

UTAH TANK NEWS

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Using Environmental Covenants to Facilitate LUST Site Closure

by John Menatti

Many states are using Environmental Covenants (ECs) or similar instruments to enable closure (i.e., no further action at this time under the current property use) of LUST sites with residual soil and groundwater contamination remaining in the subsurface. The primary purposes of ECs are:

1. To document the presence of subsurface contamination (contaminant type and location) underlying a property so that prospective purchasers/developers can estimate the costs of dealing with the contamination during property redevelopment.
2. To notify workers that will be excavating or drilling in the contaminated area so they can safely deal with the contaminated soil and/or groundwater.

In order for ECs to work, the information they provide must be readily available to the public.

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In 2006, the Utah legislature passed the Uniform Environmental Covenants Act. The Utah Division of Environmental Response and Remediation (DERR) has used ECs to manage sites that have been "closed" (issued a "No Further Action at this time under the current property use" letter) with contaminated soil and groundwater remaining in the subsurface. Since 2008, the DERR has issued closure letters on 19 LUST sites using ECs. ECs for these sites can be viewed on our website:

<http://www.deq.utah.gov/ProgramsServices/programs/tanks/ust/releases/remediation.htm>

In order to qualify for an "EC closure," the environmental consultant must perform a risk assessment and show that there are no adverse risks to human health or the environment (under the current property use) from the subsurface contamination at the site. The next step is for the environmental consultant to prepare a draft EC for the DERR to review. The draft EC must be written using the instructions and template that can be found on our website. The EC must include site maps and data tables documenting the locations, depths, and types of contamination left under the property. The EC must also include activity and land use limitations.

As part of its EC process for LUST sites, the DERR sends the site location (coordinates) to Blue Stakes of Utah (the "811 dig alert" service) where the site goes into the Blue Stakes system. When a party proposes to drill or dig in Utah, Blue Stakes must be notified. Blue Stakes then notifies the DERR that a company intends to drill or dig in the vicinity of the EC-closed LUST site. The DERR sends an email to the excavating company that provides information on the location, depth, and type of contamination in the area of the proposed subsurface work. Following the DERR's approval of the EC, the property owner must record the EC on the property deed. When proof of recordation is submitted to the DERR, the DERR will issue a "No Further Action" letter.

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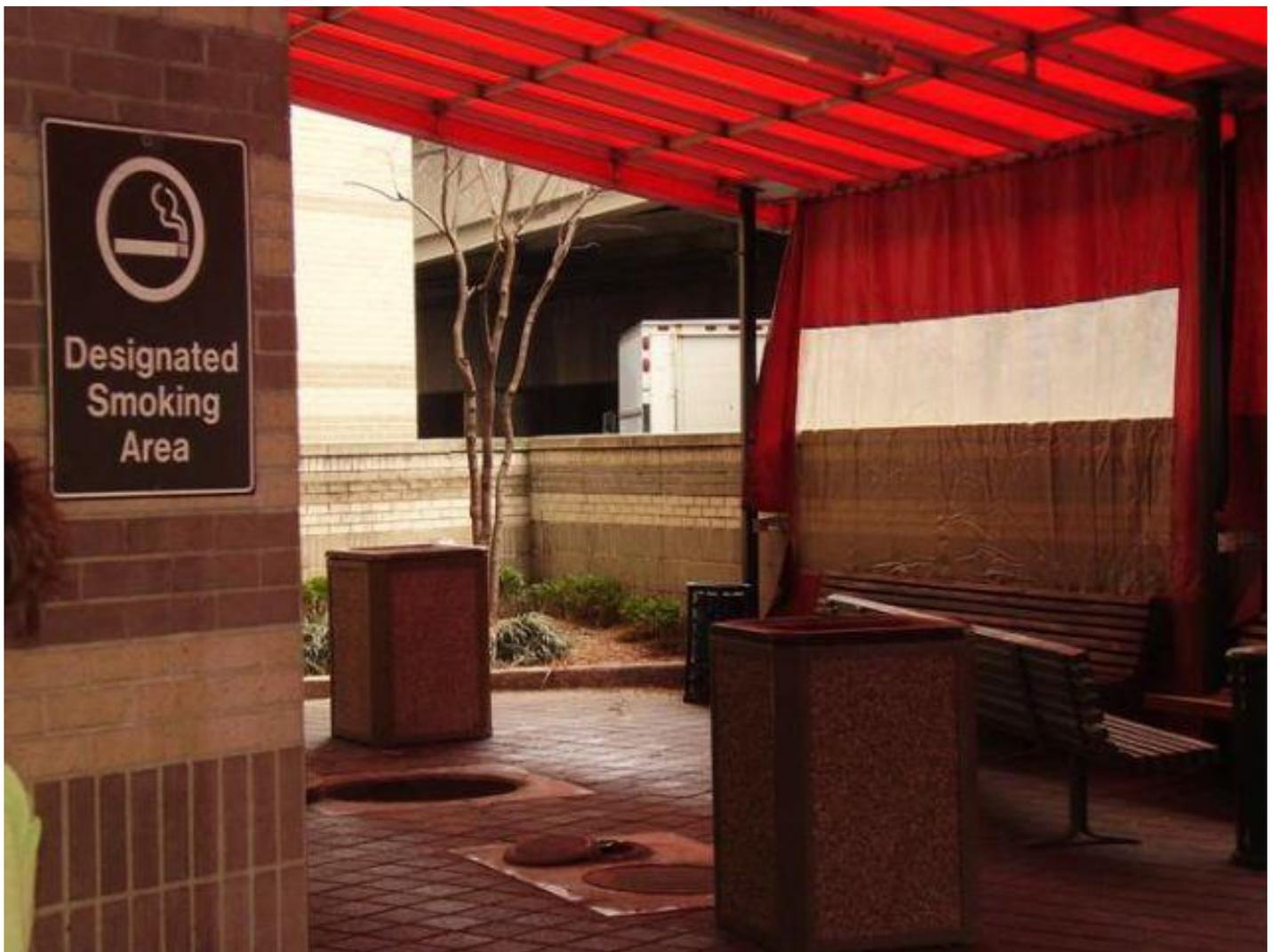
Realtors and prospective purchasers can find properties with ECs on the DERR's Interactive Map (<http://enviro.deq.utah.gov/>). More information on termination and enforcement of ECs in Utah can be found in the Utah Code, Real Estate – Uniform Environmental Covenants Act (Title 57, Chapter 25, Sections 101-114, last revised 2008).

For more information on ECs, see *State Approaches to Managing Institutional Controls and Ensuring Long-Term Protectiveness at Leaking Underground Storage Tank (LUST) Sites*, May 2015, ASTSWMO LUST Task Force. In addition, the ITRC IC Team is preparing a document titled: *Long-Term Contaminant Management Using Institutional Controls* that will be published in 2017.

What's Wrong With This Picture?

by Kim Viehweg

Find the answer to what's wrong with this picture on page 5.



Tank Warranties

by Sean Warner

My underground storage tanks are thirty years old and the warranty has expired, what now? Most people have some experience with warranties with our cars or appliances. If you get lucky it breaks down before the warranty runs out, if you are a month late be prepared to pay. Like these other products, tank systems will eventually outlive their useful life. As pointed out in LUSTLine Bulletin 81 (www.neiwpcc.org/lustline/lustline_pdf/lustline_current.pdf), the difference is when UST systems fail there is the potential to cause significant environmental damage.

In October 2015 the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) Tanks Subcommittee released a report titled "An Analysis of UST System Infrastructure" (astswmo.org/files/policies/Tanks/2015-10-ASTSWMOAgingTanks%20Report-Final.pdf) in select states. The purpose of the report was to analyze whether the aging UST infrastructure poses a higher risk for leaks, which could increase risk for state tank funds and private insurers. Due to data deficiencies there is no comprehensive answer available.

What we do know is insurance underwriters use tank age and material of construction as factors in determining risk. This is reflected in the premiums charged and, for some companies, whether a policy will get renewed at all. We also know that there is no comprehensive data from the tank community like state funds, insurers, tank manufactures that can be used in trying to convince an actuary that older tanks and their systems are "safe." That being said just because the tank's warranty has run out does not mean the tank has to be replaced and the consensus seems to be that arbitrary age limits are a bad idea.

An important factor in deciding whether to replace a tank is the fuels to which they have been exposed. One example cited in the ASTSWMO report is Xerxes tanks manufactured prior to February 1981 which were not designed for the storage of ethanol blended fuel. Xerxes tanks manufactured from February 1981 through June of 2005 are designed for the storage of ethanol fuel up to a 10% blend. For Owens Corning single walled fiberglass tanks they were never designed or warranted to store fuel with more than a 10% ethanol blend. If these tanks are going to see 15% or greater alcohol, they should be considered for replacement. In Utah, we have seen at least two older cathodically protected steel tanks fail as ethanol was introduced into the fuel system.

Tank age may be an indicator of the integrity of the rest of the tank system; other components are more often the cause of most leaks at UST sites (piping and dispensers). However, the risk related to a tank failure is increased because of the severity of the release. A small hole can grow and empty a tank in a short amount of time, leading to an expensive clean up. If groundwater is impacted, the costs can escalate quickly and lead to an open LUST site that can take years to close. The two steel tanks referenced earlier each cost more than the \$1,000,000 of PST Fund tank coverage to clean up.

In the ASTSWMO report, there is some industry feedback that is worth repeating here. "It has been demonstrated in numerous industries that preventive maintenance programs lead to great cost

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savings and more predictable operations. There is nothing worse for a business than an unplanned six-week outage, a large bill for new equipment, and a large cleanup bill. State tank funds have distorted the economics by making owners believe their cleanup costs are limited to the deductible.

The UST rules and regulations are designed to lessen the risk of releases at UST sites. Some states have chosen mandates that require tanks to be removed when the warranty runs out. California has required that all single walled tanks be removed by December 31, 2025 and some other states are taking similar actions. States that only rely on insurance for Financial Assurance can expect some companies to stop insuring older tanks. Once these tanks become uninsurable or too expensive to insure owners are required to replace the tanks or just close them.

In Utah, the approach has been to encourage removal of older tanks with the use of incentives. Utah has taken a risk based approach and owners of double walled systems can receive a rebate of up to 40 percent of the surcharge they have paid into the PST fund. The other incentive for owners to upgrade is the opportunity to get a zero percent interest loan that can be used to close old tanks and install a replacement tank system.

Upgrading old systems not only protects the environment, but will help ensure continued viability of the PST Fund. The underground storage tank community in Utah has made great strides in replacing these older tank systems but more remains to be done to reduce the risk of major tank failures. If you have questions about replacing tanks, accessing the loan fund, or lowering your risk to get a rebate, contact a member of the UST Section at (801) 536-4100.

New Rule Changes

DERR recently completed the process to change UST rules. The changes were largely in response to changes in the Federal UST Regulations. The new rules go into effect January 1, 2017. Highlights of changes to the rules include:

- Secondary containment and interstitial monitoring requirements for all new tanks, piping, and dispensers.
- Testing and inspection requirements for spill prevention equipment, overfill prevention devices, and containment sumps used for interstitial monitoring (by October 13, 2018 and periodically thereafter).
- Annual testing/inspection of electronic and mechanical release detection components.
- Leak detection is required for emergency generator tanks by October 13, 2018.
- Changes to monthly operator inspections.

Here's the answer to What's Wrong With This Picture: (from page 3): A smoking lounge should *never* be located on top of a tank pad of a UST system. This is a fire hazard and NOT a good idea.

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Certification Corner

TESTS for A/B Operators, GW/Soil Samplers, ETC

Testing will be conducted each month on the first Tuesday at 9:00 a.m. and the third Tuesday at 2:00 p.m. at the DEQ/DERR office located at 195 North 1950 West, Salt Lake City. All students must register with the DERR at least one week prior to taking the exam. Please contact Michelle Horning at mhorning@utah.gov to register.

CERTIFIED UST CONSULTANT ~ Initial Exam and Renewal Course Schedule

The renewal course will begin promptly at 9 a.m. and finish at 1:00 p.m. The next two dates for this exam are Thursday, February 16, 2017 and Thursday, June 15, 2017. If you have any questions, please contact Michelle Horning at mhorning@utah.gov.

GOOD NEWS!! You can now submit initial UST certification and operator applications, documentations, and payments online here: <https://secure.utah.gov/storagetank>