

Guidance for Understanding Petroleum Storage Tank Bankruptcy: Association of State and Territorial Solid Waste Management Officials January 2017 Report



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The Association of State and Territorial Solid Waste Management Officials (“ASTSWMO”) issued a January 2017 report titled

Guidance for Understanding Petroleum Storage Tank Bankruptcy (“Guidance”)

The Guidance was prepared by the ASTSWMO Tank Subcommittee’s State Fund (Financial Responsibility Task Force) with assistance from the United States Environmental Protection Agency Office of Underground Storage Tanks.

Petroleum underground storage tank (“UST”) owners or operators are required by the federal Resource Conservation and Recovery Act Subtitle I regulations to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by releases associated with USTs. Despite this mandate, a varying percentage of UST owners and/or operators suffering UST releases are either unable or unwilling to undertake required investigation/remediation.

It is not uncommon for either the United States Environmental Protection Agency (“EPA”) or a RCRA Subtitle I delegated state (such as Arkansas) to be forced to seek reimbursement of costs they have expended to address petroleum UST releases. As a result, agencies are sometimes forced to seek reimbursement through an administrative or judicial action.

UST owners or operators facing such an action sometimes file bankruptcy at some point during the proceeding. The intersection of the federal and/or state UST statutory authorities and the federal bankruptcy code can raise complex issues.

The Guidance addresses issues such as:

- Bankruptcy/types of bankruptcy
- When to file a proof of claim in a storage tank bankruptcy case
- Potential for recovery
- Impact on department resources
- Fairness to other liable parties

- Other considerations
- Abandonment of contaminated property
- Whether there are unencumbered assets in the bankruptcy estate that could be used to fund response actions
- Nature of environmental threats
- Need for access to conduct future cleanup activities
- Impact of automatic stay (i.e., bankruptcy) on administrative and judicial proceedings
- Regulatory compliance enforcement actions
- Information gathering
- Liens
- Approach to storage tank bankruptcy procedure and financial assurance
- Discharge

The Guidance also contains recommendations for how an agency should respond to a bankruptcy proceeding involving a person or entity that it oversees in relation to such a matter.

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