

# Aboveground Storage Tanks: An Arkansas Petroleum Storage Tank Trust Fund Reminder



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The Arkansas Petroleum Storage Tank Trust Fund (“Trust Fund”) is a state statutory mechanism that has been used by both underground and aboveground storage tank owners and operators for over 30 years to address petroleum leaks and spills (i.e., releases).

Arkansas is one of the few states that allows petroleum aboveground storage tanks (“ASTs”) in addition to underground storage tanks (“USTs”) to access the Trust Fund.

The Arkansas Trust Fund’s coverage of ASTs can sometimes cause confusion regarding eligibility requirements. Because the Trust Fund can provide significant financial coverage for petroleum releases, it is important for AST owners and operators to clearly understand the statutory and regulatory requirements for coverage. This is especially true in view of some changes the Arkansas General Assembly made affecting ASTs in 2017.

USTs and ASTs are key components of many Arkansas facilities. They are used individually or collectively to store hundreds of thousands of gallons of various motor fuels and other petroleum products. However, governmental regulation of USTs and ASTs greatly differs.

In the mid-1980’s the United States Congress concluded that a significant percentage of the UST population had or would suffer leaks or spills (i.e., releases). The Congressional response was a statutory requirement that the United States Environmental Protection Agency (“EPA”) promulgate regulations requiring that USTs meet various registration, installation, design, leak detection, recordkeeping, and closure requirements.

In addition, EPA promulgated regulations requiring that UST owners and operators meet certain financial assurance requirements. The purpose of the regulations is to ensure funds will be available for corrective action for petroleum releases and compensation for third-party property damage and bodily injury claims. The UST owner or operator was required to provide some type of financial instrument, guarantee, financial worth test, or access to a state trust fund to provide the required financial assurance of \$1,000,000 for corrective action and \$1,000,000 for third-party claims.

Most states (including Arkansas) decided to play a role in the regulation of USTs after the promulgation of the federal regulations. Arkansas developed the legislation necessary for the State to assume the primary UST regulatory role. Equally important, the Arkansas General Assembly established the Arkansas Trust Fund as a mechanism to enable UST owners and operators who meet certain eligibility requirements to meet their financial assurance requirements.

A release from a facility's eligible tank or tanks is eligible for \$1.5 million (less the \$7,500 deductible) in corrective action reimbursement and \$1 million (less the \$7,500 deductible) for third-party claim reimbursement for compensatory damages. However, the USTs must be registered with the Arkansas Department of Energy & Environment – Division of Environmental Quality (“DEQ”), certain fees paid, and comply with reporting requirements. The failure to do so jeopardizes Trust Fund reimbursement in the event of a release.

Unlike most states, the Arkansas General Assembly decided to provide that certain petroleum ASTs were eligible to participate in the Trust Fund. ASTs differ from USTs in that they are not, for the most part, regulated in Arkansas in terms of design, leak detection, etc. However, DEQ does have the authority to require remediation of releases. Further, local fire codes address certain aspects of the placement and operation of ASTs.

Nevertheless, the primary regulatory control over ASTs is found at the federal level. Facilities with ASTs holding oils of any kind may be subject to U.S. EPA Spill Prevention, Control and Countermeasure Regulations (“SPCC”).

The SPCC regulation does not specifically use the term AST. Instead, it includes ASTs under the term “bulk storage container.” Such container is defined as any container used to store oil.

The Arkansas General Assembly originally mandated that certain ASTs be registered and fees paid. If so, they were automatically eligible for Trust Fund reimbursement. Eligible ASTs were those that store between 1,320 and 40,000 gallons of a refined petroleum product.

In 2017 the Arkansas General Assembly eliminated the registration and fee requirements for petroleum ASTs. However, Act 584 also provided that petroleum ASTs still had the ability to access the Trust Fund if such tank owners or operators opted to meet the registration/fee requirements. In other words, registration and payment of fees by AST owners or operators was made optional. Nevertheless, one would assume that many AST owners and operators would be highly motivated to register and pay the fees since the Trust Fund provides significant corrective action and third-party claim coverage for an arguably minimal price.

This is an important point. I have learned of at least two instances in which AST owners or operators were correctly told by a petroleum or equipment supplier that, unlike USTs, they are not required to register their ASTs. While correct, it may not have been impressed upon them that failing to do so forfeits potential Trust Fund coverage in the event of a petroleum release.