

Product Deliveries in Jeopardy Without Proof of Upgrade

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As reported in earlier *Hole Notes* articles, the 1998 underground storage tank (UST) upgrade deadline is rapidly approaching. Many USTs at golf courses meet the criteria of regulated tanks. Therefore, effective December 22, 1998, they must have spill protection, overfill prevention and corrosion protection measures in place. In addition, UST owners and operators must also prove compliance with all standards. This article provides a brief overview of proving UST compliance, and the potential implications of not having the proper documentation.

Types of Documentation

The amount and type of information necessary to prove compliance is dependent on the party requesting the information. In addition to records for leak detection compliance (leak detection was required at least five years ago) and receipts for paid state fees, UST owners should have documentation on more recent upgrade work, such as paid invoices, plans and drawings, contractor reports, etc. This documentation should be available for review by the Minnesota Pollution Control Agency (MPCA) but also for review by the companies that deliver product to the tanks.

Issues for Petroleum Suppliers

The deadline for upgrading, replacing or closing USTs raises several liability issues for petroleum product suppliers. Suppliers worry about liability because recent court rulings have held petroleum suppliers liable for actions (or inactions) of the purchasers. When automobiles are sold to individuals without a license, the court has ruled that if the driver causes an injury, it can be defined as "actionable negligence" on the part of the seller. Similarly, if a supplier that delivers petroleum to a non-upgraded UST it too can be ruled as committing an act of "actionable negligence" if the tank later leaks and causes injury or harms the environment. A supplier that knows, or reasonably should have known, that a tank is not upgraded but delivers fuel anyway, may be seen as aiding a crime. According to Chris Braun, an attorney representing a petroleum marketing association in Indiana, a supplier claiming to not know the status of a UST may not have an adequate defense, since most of the information of upgrades is publicly available. Thus, the trend in the very near future is for petroleum suppliers to make more detailed inquiries into the upgrade status of the tanks to which they deliver petroleum.


Implications for Non-Compliance

Although suppliers often do have contractual obligations to deliver fuel to sites with USTs, such as those at many golf courses, most contracts have clauses that require compliance

with regulations. It is these clauses that give suppliers the right to stop delivering fuel at any time if the USTs are not upgraded. Thus, it is important to emphasize that not only the MPCA can "red tag" a tank if proven to be non-complying; the trend will become for the suppliers to apply their own "red tag" to cover their liability.

Steps to Avoid Potential Disruptions to Business

Verifying the status of USTs now can minimize potential disruptions in service. By sharing all documentation with your petroleum supplier, including: proof that the USTs were upgraded to the December 1998 standards, results of required annual tank tightness tests, registration confirmation and proof of payment of fees and insurance, a consistent schedule of product deliveries to your UST may be maintained. With fuel in your UST, maintenance vehicles and golf carts stay on the course.



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