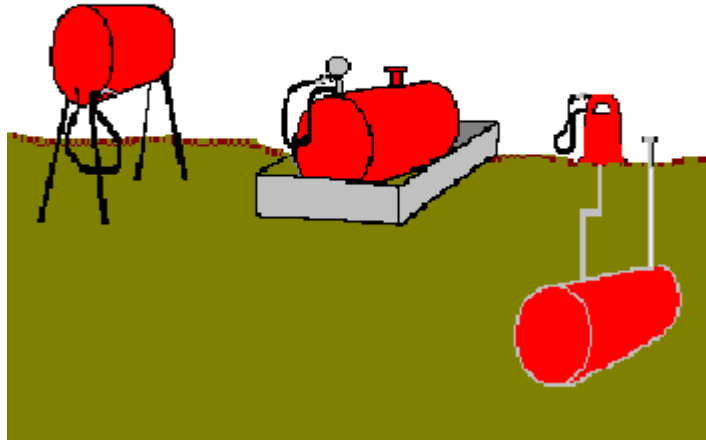


UNDERGROUND PETROLEUM STORAGE SYSTEMS IN FLORIDA

Introduction

The presence of underground storage tank systems may affect you if they are located on your property or your neighbor's property. These systems may leak or otherwise discharge gasoline or other petroleum products into the environment. Consequently, soil, groundwater, and surface water may become contaminated. Because Florida relies on groundwater for over 90% of its drinking water needs, such contamination may pose a serious threat to human health and safety and to the quality of the environment. Therefore, activities involving storage of petroleum products and cleanup of petroleum products discharged into the environment are regulated by the Florida Department of Environmental Protection ("DEP") to protect the public and the environment. The United States Environmental Protection Agency ("EPA") also regulates underground petroleum storage tank systems, but this brochure discusses only the requirements of Florida's program. The Florida Administrative Code defines an underground tank as "an underground stationary device designed to store regulated substances and the volume of which (including integral piping) is more than 10% beneath the surface of the ground." (F.A.C. § 62-761.300). If you have an underground petroleum storage tank system on your property or if you are planning to build one, please be aware of the relevant regulations, discussed below.



Through the Bureau of Petroleum Storage Systems, the DEP regulates the construction, installation, operation, maintenance, and closure of petroleum storage tank systems. The DEP also regulates the procedure for cleanup of any discharge of petroleum or petroleum products. However, a different agency, the Department of Agriculture and Consumer Services (Division of Consumer Services), regulates the dispensing of gasoline to your vehicle under separate rules.

This brochure provides some basic information for property owners, storage tank owners, storage tank operators, and others interested in Florida's underground petroleum storage tank system regulations and cleanup requirements. While the DEP also regulates certain aboveground tanks and the cleanup of other substances, for which some of the same regulations apply, those topics are beyond the scope of this brochure. There are other agencies or bureaus that may regulate certain activities not monitored under the Bureau of Petroleum Storage Systems program. It is recommended that you contact the DEP for additional information. Contact information appears at the end of this brochure.

Underground Storage Tank Owners and Operators

Construction and Installation

Under Chapter 62-761 of the Florida Administrative Code, the owner or operator must notify the appropriate DEP-contracted county representative at least 30 days before installing or upgrading a regulated petroleum storage tank system, so that a county inspector working on behalf of the DEP can inspect the installation. Some counties have opted for a shorter notification period, so be sure to check your local regulations.

All underground petroleum storage tank systems must be installed in accordance with the manufacturer's instructions by a contractor certified by the Department of Business and Professional Regulation. Additionally, all petroleum storage tank systems must comply with the DEP's construction standards.

New storage tank systems must be made of the DEP-approved materials, such as fiberglass reinforced plastic, fiberglass coated steel tanks, and cathodically protected coated steel, and must have a secondary containment system able to contain a discharge for 30 days. To reduce the possibility of a discharge during the filling of the tanks, new storage tank systems must have both overfill protection and a spill containment bucket. There are also extensive requirements regarding petroleum storage tank systems' integral piping.

Registration

Petroleum storage tanks must be registered with the DEP, and it is unlawful to supply motor fuel to a tank that is not registered. Contact the DEP to obtain a registration form, or if you have questions about the registration status of a particular facility's storage tank system or systems. The registration form can also be obtained at http://www.dep.state.fl.us/waste/quick_topics/forms/documents/62-761/761_2.pdf.

Financial Responsibility

Owners or operators of storage tank systems must have insurance or some other approved mechanism of demonstrating that the owner or operator has funds to pay for the cost of cleaning up the contamination and to pay third party damage claims should the storage tank system discharge petroleum into the environment. More information about the cost of storage tank insurance and the companies that are able to provide the insurance is available in an online guide, at http://www.astswmo.org/Files/Policies_and_Publications/Tanks/2011.10_Guide_to_Tank_Insurance_FINAL.pdf. The average cost of cleaning up a contaminated site is about \$250,000. Federal requirements (located in the Code of Federal Regulations at 40 C.F.R. § 280) mandate that petroleum producers, refiners, marketers, and non-marketers must have an aggregate amount of at least \$1 million worth of coverage each year if they own 100 or fewer tanks and at least \$2 million worth of coverage each year if they own more than 100 tanks. Petroleum producers, refiners, or marketers must also

have \$1 million worth of coverage for each time a tank leaks. Non-marketers must have either \$500,000 or \$1 million worth of coverage for each time a tank leaks, depending on whether the tank's throughput is more than 10,000 gallons per month.

Repairs, Operation, and Maintenance

As per Florida Administrative Code § 62-761.700, repairs to any defective or broken equipment must be made whenever there is a potential for discharge of products. Repairs must be made in accordance with manufacturer's specifications and any applicable DEP standards. The petroleum storage tank system must be taken out of service during repairs if there is a potential for a discharge to occur during the repair and if the component or part to be repaired cannot be otherwise isolated from the system. The repaired components must be tested before they are placed back into service.

Spill containment devices must be maintained to provide access for someone to monthly examine the device and remove water, as necessary. Collected water and petroleum contact water must be properly disposed of or reused. Release detection devices must be tested periodically to ensure proper operation.

The DEP also requires that certain records of repair, operation, maintenance, inventory data, site suitability determinations, and so forth, be maintained by the owner or operator.

Leak or Release Detection

Leak detection, also known as release detection, is an important component of the storage tank regulations. Early detection of, and response to, a leak can save a property owner or a tank owner or operator thousands of dollars in cleanup costs. Additionally, promptly responding to a leak protects the environment and human health and safety, thereby reducing liability claims from those affected by such a leak. Therefore, all petroleum storage systems and their small diameter piping are required to have some form of leak detection. Below is a list indicating some types of release detection. The tank owner and operator are responsible for reporting incidents to the local county DEP representative within 24 hours of discovery or before the close of the county's next business day. An incident includes:

- Failed statistical inventory reconciliation or failed or inconclusive tightness, pressure, or breach of integrity test,
- Internal inspection results indicating a release could have occurred,
- Unusual operating conditions,
- Presence of petroleum or gas odor,
- Loss of pollutants exceeding 100 gallons on an impervious surface,
- Positive response of a leak detection device, exceedance of the system's Release Detection Response Level, or breach of system integrity, and
- Presence of free product in a piping sump.

Upon discovery of unreported discharge, the tank owner or operator is responsible for reporting discharges of pollutants to the local county DEP representative within 24 hours. A discharge includes:

- Test results that indicate petroleum contamination of soil, surface water or groundwater
- Free product or sheen visibly observed on soil, surface waters, in groundwater samples, and other locations, and
- Spills equal to or exceeding 25 gallons on soil or other pervious surface.

Incident Notification Form and Discharge Report Form are available respectively at http://www.dep.state.fl.us/waste/quick_topics/forms/documents/62-761/761_6.pdf and http://www.dep.state.fl.us/waste/quick_topics/forms/documents/62-761/761_1.pdf.

Tank Closure

A storage tank system must be properly closed when it is no longer being used, has not been upgraded in accordance with DEP rules, does not have release detection, has been out of service for more than one year if the tank or piping is made of bare steel, or has been out of service for more than two years if the system is corrosion protected. 607 tanks were closed in the year 2012, and 241 have been closed so far in the year 2013. Storage tank systems are closed by removing all liquids and sludges from the tank, disconnecting and capping, or removing all piping from the tank, either removing the tank from the ground or filling it in place with a solid, nonshrinking, inert material such as sand or concrete, and performing a closure assessment to test around the tank area to determine the existence of any contamination. In general, only contractors certified by the Florida Department of Business and Professional Regulation may remove a storage tank system from the ground.

Cleanup Requirements

Those responsible for contaminating the environment must immediately clean up any petroleum contamination in accordance with Florida Administrative Code Chapter 62-770, Florida's legislature created the Inland Protection Trust Fund (IPTF), financed by an excise tax on the importation of petroleum into Florida, and the production of it in state. The IPTF is administered by the DEP to assist in the cleanup of certain specified petroleum contaminated sites. Thousands of contaminated sites across Florida have been cleaned up, are being cleaned up, or will be cleaned up using the trust fund moneys. However, many contaminated sites are ineligible to participate in state funded cleanups and must be immediately addressed by the discharger in accordance with the rules in Chapter 62-770.

Petroleum contaminated sites currently being cleaned up must meet state water quality standards and soil cleanup target levels specified in Florida Administrative Code Chapter 62-770. The cleanup criteria incorporate the use of risk-based corrective action ("RBCA") principles to achieve cleanup of petroleum-contaminated sites. These requirements aim to achieve protection of human health and safety and the environment

in a cost effective manner. Cleanup may be allowed, when appropriate, through natural attenuation in conjunction with monitoring. Natural attenuation means that the petroleum products naturally degrade into harmless components over time.

There are situations in which cleanup of the contamination cannot be achieved to the appropriate cleanup standard because the technology does not exist or the cost of cleaning up to those standards is prohibitive. In such cases, the use of engineering controls such as slurry walls, pavement, or two feet of clean topfill may be required to prevent exposure to the remaining contamination or to prevent the remaining contamination from migrating off the source property. In conjunction with those controls, the DEP may allow a site owner to use institutional controls to prevent certain uses of the contaminated property to avoid exposure to the contamination. For example, the DEP may help a site owner prohibit the installation of supply wells into the area of contaminated groundwater, so that the contamination does not spread.

Real Property Buyers

Buyers of real property should determine whether the property they are buying contains or contained a storage tank system, or is contaminated. Buying contaminated property may subject the purchaser to legal and financial burdens. The purchaser may be liable for the cleanup of the contamination, and if contamination has moved onto an adjacent property, the payment of damages to an adjacent or off-site property owner. The costs of cleanup or a damages claim can be quite expensive. Therefore, it is prudent to hire a technical expert experienced in environmental assessments of real property. In addition to researching the title records (many of which are available through <http://www.dep.state.fl.us/lands/title.htm>) and conducting an on-site assessment, you can contact the DEP before purchasing any property to determine whether there is a record of a registered petroleum storage tank system, contamination, or cleanup. However, be advised that the DEP's petroleum storage tank system records may not be complete and should not be the exclusive source used to determine the contamination status of a particular property. Furthermore, dialogue with DEP staff or review of records does not suffice to fulfill one's legal obligation to make diligent inquiry regarding a property's status or condition. Seeking the advice of an attorney with knowledge of the pertinent environmental laws and regulations is advised.

Adjacent Contaminated Properties

Contamination sometimes migrates off the source property onto adjacent properties. The DEP requires cleanup of the entire discharge, regardless of where the contamination migrates. If you own a piece of property adjacent to a source of contamination, you may be asked to provide access to your property to allow the cleanup contractor to install monitoring wells used to determine the extent of the contamination and, if necessary, to allow cleanup of the contamination on your property. Terms of such access, if through a private cleanup, are negotiated with the source property owner and the owner's cleanup contractor. If the cleanup is state-funded, access is negotiated with the DEP's contractor. There is a standard access form, but

arrangements can be made to address particular concerns regarding your property or business.

Legal Rights and Responsibilities






This brochure was prepared in conjunction with the DEP's Office of General Counsel and Bureau of Petroleum Storage Systems. It only provides a brief overview of certain regulations regarding the petroleum underground storage tank system programs and purposefully does not address any other Departmental cleanup, permitting, or storage tank system programs. Please contact the DEP for further information or to obtain copies of the appropriate rules and statutes pertaining to this area of the law, and consult an attorney with knowledge of the pertinent environmental laws and regulations before proceeding.

Contact Information and Resources

To find out how your community scores with regard to environmental health, check out Environmental Defense Fund's Environmental Scorecard webpage. You input your zip code and it will tell you how your county ranked in terms of a variety of environmental factors including air and water pollution, toxic exposure and an environmental justice report. The link is: <http://scorecard.goodguide.com/>

If you would like more information regarding the DEP's petroleum storage tank system program, such as the Petroleum Storage System rules (Chapter 62-761, F.A.C.) or the Petroleum Contamination Site Cleanup Criteria rules (Chapter 62-770, F.A.C.), contact the Bureau of Petroleum Storage Systems at MS 4575, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400; (850) 245-8839, or visit the website at: <http://www.dep.state.fl.us/waste/categories/tanks/default.htm>.

DEP's district offices

-  Northwest District - Pensacola, 850-595-8300
<http://www.dep.state.fl.us/northwest/>
-  Northeast District - Jacksonville, 904-256-1700
<http://www.dep.state.fl.us/northeast/>
-  Central District - Orlando, 407-897-4100
<http://www.dep.state.fl.us/central/>
-  Southwest District - Tampa, 813-632-7600
<http://www.dep.state.fl.us/southwest/>
-  South District - Ft. Myers, 239-344-5600

<http://www.dep.state.fl.us/south/>

📍 Southeast District - West Palm Beach, 561-681-6600

<http://www.dep.state.fl.us/southeast/>

For general information about other DEP programs, contact the Ombudsman's Office by phone at (850) 245 2118 or by email at public.services@dep.state.fl.us.

Prepared by the Environmental and Land Use Law Section, Committee on Access to Justice

The Environmental and Land Use Law Section (“ELULS”) is an organization within the Florida Bar. One of the ELULS’s major purposes is to promote increased knowledge and understanding of environmental and land use law. In response to the need for increased legal services to people who are unable to afford legal counsel, the ELULS has created a Committee on Access to Justice to encourage pro bono activities in the areas of environmental and land use law. Right now, the ELULS is sponsoring a variety of activities, including *Legal Assistance through Legal Services, Inc. and the Florida Pro Bono Coordinators Association, Public Workshops on Environmental and Land Use Law, and Educational Materials for Citizens.*

For more information, visit the Florida Bar at <http://www.flabar.org/>; or contact the Environmental and Land Use Law Section, 651 E. Jefferson Street, Tallahassee, FL 32399-2300, 904/561-5623, <http://www.eluls.org>.

UPDATED: July 11, 2013