

# Storage Tank Trust Fund Eligibility: Pennsylvania Supreme Court Addresses Registration/Fee Issue



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The Supreme Court of Pennsylvania (“Court”) addressed in an April 19th Opinion an issue involving the Pennsylvania Storage Tank and Spill Prevention Act. See *Dr. Timothy and Debra Shrom v. Pennsylvania Underground Storage Tank Indemnification Board*, No. 21 MAP 2022.

The question considered was whether certain costs were eligible for payment from the Underground Storage Tank Indemnification Fund (“Fund”) that the property owners incurred in remediating contamination caused by fuel releases from their underground storage tanks (“UST”).

A number of states have trust or indemnification funds which provide reimbursement for remediation and/or third-party claims related to petroleum releases from USTs. Almost all such state funds precondition reimbursement on meeting certain eligibility requirements. The failure to meet one of these eligibility requirements can result in denial of payment or reimbursement from the state fund.

A typical eligibility requirement is the registration of the USTs with the state or indemnification trust fund and payment of certain fees. The issue in the *Shrom* decision was the timing of the USTs registration and payment of fees.

The Court in its April 19th Opinion addressed whether Dr. Timothy Shrom and Debra Shrom (collectively “Property Owners”) were ineligible for payment because the USTs were not registered with the Pennsylvania Department of Environmental Protection (“DEP”) as required by Section 503 of the Storage Tank and Spill Prevention Act (“Act”), and the registration fees were not paid at the time of the fuel releases that gave rise to the property owners’ claim for remediation costs.

Section 703(3) of the Act provides:

“In order to receive a payment from the ... Fund, a claimant shall meet the following eligibility requirements: ... (3) The tank has been registered in accordance with the requirements of Section 503.”

In order to be registered in accordance with the requirements of Section 503:

“Every owner of a UST ... shall register with DEP each UST by completing and submitting the form provided by DEP and by paying the registration fee prescribed by DEP for each UST within three months of the effective date of this Act.”

The property owners appealed the Board’s decision to deny payment. They argued that the Act did not require Section 503 registration fees to be paid prior to the discovery of a release.

The Commonwealth Court of Pennsylvania reversed the Board's decision. It held that the property owners were eligible to receive payment from the Fund for remediation costs.

The Board appealed to the Supreme Court of Pennsylvania.

The Court agreed that there is no language within the Act that requires UST registration be completed or the Section 503 registration fees be paid at the time that the release giving rise to the claim is discovered for a claimant to be eligible to receive payment from the Fund for remediation costs.

The Court interpreted Section 706(3) to require that, in order for a claimant to be eligible to receive payment from the Fund for remediation costs, the subject UST's must be registered, and the Section 503 registration fees have to be paid at any time prior to the Fund's eligibility determination.

The Court also found that to the extent that the Fund wishes to impose an eligibility requirement relative to the timing of UST registration and the payment of registration fees in the future, the Board must adopt a regulation to that effect in accordance with the applicable laws.

A copy of the Opinion can be downloaded [here](#).