



## Underground Oil Tank – Pollution Coverage

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There is a trend in the insurance industry to not write the homeowner coverage on homes containing an underground oil tank. In Virginia we have a fund established to assist homeowner with any possible spills/leaks. It is our attempt to educate agents and insurance companies as to the specifics of this fund which can be used to assist in the clean-up. Hopefully this will encourage insurance carriers to continue to write insurance on these homes. Currently in Virginia there are 362,000 active tanks and 200,000 inactive tanks. Underground oil tanks represent 26% of these tanks with 95% of these being residential.

Effective July 1, 1987, the Virginia General Assembly created Articles 9 & 10 of the Water Control Law (Sections 62.1-44.34:8-12) which gave the Department of Environmental Quality (DEQ) general supervision of Underground Storage Tanks (USTs), set financial responsibility requirements, and established the Virginia Underground Petroleum Storage Tank Fund (State Cleanup Fund).

All underground home heating oil tanks are exempt from the State and Federal Underground Storage Tank (UST) Technical Regulations. Aboveground home heating oil tanks less than or equal to 5,000 gallons capacity are also exempt from the DEQ's Pollution Prevention requirements. (Check local codes and ordinances to see if any may apply). Virginia state law requires the reporting of a fuel oil release regardless of whether the tank is exempt from state regulation. Failure to report leakage may result in denial from the Virginia Petroleum Underground Storage Tank Fund (VPSTF).

The Virginia Petroleum Underground Storage Tank Fund has been in place since 1992. It is a successful low-cost method of providing homeowners pollution coverage for heating oil leakages. As of January 2001, DEQ has processed 11,764 claims for a total of more than \$121 million. Funds are collected at the time of oil delivery. The rate is .006 cents per gallon. The pollution coverage is \$1,000,000 with a \$500 deductible. The fees collected are deposited in the Fund to be used in cleaning up spills from leaking aboveground and underground petroleum tanks. When the balance in the Fund is likely to or has fallen below \$3 million, the fee is increased to three-fifths of one cent per gallon, until the Fund reaches \$12 million, whereupon the fee reverts to one-fifth of one cent. The purpose of the fund is to provide reimbursement for eligible homeowners for cleanup costs in connection to petroleum storage tank release and for costs incurred for third party bodily injury and property damage. Compensation for bodily injury and property damage shall be paid in accordance with final court orders in cases which have been tried to final judgment in which no appeals are pending.

Liability for ownership of these tanks is governed by common law rules regarding items that transfer with the property during a real estate transaction. DEQ considers the responsible party to be the owner of the land on which the tank is located on the day that the leak is reported. When a person buys a property with a leaking tank on it, they become responsible for the clean-up and potential third party injury. Under the Virginia Residential Property Disclosure Act, the seller must disclose the existence of the tank unless the property is sold "as is". DEQ receives many requests from buyers asking that DEQ force the seller to remove a tank that is no longer being used. They are not able to honor these requests as there is no statutory requirement that these tanks be removed however the buyer can make it a stipulation of the contract before purchasing the property.

Releases from heating oil tanks must be reported immediately to DEQ. Once they have been reported DEQ provides the homeowner with written instructions concerning clean-up. This is determined on case by case basis and the property's proximity to drinking water, well, stream or lake is taken into consideration. If the surrounding homes are connected to county/city water a less extensive clean-up is the norm. Cleanup activities may include removal of contaminated soil and/or tank, soil testing, ground water testing, and the preparation of reports. DEQ has a list of environmental contractors on their website [www.deq.virginia.gov](http://www.deq.virginia.gov). Virginia does not regulate tank contractors. Contractors are required to get a license from the Dept. of Professions and Occupations/Board of Contractors. They file an application (which contains general information and bonding/insurance information). VPSTF does not impose any requirements on who the homeowner chooses to do installation.

The Virginia Petroleum Storage Tank Fund will reimburse an eligible homeowner for cleanup costs and potential third party liability. The homeowner is required to pay a Financial Responsibility (FR), which is similar to an insurance deductible. For heating oil and farm tanks the FR is \$500. There is usually an initial inspection and reporting fee in addition to the FR, but it usually does not exceed \$500. Therefore, 90% of the clean-up cases result in less than \$1,000 out-of-pocket expense (to the client) to perform the DEQ-required investigation and/or cleanup associated with a leaking residential or farm tank, regardless of the degree of contamination. The 10% of cases that result in out-of-pocket costs exceeding \$1,000 usually do so because of difficult access to the tank (e.g., the tank is under a deck or patio, etc.) resulting in additional, non-reimbursable costs.

It is important to know that the above estimated pricing is to perform DEQ-required environmental clean-up work only. Depending on the nature of the release and the risks, this may or may not include the removal of the tank. If a removal or filling the tank is not included in the DEQ-required work, the client may choose to have it done at his/her own expense. If so, the typical additional cost ranges from \$800-\$1,400. Pollard Environmental indicated that most of the residential and farm cases that they handle do not exceed \$15,000. There may also be some other costs that are not covered under the Virginia Petroleum Storage Tank Fund (VPSTF).

No reimbursements can be paid if the cleanup costs are covered under an insurance policy. Both in the property and liability section of the homeowner policy are exclusions for pollution events. VPSTF will also not reimburse the homeowner if the release is caused by their negligence. E.g include removing a fill pipe to an unused oil tank allowing the tank to fill with water which becomes contaminated and leaks out. Some of these incidents would also not be covered by the homeowner policy due to intentional acts of the insured or maintenance related exclusions under the policy.

Virginia homeowners do have a source to deal with both aboveground and underground oil tanks. This can be a useful tool for them to recoup some of the potential clean-up and third-party liability costs associated with these tanks. The following are some guidelines for homeowners in the care of these tanks.

### **Guidelines for a Homeowner:**

1. Look at your tank system. A monthly check is recommended as a preventive maintenance tool. Report sudden changes in product level or problems to a heating repair professional or your oil supplier.
2. Understand your tank system and how it works. You should know the tank size, age, construction material (of both tank and piping) and who to call if a repair is needed. Keep track of all deliveries.
3. If obvious signs of contamination are found (such as petroleum vapors, oil on property, etc.), immediately report petroleum releases or discharges to any Department of Environmental Quality (DEQ) Regional Offices.

### **Homeowner's Monthly Tank Checklist**

- \_\_\_ Check fuel use (an increase may indicate a tank or line leak). Watch deliveries to prevent spills/overfills. Keep track of your oil consumption (note any sudden, unexplained change).
- \_\_\_ Any signs of unexplained dead or withered vegetation in area?
- \_\_\_ Any signs of spills or overfills around the fill pipe or vent lines?
- \_\_\_ Any problems with the operation of the furnace?
- \_\_\_ Are there any petroleum vapors in basement/crawl space? (If vapors are present, call DEQ.)
- \_\_\_ Check sump pump or floor drain (if present), petroleum odors? signs of petroleum? Call DEQ immediately if oil or vapors are detected.
- \_\_\_ Look for any signs of oil (odors, sheen on water surfaces, visible puddles of oil, etc.) on property. If oil is found, notify DEQ immediately.

### **Homeowner's Annual Tank Checklist**

- \_\_\_ Check for water in the tank (record measurement, if taken).
- \_\_\_ Check oil/water separator (if present), newer models are metal, older are glass (which can shatter during freezing temperatures), drain if needed. If you are unsure, talk to your heating professional.
- \_\_\_ Is vent line clear?
- \_\_\_ Is fill gauge (if one is installed) functioning?
- \_\_\_ Is overflow whistle (if one is installed) functioning?
- \_\_\_ Check the fill cap (if damaged/missing, replace immediately, oil can overflow if too much water enters tank.)
- \_\_\_ If tank is aboveground, check the entire tank surface (rust, dents, etc.) for damage.
- \_\_\_ If tank is aboveground, check tank support (is it sturdy/solid?).
- \_\_\_ Check all pipeline connections and bungs (if visible).

My Heating Repair Professional (Name & Number): \_\_\_\_\_

My Oil Distributor (Name & Number): \_\_\_\_\_

Please Remember : Report petroleum odors, petroleum sheen on water surfaces, or suspected problems to DEQ. Do not attempt to repair a tank system yourself.

*It is the intent of this technical bulletin to be just guidelines and not legal advice. Each agency should review their own particular clients exposures and applicable coverage forms. The Independent Insurance Agents of Virginia does not accept any responsibility for the information provided, but offers such as acceptable guidelines. This information is not intended as legal advice, but is provided for general agency information. Facts, circumstances, and the application of particular laws will differ in individual circumstances.*

#### Resources:

American Environment Technology Inc. [http://www.aeti.us/residential\\_financing.html](http://www.aeti.us/residential_financing.html)

Association of State and Territorial Solid Waste Management Officials  
<http://www.astswmo.org/Publications/ascii/tanksresident.txt>

Central Virginia Soil Consulting Inc. [http://personal.cfw.com/~cvasci/Home\\_Heating\\_O.html](http://personal.cfw.com/~cvasci/Home_Heating_O.html)

Kendall, Mary-Ellen; "The Impact of Heating Oil Tanks on Residential Real Estate Transactions" Environmental Law Section, April 2001

Pollard Environmental [http://www.pollardenvironmental.com/cost\\_fin\\_res.htm](http://www.pollardenvironmental.com/cost_fin_res.htm)

Virginia Department of Environmental Quality <http://www.deq.virginia.gov>

Virginia Petroleum Underground Storage Tank Fund <http://vpstf.org/Links.cfm>

Virginia State Code 62.1-44.34:11-18