**REMOMING UNDERGROUND STORAGE TANKS**

**Local Government Unit Responsibilities**

RR-627 September 2013

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**Background**

The Agriculture, Trade and Consumer Protection (DATCP) has the responsibility in Wisconsin to implement the federal and state regulations pertaining to the installation and removal of underground storage tanks (USTs). In instances where local governments acquire a property, they are required to comply with state and federal law regarding the removal of underground tanks.

Some local government units expressed confusion about their responsibility to remove USTs at properties that they have acquired through tax delinquency, condemnation, blight elimination, slum clearance and other such “involuntary means.”

In 1994, the Wisconsin State Legislature created an exemption under the Spill Law, s. 292.11, Wis. Stats., that allows certain local government units to acquire property through tax foreclosure, eminent domain and other means specified in s. 292.11(9)(e), Stats., and not be subject to the legal requirements to investigate and cleanup the property.

Many local governments mistakenly thought that the Spill Law exemption relieved them of the responsibility to properly remove the USTs. This is not the case. The LGU should be prepared to assume the responsibility for properly removing any USTs on one of their existing properties or any property that they intend to acquire, if regulations or code require such removal actions.

**Guidance**

The following are some steps LGUs should consider before acquiring a property with known or suspected UST(s) in order to coordinate necessary budget expenses, removal time frames and possible extensions for removal of the USTs.

**Be proactive!** Before acquiring the property, find out if the property has one or more registered or unregistered tanks. To do this, contact the Local Program Operator.
(LPO) designated by DATCP. The LPO can look through the tank registry for you. A list of LPO’s and their jurisdictions can be found on DATCP’s web site at dsps.wi.gov/php/er-lpolists/lpo_agency_list.php. You may also contact DATCP directly by phone and staff will check the tank registry. Staff contacts can be found at dsps.wi.gov/er/ER-BST-StaffStateMap.html.

Finally, you may check the tank registry yourself using DATCP’s web site at dsps.wi.gov/ER/ER-EN-tanks-info.html. To determine if you have unregistered tanks on the property, you may want to hire an environmental consultant to conduct a Phase I Environmental Assessment of the property.

To find out more on how to hire a consultant, please see DNR publication RR-502, “Selecting an Environmental Consultant.”

Plan! If you have one or more tanks on your property in need of removal, make sure you budget funds to cover the cost of tank removal. In addition, develop a written plan with a timetable for tank removal and send it to the LPO as soon as possible. If the LPO receives a plan up front, a formal non-compliance order to remove the tank may not be issued. If an order to remove is issued, you may still be able to receive an extension if you have a plan for removal.

The plan should address the following:

- length of extension requested along with justification (budget constraints, formal bid process, etc.); note any seasonal constraints; extensions can be granted if the tank removal cannot take place due to environmental conditions which make excavation difficult;
- provisions to remove any existing product (gasoline, oil, etc.) from the tank and clean the tank;
- action the LGU is taking to restrict access to, or secure the property in order to minimize costs or damages that may result from unauthorized persons entering the property; and
- whether a Phase I is completed and available or any LGU action toward having a Phase I environmental assessment conducted; this shows a good faith effort to assess contamination and additional time extensions may be approved before removal has to take place.

Local Government Exemption to Cleanup
For more information about the LGU liability exemption please see the DNR Fact Sheet RR-579, “State and Federal Liability Protections for Local Government Units.”