

# Underground Storage Tanks: Approach With Caution

by Matthew Tanzer and Kenneth Baldwin

Commercial underground storage tanks (USTs) have been regulated by federal and state environmental agencies for years. Now, due to great concern for leaking underground storage tanks, many local government agencies are beginning to develop ordinances that deal directly with small, residential tanks as well, which are generally exempt from federal and state regulations.

Local aquifer protection regulations, groundwater preservation zones, and other similar regulations may regulate tank installation, secondary containment, monitoring, soil testing, reporting, removal, disposal, and contractor licensing, among other issues. Local and/or state regulations may also require that the local fire marshal or engineer be notified and possibly present when a tank is removed.

As a contractor, you should know how to access this information and comply with government requirements before you do any work, such as excavation, that might involve a known or discovered UST.

## Potential Liabilities

In 1988, the federal government estimated that one in four USTs were leaking. With typical life expectancies of only 10 to 15 years for the older style steel tanks, it is anticipated that many more are on the verge of leaking. Leaks from the tank itself are not the only concern; piping and fill spouts are equally suspect.

The consequences of leaking tanks can be serious and very costly. Fuel oil, petroleum, or other chemicals stored in these tanks can contaminate soil, groundwater, air, and public and private drinking water supplies. Poisonous and explosive vapors from leaking tanks have been known to accumulate in nearby septic systems, storm sewers, sanitary sewers, and basements.

The cost of remediating soils and groundwater affected by a leaking underground tank can range from \$50,000 to \$100,000. In extreme cases, costs can exceed \$500,000 or even \$1,000,000, depending upon the amount of material released, the subsurface geologic conditions, the age of the release, the proximity of public or private wells, and the speed and/or effectiveness of initial remediation efforts.

Obviously, with such high stakes, the small contractor wants to avoid being entangled in this web of environmental conflict and potential liability. This article outlines some helpful tips on how to avoid USTs altogether and what to do if one can't be avoided.

## Dig Above Grade First

Your best source of information on potential problems with USTs is the homeowner. Make it your policy to ask before you dig:

- Is there a UST buried on the property? If so, where?
- Is the tank in use?
- What is or was stored in the tank, and how much is in it now?
- How large is the tank?
- What is the tank's proximity to other underground structures such as septic tanks, leach fields, storm drains, or water lines?
- What is the fuel source for the home heating system?
- What were the previous uses of the site (e.g., farming, gas station, multi-family residence)?

Don't be surprised if the homeowner doesn't know the answers to most of these questions. Former owners may have left undisclosed buried tanks behind. Your inquiry must therefore go beyond the homeowner. Inspect the site. Look for physical signs of a tank, such as:

- Fill spouts in lawn areas.
- Bulges in the ground.

Empty tanks have a natural buoyancy and may begin to rise toward the surface.

- Piping (fuel lines) coming through the basement wall.

You should also check with the local fire marshal, building officials, health departments, and fuel oil companies to see if they have any records of a tank and its location. Research the history of the property. Its past uses and placement of previous structures may give you some strong hints as to what to look for. Farming operations are infamous for their use of USTs.

Most importantly, don't assume

that simply because the home currently uses natural gas, or some other non-oil fuel source, that no UST exists. During the oil embargo of the 1970s, many households switched from oil to natural gas, leaving old USTs in the ground.

Don't take anything for granted. Asking simple questions and doing a little homework will save you time and money in the long run.

## Protect Yourself With Your Contract

One way to limit your liability for UST problems is through your standard construction contract with the homeowner. With the

removal, or disposal of any tank discovered. Even though most, if not all, federal and state regulations place ultimate liability on the "owner or operator" of the tank, such contract language could protect you from the homeowner claiming you were negligent.

## Don't Attempt Casual Removals

If you encounter an underground tank, don't remove it yourself. Stop the job, evaluate the situation, and seek competent advice from professional consultants or attorneys. In some states, discovery of an underground tank may trigger immediate legal obligations, such as reporting

requirements; these may or may not apply to the contractor. A failure to comply with such requirements could subject you to civil or criminal penalties.

A safe strategy to follow is to not attempt a tank removal unless you are fully qualified and have experience with the complex regulations that will come into play.

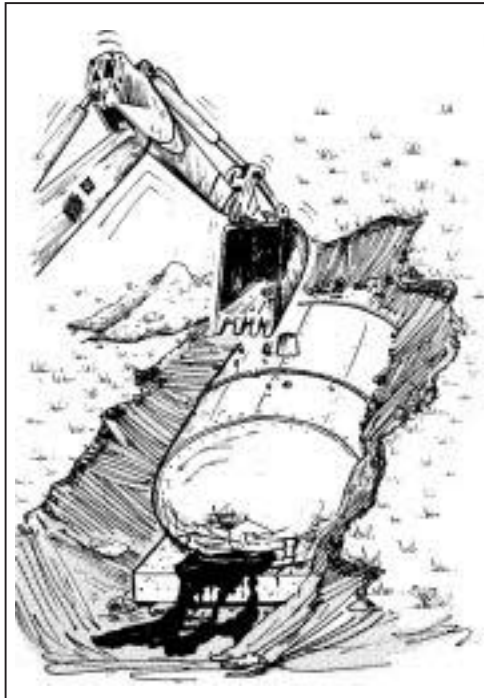
The unsupervised backhoe removal is universally frowned upon by environmental professionals and could lead you into trouble with either the regulatory authorities or the homeowner. Many states and localities have established guidelines for tank removals; such guidelines might not only subject you to regulatory enforcement, but could also be grounds for the

homeowner to claim you were negligent.

## Conclusion

Don't act before you know the facts or in an attempt to move a job along. UST regulations are relatively new and constantly changing. Avoid being a party to an improper removal and/or attempted cover-up. Your business and reputation may depend on it. ■

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help of your attorney, you should consider including protective language that will release you and your company from liability associated with an unknown leaking tank or a tank accidentally damaged during construction. The contract language should be specific to each situation; it should mention homeowner interviews and known tanks and unknown or unknowable conditions.

The contract should clearly indicate that the homeowner accepts full responsibility for any and all conditions associated with an underground tank, and that the contractor shall not be responsible for the location, inspection,