

Storage Tank Guidance for Real Estate Professionals

Real estate professionals can feel uneasy when they realize that a property they are showing or listing has, or had, one or more underground storage tanks (USTs) on the premises. Part of this unease may stem from not knowing what needs to be done or who to turn to for assistance in dealing with USTs. This document has been prepared for real estate professionals who must deal with USTs on properties in Maryland and would like to better understand the subject.

This information can help you and your clients by:

- Answering questions about USTs.
- Helping you understand the various options a seller or buyer has when an UST is on a property.
- Helping you direct a client who needs to contact the UST regulatory authority.
- Helping you direct a client who needs to find an UST technician or contractor.
- Providing you direction on where to obtain more information on USTs.

This information can also help you conduct quicker and smoother transactions.

The information provided here is based on good tank management practices and on comments made by real estate professionals just like you who work with properties containing USTs. These professionals have learned that by being more knowledgeable about USTs they can increase the likelihood that transactions will progress quickly and smoothly. They realize good tank management makes for better real estate business and a property with a properly maintained UST is much more attractive to buyers and lenders. It is anticipated that a well maintained UST will require less interaction with regulatory authorities. Buyers and lenders also realize that there is less of a chance the UST could re-emerge as an issue or problem after a transaction is completed if a tank is properly maintained.

So... what do you need to know?

This document provides you with a framework for understanding how and why USTs are regulated in Maryland. The following pages contain common questions and answers about properties with USTs in the state. (**Please note**, this document is not meant to be a comprehensive guide to Maryland UST regulations but only a “layman’s” introduction to them. A section at the end of the document lists sources of more complete information.)

What is an UST?

Commercial:

The tank must store a regulated product, such as gasoline, heating oil, or diesel fuel. An underground storage tank (UST) is a tank and any underground piping connected to the tank whose capacity is buried at least 10 percent underground. It is important to note that USTs on commercial properties are highly regulated, and it is critical for the tank owner to become knowledgeable of the UST regulations.

Residential:

Residential or farm tanks with 1,100 gallons or less capacity are not regulated to the same degree as commercial tanks. In most cases, residential USTs with smaller capacities are only regulated if they cause a release or when they are taken out of service.

Why are USTs regulated?

USTs containing petroleum products or hazardous substances are subject to federal, state, and, sometimes, local regulations. USTs are regulated because product can leak into the soil, causing environmental pollution, health and safety issues, and may contaminate groundwater, the source of drinking water for 40 percent of all citizens of Maryland. UST systems are regulated at various degrees depending on the material stored, size of tank, type of property, and the use of the storage system.

Who is the UST regulatory authority?

The U.S. Environmental Protection Agency (EPA) has promulgated federal UST regulations; however, the federal regulations have been essentially duplicated as state regulations, and the Maryland State UST program has been granted State Program Approval by the EPA. Thus, the Maryland Department of the Environment's (MDE) Oil Control Program principally enforces UST regulations in the state and is the immediate regulatory authority.

The information in this document is based on Maryland UST regulations; these are the regulations which UST owners, operators, and property owners are legally held accountable. (*Note: There may be other health and safety regulations at the local level that may apply to an UST and are not included here. Contact your county permits division and the local fire marshal's office for further information.*)

MDE can provide technical information and furnish other assistance, such as tank histories and lists of companies that perform tank work, to real estate professionals and their clients.

Contact:

Maryland Department of the Environment
Land Management Administration
Oil Control Program
1800 Washington Boulevard, Suite 620
Baltimore, MD 21230-1719
Telephone: 410-537-3442
Toll Free: 1-800-633, 6101, ext. 3442
Fax: 410-537-3092
www.mde.state.md.us

How do I deal with USTs at listing time?

Keep in mind that *any* property may contain USTs. Underground storage tanks have been found in many unusual places, and some USTs do not give visible indication of their presence below ground. Many properties that have changed use, such as fast food restaurants, were previously gasoline service stations.

Examples of where USTs are commonly found are: gasoline stations, convenience stores, residences that use or once used heating oil, trucking and bus terminals, railroad yards, farms, and marinas.

A walk-through of a property may uncover indications of abandoned USTs; items to look for include:

- **Vent pipes.** Vent piping is usually found outside of structures, and is normally 2 to 8 feet tall. Vents may be made of 1-1/2 to 2-inch metal piping and in many cases have a cap that looks like a mushroom on the top of the piping.
- **Fill pipes.** Fill piping is normally directly over the top of the UST. A fill pipe can be 2 to 4 inches in diameter. In most cases, the fill pipe will have a special cap that requires a tool for its removal or a cap with ears that locks it in place.
- **Dispensers.** Especially at former farms or gas station sites, the old dispenser may still be standing. These units can be large like the one you would typically fill your car with, or they can be a small pipe with an electric motor and hose attached.
- **Abandoned piping.** In many buildings that have changed their source of heat, you may find abandoned piping. This piping may be copper or metal. There are normally two pipes associated with an oil heat system, a supply line and a return line. If abandoned pipes run out through a wall, there is a good possibility there is an UST on the other side.

For commercial properties, MDE is the place to begin a record search for USTs. The MDE maintains information on a large number of open and closed UST sites across the state. The MDE already may have information on a particular property. You need only contact MDE with the address or location of the property in question. You may also contact MDE for residential properties. However, MDE will only have information on a residential property if there has been a release of product or the capacity of the UST requires the tank to be registered with MDE. A searchable case data base can be found on MDE's web site at http://www.mde.state.md.us/Programs/LandPrograms/Oil_Control/RemediationSites/index.asp.

If MDE has no record of an UST on the property, how can a property be investigated for USTs?

A way to investigate a property for USTs is to have the property owner contract to conduct a home survey for residential properties or an environmental site assessment for commercial sites. Lenders often require a site assessment before they make a loan on certain types of commercial properties. Also, if you or the owner suspect that the property has or ever had USTs, and you list the property without confirming this, you run the risk of spending dollars to advertise a property, lining up a buyer, and then having settlement delayed if the potential buyer requests a site assessment and discovers USTs and possible contamination from a leak.

Some contractors offer services using metal detectors and ground penetrating radar to identify suspected USTs.

The site assessment or survey should be conducted by knowledgeable and experienced personnel. MDE can provide an updated list of companies that perform site assessments. Real estate professionals or their clients can call the Oil Control Program at MDE at 410-537-3442 for answers to specific questions concerning site assessments in Maryland. A list is also posted on MDE's web site: http://www.mde.state.md.us/Programs/LandPrograms/Oil_Control/FactsheetsPublications/index.asp.

What about possible contamination from a leaking UST?

The question of possible contamination from a leaking tank (past or present) will almost certainly come up in any transaction involving property that has or had USTs. If MDE has records of a property, these records can shed light on this question (for either the seller or the buyer). A thorough site assessment of the property should provide the UST owner with details on any contamination found. Any past or newly discovered contamination must be disclosed to a potential buyer and be reported to MDE to determine if remedial action is warranted.

By State law, any contamination discovered from leaks from a storage tank system must be reported to MDE within two (2) hours after its discovery. Contamination must be reported to MDE whether the UST will remain in the ground or not. MDE will determine the level of cleanup effort necessary to protect human health and the environment. To report a discovered discharge, the property owner should call 1-866-633-4686 (24 hours).

What if it is decided to close an UST?

Often, either a potential buyer or the lending institution will want an UST to be properly closed before a property transfer occurs. There are specific state requirements the tank owner must follow for the proper closure of an UST; Maryland regulations require the following basic actions when closing an UST.

All USTs:

- 1) An MDE-certified UST remover or technician must be used to perform the tank closure. (A list of companies that perform this work in Maryland is available from MDE.)
- 2) **Prior to closure, the UST must be emptied of liquids and accumulated sludge.** These actions need to be carried out by trained personnel who carefully follow standard safety practices. At commercial sites, after the tank has been properly emptied, it must be removed. The MDE may give site specific variance to allow closure in-place.

Commercial Properties:

- 1) **MDE must be notified in writing at least 30 days before the UST is closed.** MDE must also be contacted (by calling 410-537-3442) 48 hours prior to the UST removal to schedule a site inspection. MDE must monitor the tank closure activities.
- 2) **Determine if spills or leaks from the UST have contaminated the surrounding environment.** The results of soil vapor or groundwater monitoring can be used to show that the site is not contaminated. Otherwise, a site assessment needs to be completed (if it hasn't already been done). When a MDE inspector is on site, they will assist evaluating the site for

contamination. If contamination is found, sampling and corrective action to clean up the site, as determined by MDE, will have to be taken.

Residential Heating Oil

A MDE-certified UST technician or remover must perform the closure. The MDE does not require prior notification if the removal is elective and there are no indications of product loss. Closing the tank in-place is also acceptable when the closure is elective and there are no indications of product loss. Prior notification is required if the removal is related to a suspected release, product loss, or system test failure. Soil sampling is not required for a system that is not suspected of a release, product loss, or system test failure. A visual assessment of the tank system and backfill is acceptable. The tank owner should keep records of the closure activities.

At any time during closure activities product loss is discovered, MDE must be notified in accordance with spill reporting regulations.

What if an UST will remain in operation?

Any contamination from past or present leaking USTs on the property must be addressed by the Responsible Party in cooperation with, and to the satisfaction of, MDE.

If the UST will be kept in operation after the sale, potential buyers may want to know if it is in compliance with Maryland UST regulations. There are three different sets of UST regulations, depending on the product stored in the UST: (1) For USTs storing motor fuel, used oil, or bulk heating oil; (2) for USTs storing heating oil for on-site consumptive use; and (3) Residential USTs.

1) For USTs storing motor fuel, used oil, or bulk heating oil:

- **The UST must be registered.** Maryland regulations require that an UST be registered with MDE. Registration forms are available by contacting MDE and on the MDE website at: http://www.mde.state.md.us/assets/document/Tank_Registration_Form.pdf.
- **The UST must have spill protection.** The UST must have a catchment basin (also know as spill bucket) to contain spills that may occur when the delivery hose is disconnected.
- **The UST must have overfill protection.** The use of overfill protection devices (such as automatic shutoff devices, overfill alarms, and ball float valves) help prevent overfills that can occur during delivery.
- **The UST must have a leak detection system and be checked regularly for leaks.** These types of USTs must have a properly maintained leak detection system. The USTs must be checked for leaks on a regular basis. (**Note:** Emergency generator USTs installed prior to March 1, 2008 do not need to follow monthly release detection but must be tested at 15 years of age and every 5 years thereafter.)
- **An UST with corrosion protection must be tested and inspected regularly.** An UST made of a non-corrodible material such as fiberglass does not need corrosion protection. An UST (and any piping) made of steel and copper must have a way of preventing corrosion, which can cause leaks. The tank and its corrosion protection system must be tested and/or inspected regularly: at least once every 3 years.
- **The tank owner/operator must demonstrate liability coverage.** Financial responsibility regulations require that an owner or operator have pollution liability insurance and the resources to pay for costs associated with cleaning up releases and

compensating third parties in the event of a leak or spill. Property and business insurance do not normally cover cleanups.

- **The tank owner/operator must keep records of tank operation.** An UST owner/operator must keep records of: tank installation and upgrades, maintenance and repairs; maintenance of the leak detection system and leak detection monitoring; documentation of corrosion protection and testing; and any releases and corrective actions taken. Also, accurate inventory records must be kept daily.
- **The tank owner/operator must report releases and take corrective action to clean up contamination.** Any suspected releases must be reported to MDE. If a release is confirmed, the owner must also report follow-up actions planned to correct the damage caused by the release.
- **Motor fuel, emergency generator, bulk storage, and used oil UST systems require inspections once every 3 years.** To comply with the Federal Energy Bill Act of 2005, MDE will issue a notice to the owner of the UST when the inspection is due.

MDE is the compliance authority for these tanks and tank owners should contact MDE's Oil Control Program if they have questions on compliance issues. MDE can provide a list of companies that inspect, test, upgrade, or replace tanks.

2) **For commercial properties storing heating oil for direct consumptive use in USTs:**

- **The UST must be registered.** Maryland regulations require that USTs be registered with MDE regardless of the size of the tank.
- **The UST must be tested.** Maryland regulations require these systems be precision tested at 15 years of age and every 5 years thereafter.
- **The UST tank field must have two monitoring pipes.** Maryland regulations require that at least two PVC monitoring pipes be installed in tank field systems installed after 1985.
- **An UST installed after November 4, 1996 must have spill protection.** The UST must have a catchment basin to contain spills that may occur when the delivery hose is disconnected.
- **An UST installed after November 4, 1996 must have overfill protection.** Overfills usually release much larger volumes of fluid than spills. The use of overfill protection devices, overfill alarms, and ball float valves can help prevent this. (For USTs under 1,000-gallon capacity, a whistle alarm would suffice.)

MDE is the compliance authority for tanks storing heating oil for direct consumption. Property owners with compliance questions should contact MDE.

3) **For Residential properties:**

The owner of a residential property can take steps to avoid a release of heating oil. The MDE offers several precautionary steps homeowners who heat with oil can take to head off potentially costly problems caused by fuel leaks and spills.

The typical cleanup cost from spills ranges from \$5,000 to \$30,000.

For All Heating Oil Systems (Underground and Aboveground Tanks)

- Inspect for leaks. Look at the tank, fuel delivery line, valves, piping and fittings.

- Inspect the vent pipe to ensure that it is free of obstructions and that an audible signal (whistle) is on the vent. Oil delivery personnel listen for the whistle to help avoid overfills. Vent pipes should be at least 3 feet tall.
- Have the oil company clean the furnace and repair or replace damaged parts. A well-maintained furnace means lower fuel bills, cleaner emissions, and less chance of a spill.
- Retain all oil delivery receipts to track oil demand. Unexpected increases may indicate a leak.
- Ensure that the property street number is clearly visible from the road to prevent oil company personnel from delivering fuel to the wrong address.
- Clearly mark the location of the tank's fill pipe to ensure that oil company personnel deliver fuel to the right place.
- Every 10 years, have the inside of the oil tank cleaned. Over time, water and sludge can cause corrosion on the inside of the tank, resulting in leaks.
- If a tank is removed, have a certified technician perform the work and also remove fill and vent pipes immediately to prevent a fuel delivery to a location without an attached tank.
- For new tanks, consider purchasing one with double walls; they provide an extra layer of protection regardless of where the tank is located.
- Testing of USTs may be available through the oil company or by contacting a professional tank testing company. Hydrostatic tests may be a cost savings test method for determining the integrity of tanks of 1,000 gallons or less.
- In Maryland soil, most steel USTs will last approximately 10 to 20 years before corrosion can cause a leak. If the tank is older than that or the age is unknown, replace it with an aboveground storage tank or protected UST. Locate your new aboveground storage tank under a shelter or inside a basement or garage to prevent rust, corrosion, or damage.
- For outside aboveground storage tanks, inspect the stability of the tank regularly. A full 275-gallon tank weighs more than 2,000 pounds. The tank must have metal legs and should stand on a concrete support or pad. If the legs become loose or the concrete cracks, the tank can fall over and release product.

What types of documents can MDE issue to assist with property transfer?

Code of Maryland Regulations (COMAR) 26.10.01.05 allow MDE to issue several types of letters related to Oil Control Program activities. The letters include Site Condition, Cleanup Suspension, Final Closure, and No Further Action. The MDE can tailor a letter to meet your needs for properties on which an MDE case was open, there was a regulated tank system, or site information is provided to the Department.

Maryland regulations further state in COMAR 26.10.01.05G: "A purchaser of oil-contaminated property does not become a person responsible for a discharge solely as a result of the purchase of the property, unless the purchaser is otherwise a person responsible for a discharge under Environmental Article, 4-401(i)". Any letter produced by MDE related to a property transfer will quote this regulation.

For Further Information:

Please note that this guide is intended only as a brief introductory for real estate professionals on UST management in Maryland. More detailed information, including the citations for state

statutes and regulations governing USTs in Maryland is available from the Oil Control Program.

If the steps outlined in this booklet have been followed and actions taken accordingly, both you and your client are now on your way to a more orderly, expeditious, and uneventful real estate transaction. If the property has an UST, let MDE know of your closing requirements at least 30 days in advance of your settlement date so everything can be completed in time.

Sources for information:

The National Oil Heat Research Alliance
600 Cameron Street, Suite 206
Alexandria, VA 22314
Phone: 703-340-1660
www.nora-oilheat.org

Mid-Atlantic Petroleum Distributors Association
410-349-0808
www.mapda.com

Maryland Department of the Environment
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Oil Control Program
1800 Washington Boulevard, Suite 620
Baltimore, MD 21230-1719
Telephone: 410-537-3442
Toll Free: 1-800-633, 6101, ext. 3442
Fax: 410-537-3092
www.mde.state.md.us

http://www.mde.state.md.us/Programs/LandPrograms/Oil_Control/index.asp

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