

# MISSISSIPPI GROUNDWATER PROTECTION TRUST FUND

On May 18, 1988, the Mississippi Underground Storage Tank Act of 1988 created the Mississippi Groundwater Protection Trust Fund (Trust Fund). Whenever it is determined that a release of motor fuel from an active underground storage tank (UST) system poses a threat to the environment, public health, safety, or welfare, the Trust Fund is to provide moneys to pay for:

1. Investigation and assessment of contaminated sites;
2. Restoration or replacement of drinking water supplies; and,
3. Cleanup of contaminated sites.

Payments from the Trust Fund may also be paid to any third party who makes a third party claim against a qualified UST owner and who obtains a final judgment in this action. The following series of questions and answers was designed to give you a better understanding of the Trust Fund.

## **Q. What is the Mississippi Groundwater Protection Trust Fund?**

- A. The Trust Fund comes from a fee on the motor fuels dispensed within the state of Mississippi and is collected by the State Tax Commission. The moneys collected are deposited into an account that is administered by the Mississippi Department of Environmental Quality (DEQ).

## **Q. What is the purpose of the Trust Fund?**

- A. Federal and state laws require that all owners of USTs be able to prove that they have at least \$1,000,000 of financial responsibility to pay third party damages and to clean up leaks. The Trust Fund is a mechanism for eligible owners to use to prove that they meet the financial requirements without having to buy insurance.

## **Q. What will this Trust Fund pay for?**

- A. Monies from the Trust Fund can **generally** be used to evaluate and clean up environmental problems associated with a motor fuel release from a UST system. Each tank owner must receive prior written approval from the Office of Pollution Control (OPC), UST Division before incurring any expenses in which the tank owner expects Trust Fund reimbursement. Each individual site must be evaluated by the UST staff for costs eligible for reimbursement to the UST owner. However, expenditures **generally** reimbursable to the UST owner are:

1. All digging, removal, disposal, and replacement of contaminated soil and pavement. However, the Department may reimburse only a portion of the cost for replacement of worn, damaged concrete/asphalt.
2. Recovery of released or leaked motor fuels.
3. Cleanup of contaminated water, surface or underground.
4. Installation and operation of recovery wells.
5. Construction of interceptor trenches.
6. Third party damages ordered by a court of law.

**Q. What will the Trust Fund not pay for?**

- A. The regulations more clearly spell out what the Trust Fund will not pay for. Basically, the Trust Fund will not be used to pay for such things as:
1. Repair of a leaking UST or the purchase or installation of a new UST.
  2. Removal of UST(s).
  3. Repair or replacement of damaged or leaking flow lines.
  4. Breaking and replacement of concrete for repairs.
  5. Loss of revenue during shutdown of the business during cleanup.
  6. Loss of spilled fuel.
  7. Any costs necessary to confirm that a release has actually occurred, including precision tank testing.
  8. Temporary fuel storage tanks, if needed, to keep business open.
  9. Loss of trees, shrubs, signs, etc., on the owner's property.
  10. Costs determined by DEQ to be excessive and not comparable to common industry averages.
  11. Legal fees.

**Q. Will the Trust Fund pay all of the allowable costs for cleanups?**

- A. Yes. Up to \$1,500,000 may be reimbursed.

**Q. What must I do if I think that I may have a release?**

- A. You must, at your own expense, confirm that you have actually had a release into the environment. If you see the fuel flowing out of a road bank or hill next to your UST(s), and your inventory shows that some of your fuel cannot be accounted for, then you have a confirmed re-lease. It probably will not be that easy. As circumstances dictate, you may have to get someone to perform a precision tank tightness test on your USTs and lines. You may even have to get someone to drill some holes around your USTs and find fuel before you can actually say that you have a confirmed leak.

**Q. When I have confirmed that I have a release into the environment, what must I do?**

- A. You must immediately stop the release, which may be as simple as shutting down the customer's pump connected to a leaking line. You should call your distributor to come pick up the fuel in the leaking UST or transfer the fuel in the leaking UST to another storage tank. If you have spilled gas into a sump or on a surface of the ground, you should clean up the site so that you will not have a fire. Your local fire department should help you eliminate the fire hazard if one exists.

Then you must call the UST Section of DEQ at (601) 961-5171 within 24 hours and tell us that you have confirmed a release into the environment. We will then tell you to write us a letter within 10 days telling us what you did to confirm a leak and prevent further contamination. We will not wait to get your letter before we begin to advise you as to what action you should take. However, the law requires you to send us the letter. If there is an immediate threat, we will give you the names of cleanup contractors on our approved list. Perhaps you already have someone in mind that you would like to do your cleanup. If he is on our approved list, you can use him. Otherwise, you can call any contractor on our approved list, and find out from him when he can come to your facility. Then let us know when he will be there, or tell him to call us and tell us when we can meet him at your site. We must approve any work before it begins for that work to be Trust Fund eligible.

**Q. If there is an assessment needed instead of immediate action, who do I call?**

A. We will provide you with a list of professional engineers/professional geologists registered in Mississippi who have performed such assessments under this program.

**Q. Who will the contractor be working for, the state of Mississippi or me?**

A. The contractor will be working for you, but we need to be involved in deciding what work will be done. Most of the costs you incur will be paid out of the Trust Fund. Therefore, we must give prior approval for all work.

**Q. What will the contractor be doing?**

A. He will be dealing with the immediate problem, which is to clean up as much of the leaked fuel as possible, and to clean up the contaminated soil under and around the leak. The contractor may not be able to clean up all of the contamination caused by the leak. However, he will at least clean up enough so that you can install a new UST without anyone having to come back later and dig up the same area again. We will try to see that you are only shut down once and only have to dig up concrete once.

**Q. Should this same contractor replace my leaking lines or install my new UST?**

A. You can get someone else if you would like. Remember this work is not reimbursable. You must, however, use a contractor that is certified by DEQ to install, repair and/or permanently close a UST system.

**Q. Should I contact my insurance agent?**

A. Yes. Contact your insurance agent since he may have coverage to help you pay for your part of the expenses.

**Q. To whom does the contractor send the bill?**

A. The contractor is working for the UST owner and will send his invoice to the UST owner. The UST owner then reviews the invoice for correctness and forwards it to DEQ with a certification affidavit provided by DEQ.

**Q. What happens if the Trust Fund becomes insolvent, and there is no money in the Trust Fund?**

A. All of those owners of USTs who are required to demonstrate financial responsibility will have 60 days to obtain insurance, letters of credit, or some other approved means of demonstrating that they have \$1,000,000 available to pay third party damages or to use to clean up leaks. In addition, any costs incurred for cleaning up leaks will be out of the owner's pocket, should the Trust Fund become insolvent.

**Q. I am an owner who has confirmed a leak from my UST(s), and I have been told by DEQ to hire a contractor. Why can't DEQ deal with my contractor directly? Why do I even have to be involved?**

A. As the owner of the UST, you are legally responsible for confirming the leak, stopping the leak, making the necessary repairs, and for cleaning up the environment. You should have frequent contact and oversight of any contractor working for you to clean up your fuel leak, whether this agency is involved or not.

**Q. If I store chemicals, fertilizers, butane, propane, or substances other than motor fuels in by UST, am I covered under the Trust Fund?**

A. No. None of the costs for dealing with a leak of something other than motor fuels (or aviation fuel) will be paid out the Trust Fund. However, you still have to stop the leak and clean up the spill.

**Q. How do I know if I can be helped by the Trust Fund?**

A. If you store motor fuels at an active site, have registered your USTs with us, and have made a good faith effort to comply with the laws and regulations concerning USTs, you are in substantial compliance and are eligible for the Trust Fund.

**Q. What if I am sued by my neighbor or someone else because they believe that I should pay them money for damages that my UST or line leak caused?**

A. That person would have to sue you and DEQ together. If the court decides that your leak did cause the damage and that the party suing you and us deserves some damages, the Trust Fund would pay those damages up to \$1,000,000, but no more.

**Q. What is an "approved response action contractor"? Why can't I use anyone that I want?**

A. An approved response action contractor is a contractor that has proved to us that he meets the minimum requirements and standards for doing this type of work. We encourage each tank owner to enter into a written contract with their selected contractor to protect their interest.

**Q. Who decides what work needs to be done at my leak site?**

A. You, your contractor, and a representative of DEQ will decide together. We will require work that is necessary to protect the environment and the public.

**Q. If I have a big contamination problem, will the contractor stay until it is all cleaned up?**

A. No. If the problem is severe, such as a lot of off-site contamination, you have to stabilize the situation, come back later with an engineer to assess the magnitude of the problems, and even return later to do additional cleanup. All of this should be paid by the Trust Fund, if costs are fair and reasonable.

**Q. As an owner, what paper work will I have to provide after writing the letter to DEQ confirming my release?**

A. Within 10 days after you have confirmed your release, you must write us and tell us what you did to stop the release, and what progress you have made to clean up the release. Your contractor should be happy to help you do this.

**Q. To be in compliance with the law, I plan to permanently close my UST rather than add leak detection and upgrade my UST system. I know that there is contamination present. Will the Trust Fund pay for permanently closing my UST?**

A. No. The Trust Fund will only reimburse you for those additional expenses that you incur because of there being a release from an active UST (site). The Trust Fund does not pay for the expenses of complying with the routine regulatory requirements, such as permanently closing USTs that are not used anymore.

**Q. If there is no money in the Trust Fund when I have a release, can I wait until there is some money before I do the work?**

A. No. You must obey the law and deal with the release, whether or not there is any money in the Trust Fund at the time. We will try to see that you can get some financial help if at all possible, but you cannot be guaranteed that the Trust Fund will pay any of the costs if there is no money in the Trust Fund.

**Q. If I get a load of fuel in and the company or distributor that brings the fuel lets my UST run over, who is responsible for dealing with that spill?**

A. Since it is your facility and UST system, you are responsible for dealing with the spill. However, your distributor should pay for the costs of cleaning up the spill, since he is insured for the actions of his employees.

**Q. If there is a real emergency, like a very large release, a fire hazard, or something so bad that it needs to be dealt with within minutes, will the Trust Fund pay for that?**

A. Yes. In the event of a true emergency you will select a contractor to respond immediately from an approved list that we will provide. You will not have to pay for any of the cleanup as long as you meet the eligibility requirements at the time, and all costs are allowable, fair, and reasonable.

**Q. Does the Trust Fund cover my financial requirements as specified in the federal UST regulations?**

A. Yes. If you are in substantial compliance and meet all other eligibility requirements, you have all of the required financial responsibility coverage.

**Q. I got a bill from the Department of Environmental Quality wanting me to pay a fee to the Department for every UST that I have that is currently in use. If I pay the fee, can I be assured of coverage by the Trust Fund?**

A. The law provides that we may obtain funds for administering this program by collecting a fee from each owner for each active UST that he has. This fee may increase or decrease next year, depending on funds necessary to run the program. The annual fee must be promptly paid in order for the owner to be eligible to access the Trust Fund, but there are other eligibility requirements that must also be met.

**Q. What is an "active site"?**

A. The law defines an "active site" as "a site of an underground storage tank where an owner can be identified and where the tank is in use for management and handling of motor fuels." We consider any tank or tanks that met this definition on or after May 18, 1988, as meeting the "active site" requirements.