanks that were taken out of service before the program was initiated can enter the program voluntarily provided the tank would be classified as a regulated storage tank system if operated today.

Requirements for State-Funded Remediation:

There are four requirements for a storage tank system owner/operator to be in compliance with state law and regulation. If these four requirements are met, the facility is participating in the Wyoming STP and is eligible for state-funded remediation.

1. Full payment of appropriate annual tank and installation/modification inspection fees. The STP fee is \$200 per year per underground storage tank, \$50 per year per aboveground tank with a capacity of 5,000 gallons or less, and \$200 per year per aboveground tank with a capacity over 5,000 gallons. Tank fees are due January 1 for the coming year. The first tank fees were collected for the 1989-1990 fiscal year. Fees for all applicable years must be paid for a facility to be eligible for state-funded remediation. The fees are attached to the facility; not the owner. If the owner of a facility changes and fees were not paid by the previous owner, the new owner is responsible for paying all back fees if he/she desires to be eligible for state-funded remediation.

2. Submission of an "Operator's Annual Inspection." Compliance with this requirement means conducting cathodic protection tests (if due), conducting required tests of lines and line leak detectors, submitting a year's worth of tank leak detection tests, and making a physical inspection of the entire facility. (See Chapter 17 of the Water Quality Rules and Regulations for complete requirements.) Tanks that are temporarily out of use (TOU) and empty (less than 1 inch of product/residue or 0.3 percent of product/residue, by weight, of the tank's total storage capacity) do not need to meet the leak detection requirement. Tanks can remain TOU and empty for up to 3 years. At the end of the 3-year period, the owner/operator has three choices: 1) bring the tank back into use, 2) properly abandon the tank, or 3) perform a minimum site assessment (at the owner/operator's expense). Any cathodic protection systems on a TOU tank must remain in operation and be tested on the required schedule. All TOU tanks in Wyoming have been fully upgraded to the 1998 standards. Any tank that does not meet the 1998 standards cannot be put back into use.

3. All facilities where the tanks were installed prior to December 22, 1988, were required to have completed a minimum site assessment (MSA) by December 22, 1998. If tanks were installed after 1988, an MSA is required no sooner than the eighteenth and no later than the twentieth anniversary of the tank installation. MSAs are not required if an STP system is shown as a contaminated site. MSAs must be conducted in accordance with Part F of Chapter 17, Wyoming Water Quality Rules and Regulations.

4. The owner/operator of any active STP site or a contaminated site with no active tanks must provide the department access to the site for the purpose of remediation.

Contaminated sites with **no** active tank systems on the property must meet the following three requirements for continued eligibility in the state-funded remediation program:

1. Full payment of the \$200 per year contaminated site fee. The legislature placed a cap of 10 consecutive years on the annual contaminated site fee payment for sites where remediation has not been started by the state. After the 10-year period, the contaminated site fee is **suspended** until active remediation begins. The contaminated site fee **starts again** when remediation begins and continues until the project is complete.

2. Notify the department of any site ownership changes.

3. Maintain financial assurance responsibility.

The state-funded remediation program applies to all regulated storage tanks regardless of ownership. Storage tank owners/operators and contaminated site owners that meet the requirements above are entitled to the state corrective action program. The state fund also provides the financial responsibility, required by federal law, for eligible tank owners with a \$30,000 deductible.

What Does an Eligible Tank Owner Get When Participating in the Wyoming Storage Tank Program?

Two state programs are available for eligible tank owners:

1. **Corrective Action Account.** If contamination is due to a release from an eligible tank system (tank or piping), the corrective action account will pay the entire remediation cost for the site and affected third party sites. Site remediation costs can easily exceed \$400,000. If remediation cannot be done at the time the contamination is discovered, the site is prioritized using a scoring system contained in Chapter 17, Water Quality Rules and Regulations. Remediation is accomplished based on, in general, priority of the site.

2. **Financial Responsibility Account.** If a release from a regulated storage tank system causes contamination to a third party site or affects the health of a third party, the third party may file a court action against the owner(s)/operator(s) of the leaking storage tank system(s) and the surface owner of the site. If the court awards a settlement to the third party, the state pays the first \$1 million dollars of the damages awarded by the court. The state will attempt to collect the \$30,000 deductible from the registered storage tank owner of the site. Any court-awarded amounts exceeding \$1 million are the responsibility of the tank owner. Legal costs incurred by the third party are not covered by this account, and the state does not provide legal representation to the owner. Tank owner/operators are required to submit a certificate of insurance if they have an insurance policy in effect that: 1) covers any part of the cost of cleaning up a release, or 2) provides any liability protection for them. They are not required to have an insurance policy if they are participating in the STP.

Property Owner's Construction or Development of Contaminated Sites:

While it is department policy not to unnecessarily hinder construction on or development of a contaminated site, participation in state-funded cleanup is voluntary and dependent on the owner/operator meeting the four requirements listed above. Failure to meet any of the four requirements results in the exclusion of the site from the state-funded cleanup program and obligates the owner/operator to immediately start the cleanup at his/her own expense. During construction of remediation systems at contaminated sites, the STP takes great care to minimize disruptions to the owner's use of the property, to the extent possible, while completing the necessary work. However, some disruption is unavoidable and necessary in order to complete the required work.

Active STP remediation systems belong to the State of Wyoming. The department asks for cooperation during development of a site with an active remediation system so that system components are not destroyed. If active system components are damaged or destroyed due to property owner initiated construction or development, the owner is expected to repair, replace, or pay for the repair or replacement of the affected state property. If an owner fails to protect, repair, or replace a system damaged by his/her actions, he/she may lose eligibility for state-funded corrective action and will assume full liability for site cleanup.

Systems are removed by the STP when cleanup objectives have been met. Systems are removed as funding and resources become available. Inactive systems at sites may be removed by the property owner after consultation with the appropriate STP project manager.

Available Information

The department is available to discuss the compliance status of any regulated storage tank facility and/or contaminated site. Detailed questions concerning site contamination problems or active remediation status may be addressed to the WDEQ/SHWD/STP office in the district where the facility is located.

Southeast Wyoming – Cheyenne – Adrian Ducharme, P.G., District Supervisor, 307-777-7073
Western Wyoming – Lander – Sterling Roberts, P.E., District Supervisor, 307-335-6953
Northeast Wyoming – Sheridan – Scott Forister, P.E., District Supervisor, 307-675-5678
Program Manager – Karen Halvorsen, P.E., 307-777-7244

WDEQ information concerning the state STP can be found on the department's website at <http://deq.wyoming.gov/shwd/storage-tank>.