The environmental insurance marketplace has never seen more capacity and competition than now, yet changes are on the horizon for the underwriting and risk transfer mechanisms associated with Underground Storage Tanks (USTs).

Just a year ago, there were nearly 20 qualified insurance companies aggressively writing these tanks. At renewal, coverage terms could be broadened, deductibles reduced, and premiums held flat—a more impressive feat than on other lines of insurance due to the fact that the chance a tank will leak grows exponentially each year as tanks age.

Today, we see the market at the brink of change, especially when dealing with small portfolios with tanks more than 25 years old. Over the last few months, the industry has seen deductibles and premiums rise, with carriers looking to collateralize retentions and some insurance companies nonrenewing their books of business. The writing of Financial Assurance for USTs is becoming more and more cumbersome.

Owners and operators of newer tanks can still expect competitive renewals with affordable premiums and low deductibles. However, for older tank systems, deductibles can quickly grow more than $50,000 per claim and, in extreme cases, closer to $1,000,000 per claim, requiring insureds to fully collateralize the deductible with an approved letter of credit.
**What is Financial Assurance and Who Needs It?**

The federal government, through the enforcement of the Environmental Protection Agency (EPA), requires owners or operators of USTs to evidence financial responsibility as outlined in the Code of Federal Regulations 40 CFR Part 280-282, 302. With some exceptions, USTs holding petroleum are subject to these financial responsibility requirements. Financial responsibility can be achieved through any one of the following mechanisms (see 40 CFR Part 280 Subpart H for more detail):

- State financial assurance funds. If a state fund program is available and solvent, a formal review of its financials, fee schedules, reimbursement procedures, and claims-handling process should take place. A complete list of states offering funds can be found at this website: [http://www.epa.gov/oust/states/fndstatus.htm](http://www.epa.gov/oust/states/fndstatus.htm).
- Insurance coverage through a private insurer.
- A guarantee for the coverage amount from another firm with whom you have a substantial business relationship. The provider of the guarantee has to pass one of the financial tests outlined in the Code of Federal Regulations, 40 CFR Part 280.
- A surety bond.
- A letter of credit. These letters of credit are becoming increasingly popular as a mechanism of last resort for tanks well past their useful life.
- Self-insurance. If an owner/operator has a strong balance sheet, it can prove financial responsibility by passing one of two financial tests as outlined in 40 CFR Part 280.95.
- A trust fund. An owner or operator can set up a fully funded trust fund administered by a third party to demonstrate financial responsibility.
- Other state methods. Less commonly used options may be approved by your state for compliance with financial responsibility.

**What is Changing and Why?**

While state funds have historically been a successful and reliable mechanism to rely on, more and more of state-managed funds are entering financial trouble. Many of these funds have simply run out of money and cannot keep up with the growing UST claims. When a state fund closes down, tank owners and operators can be left with unpaid invoices, sometimes amounting well into the tens of thousands. On top of these issues, state funds are based on a reimbursement principle (meaning tank owners and operators must first front the cost for claims and wait for the state to later reimburse them) and are often further limited to strict fee schedules that reduce the total reimbursement to a fraction of the total costs incurred.

As state funds close and old UST systems age, more and more insureds will be finding themselves with unexpected insurance premiums and growing deductibles or, worst-case scenario, uninsurable tanks.

Over the last decade, the private insurance marketplace has seen a number of carriers aggressively underwrite tank systems only to later pull out of the market a few years later due to growing losses. While a few have remained over the years, a number of markets struggle to write these risks profitably. It should be noted that a number of markets still aggressively target newer tanks, but the market shift towards those tanks 25 years and older is drastically changing.

Insurance companies are taking a more careful underwriting approach for those tanks more than 25 years old and trying to find a way to write them profitably.

Some of the more conservative insurance companies are reducing coverage and placing tank removal exclusion endorsements on policies, thus handcuffing insureds to their aging tanks.
These endorsements exclude claims discovered during tank replacements leaving owners/operators on the hook when there is the highest chance of discovering a leaking tank system.

Which tanks are impacted and why are these changes occurring:

- The USTs most impacted are those 25 years and older, especially single-walled steel with cathodic protection (or similar construction). The industry views the average useful life span of tanks between 26 and 30 years. Depending on soil conditions, this useful life may be shorter or longer, but it is known that as the tank ages, the likelihood the system is leaking grows exponentially.

- Many components of the UST system have a shorter lifespan than the physical tank itself. Most notably, the spill bucket is often the weak link in these systems and needs to be replaced more regularly.

- The changing nature of the fuels held in USTs affects their overall useful life and the corresponding system components greater than 20 years old were designed to hold a different composition of fuel than what is being delivered today. Some tanks are degrading faster with these new blends (i.e., increasing ethanol percentage).

- Some states have put increased pressure on those insurance companies who issue Financial Assurance, requiring policies to broaden terms and conditions and pay for claims that would ordinarily be excluded.

- Additionally, as the sensitivity of testing equipment is improved and cleanups are held to higher standards, both frequency and severity of UST claims are on the rise.

Looking to the Future

From traditional risk transfer of an insurance policy to the posting of letters of credits or surety bonds, it is crucial to look at options early and be prepared for the changes to come. While a complete UST replacement is expensive and cumbersome, at some point it becomes unavoidable. These costs, and when they should be incurred, will need to be weighed against growing insurance premiums and retentions. Ultimately, Lockton can work to develop a product that supports your business model and promotes continued success of your operations.

References

http://www.epa.gov/oust/pubs/frustman.pdf

Regulations Pertaining To Underground Storage Tanks—
http://www.epa.gov/oust/fedlaws/cfr.htm


A more comprehensive review and overall guide to tank insurance is subject to a further conversation. Interested parties should refer to "Dollars and Sense—Financial Responsibility Requirements for Underground Storage Tanks" issued by the EPA or "Guide to Tank Insurance" written by the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) for more detailed information.
Our Mission

To be the worldwide value and service leader in insurance brokerage, employee benefits, and risk management

Our Goal

To be the best place to do business and to work