



Missouri Petroleum Storage Tank Liability to Shift From Tank Owners and Operators to Property Owners

June 7, 2017

Beginning January 1, 2018, Missouri's Underground and Aboveground Petroleum Storage Tanks laws will shift environmental liability from the "owner or operator of one or more petroleum storage **tanks**" to the "current legal owner of the **site**" where aboveground or underground storage tanks were taken out of use by December 31, 1997. Specifically:

After December 31, 2017, the current legal owner of the [tank] site shall be the responsible party for corrective action...of any releases from [aboveground or underground] storage tanks.... Nothing in this subdivision shall in any way be construed to alter, alleviate, or modify in any manner any liabilities that the [Missouri Petroleum Storage Tank Insurance Fund] has to pay for in cleaning up the site.

Sections 319.131.9(3) (underground tanks) and 319.131.10(2) (aboveground tanks), RSMo.

This shift in liability was added to Missouri's statutes in 2008 in an apparent effort to give historic petroleum tank owners and operators a time limit on how long they could be held liable for past operations. Therefore, Missouri law provides that after December 31, 2017, the current legal property owner will become the responsible party for cleanup of any remaining petroleum pollution from aboveground or underground storage tanks taken out of use before December 31, 1997.

This shift in liability is a part of the Missouri Underground Facility Safety and Damage Prevent Act and the Petroleum Storage Tank Insurance Fund (PSTIF) laws. Under those laws, and assuming the tank remediation is performed as required, Missouri's PSTIF will reimburse the cost of such clean ups to a cap of \$1 million per incident and \$2 million annual aggregate after a \$10,000 deductible is paid. Missouri's PSTIF will not pay for tank removal costs, or for clean ups that are not performed in accordance with Missouri regulations.

This 2018 liability shift may have little or no direct impact on the tank sites where the landowner is already doing the cleanup. According to PSTIF, the liability shift provision may also have little impact on sites where a third party is doing the cleanup (presuming that the third party continues the cleanup and the \$10,000 deductible has been met).



The major impact of this liability shift will fall on the owners of the estimated 90 to 100 tank sites known to the Missouri Department of Nature Resources (MDNR) where no cleanup is currently happening. For those sites, the MDNR may now have a new liable party (i.e., the property owner) to pursue for remedial activity.

Beginning in July 2017, the Missouri PSTIF office is scheduled to send individual letters to approximately 300 tank and site owners explaining this shift in liability from tank owners and operators to site owners.

Even though newly liable site owners may be limited to the \$10,000 deductible for PSTIF reimbursable costs, we anticipate some site owners may decide to challenge this shift in liability as an improper retrospective application of liability.

We have assisted many site and tank owners in Missouri and other states regarding reimbursement from and compliance with PSTIF laws. To the extent you have any questions regarding this alert, or whether you may be affected by this shift in tank liability, please contact your Lathrop Gage attorney or one of the attorneys listed above.