



# DIVISION OF STATE FIRE MARSHAL

## BUREAU OF UNDERGROUND STORAGE TANK REGULATIONS

### FACT SHEET

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## SO YOU WANT TO BUY AN OLD GAS STATION

It is common knowledge that corner lots at busy intersections are considered to be desirable commercial properties and investments. These corner lots have historically been the preferred location of petroleum sales and vehicle service businesses, which utilize petroleum underground storage tanks (USTs). However, the operation of petroleum UST systems often results in the contamination of soil and ground water via system leakage, overfills, and poor business practices. Regardless of whether a flower shop or a gas station currently exists at a site, the potential for contamination from a current or former UST system always exists and should be thoroughly investigated.

The Bureau of UST Regulations (BUSTR) receives numerous telephone inquiries each day from entrepreneurs and investors with interest in purchasing these properties. Many are unaware of the potential liabilities concerning these sites and purchase them with little investigation as to historical site usage. Purchases (including sheriff sales and auctions) of such properties without environmental evaluation may result in severe financial hardship from liability for the cleanup of petroleum UST contamination, and/or the inability to sell the property in the future. **As these situations typically involve numerous intricate issues, BUSTR strongly recommends that potential buyers of current and former UST sites seek the advice of an attorney (e.g., environmental, real estate, etc.) and a professional consultant (e.g., environmental, engineering, etc.), prior to their purchase. Please note that this Fact Sheet is not intended as a final determiner of liability, but only as a guide to understanding these issues. It is not to be used as a substitute for, or in lieu of, legal advice.**

This document has been prepared to inform potential buyers (and sellers) of current and former UST sites of the basic legal issues that should be considered, and the potential liabilities that may result from these property transactions. It is divided into two main areas of discussion: property (and UST) ownership and liability; and, due diligence and environmental site assessments.

### PROPERTY (AND UST) OWNERSHIP AND LIABILITY

#### BASIC RESEARCH

Basic research concerning the desired property should be performed to determine if any significant issues exist. By identifying these issues early on, unnecessary expenditures of time and money may be avoided. Suggestions for basic research are:

- The current property owner should be questioned as to knowledge they may have regarding historical ownership and usage of the site. Information concerning the past or present existence of an UST system (and/or any contamination) should be obtained.

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- Evidence of past or present UST system operation should be investigated through a site visit. Items such as pump islands, vent lines, and system piping are obvious signs of an UST system. Items such as surface staining, slumped or gravel-covered areas within a paved area, and dead or stressed vegetation are more subtle signs.
- County tax and/or recorder offices should be visited to perform a search of historical property ownership. The search should focus on whether any petroleum companies previously owned or leased the property. In addition, it may be worthwhile to review available historical aerial photographs of the site.
- OEPA, ODOT, and local health and fire departments may have files concerning historical environmental site issues, including information on UST removals and closures. BUSTR may also have data available on key dates, information on the facility, registered UST systems, upgrade (UST system) status, and whether any releases have been reported. Information concerning registration, permitting, removal, and reporting requirements will also be provided. Many of these details may be accessed at the BUSTR website at [www.com.state.oh.us/sfm/bustr](http://www.com.state.oh.us/sfm/bustr). **Even if BUSTR records do not indicate any registered UST systems on the property, the possibility still exists that a pre-BUSTR UST system (the tank is/was not registered with BUSTR) or a non-BUSTR regulated UST system (e.g., farm tank (less than 1,100 gallons), heating oil tank (for consumptive use on the premises), hydraulic oil tank, oil water separator, etc.) exists or existed on the property.**
- It is important to determine (early on in the process) the minimum requirements for due diligence (see pages 3 and 4) that your lending/financial institution maintains in regard to the purchase of commercial property.

#### STILL INTERESTED?

If after completing basic research an UST system is or has been located on the desired property, and interest in purchasing the property continues, then potential liability regarding the property should be investigated. **It is important to note that additional liability beyond the scope of BUSTR regulations (e.g., asbestos, PCBs, lead, etc.) may be present and should also be evaluated by contacting the appropriate government agency.**

Liability for UST system removals and cleanups is based in part on a series of key dates and the language contained in prior property transactions recorded in county recorder offices.

#### Key dates for consideration include:

January 1, 1974: If an UST was last used on or before January 1, 1974, then BUSTR registration (and fees) are not required. However, if an UST was taken out of service after January 1, 1974, in a manner inconsistent with the Ohio Fire Code or 1301:7-9 (whichever was in effect at the time), then registration (and fees) are owed by the appropriate owner. However, registration fees are only due from 1989 forward, excluding 1990.

On or After November 8, 1984: An “owner” is the person who owns the UST system, or the property on which it is located, if it was in use on November 8, 1984, or brought into use after that date. If the UST was used by anyone on or after November 8, 1984 and a release has not been reported, then the property owner may be the “owner” or “operator” and subsequently liable should a release be reported after their purchase.

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Before November 8, 1984: An “owner” is the person who owned the UST system, or the property on which it was/is located, immediately before the discontinuation of its use if the UST system was in use before November 8, 1984, but no longer in use on that date.

It is also important to note that an “operator” is the person in daily control of, or having responsibility for the daily operation of, the UST system. The “operator” may also be held liable, but BUSTR typically focuses its efforts on “owners”.

On or Before December 22, 1988: If an UST system was permanently closed prior to December 22, 1988, the “owner” is not required to perform a closure assessment, unless directed to do so by the State Fire Marshal. BUSTR does not define the term “permanently closed”. However, 40 CFR (Code of Federal Regulations) 280.71(b) defines the term as removing all liquids and accumulated sludges and filling the UST with an inert solid material.

Additionally, per the Ohio Fire Code (OAC 1301:7-7-34), if a regulated UST is out of service for a period of one year, the property owner must remove the UST and restore the site in an approved manner unless the appropriate fire code official allows abandonment in place. A permit is required for all removals and abandonments. They must be performed by a certified installer under the supervision of a certified inspector. A closure assessment may be required if the property owner is also an “owner” pursuant to ORC 3737.87. See also OAC 1301:7-9-12(B).

**Only an “owner” or “operator” is legally responsible for closure assessment and cleanup (corrective actions). However, if after purchase you wish to sell the property, you may find yourself performing these activities (to satisfy a lender), even though you do not fit the definition of an “owner” or “operator”.**

Numerous informational Fact Sheets (e.g., *UST Registration*, *Selecting An Environmental Consultant*, *Financial Responsibility Guidelines*, etc.) are also available at the BUSTR website. Additionally, the Petroleum UST Release Compensation Board ([www.petroboard.com](http://www.petroboard.com)), which administers the Ohio Financial Aid Fund (i.e., leaky tank fund) should be contacted (as appropriate) to determine the site’s status with the Board.

#### **DUE DILIGENCE AND ENVIRONMENTAL SITE ASSESSMENTS**

**Many lending/financial institutions will not grant loan approval for commercial property transactions until all environmental concerns identified during the performance of due diligence have been satisfactorily addressed.** *Due Diligence* is defined by the American Society of Testing and Materials (ASTM) as the process of inquiring into the environmental characteristics of a parcel of real estate, usually in connection with a commercial real estate transaction. Due diligence is typically accomplished through the performance of an *environmental site assessment* (ESA). An ESA is the process by which a person seeks to determine if any *recognized environmental conditions* (REC) exist at a particular property. The term REC refers to conditions indicating an existing release, a past release, or a threat of a release of hazardous substances or petroleum products into site structures on the property, or into the ground, ground water, or surface water of the property.

ASTM ([www.astm.org](http://www.astm.org)) has developed the *Standard Practice for Environmental Site Assessments: Phase 1 Environmental Site Assessments (Practice E1527-05)* and the *Standard Practice for Limited Environmental Due Diligence: Transaction Screen Process (Practice E1528-06)* for the purpose of defining good commercial and customary practices for conducting an ESA. However, some lending institutions develop their own ESA requirements.

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The performance of an ESA typically involves a thorough investigation and evaluation of all site environmental characteristics, including the abbreviated list of examples shown below:

- Government (USEPA, OEPA, BUSTR, ODNR) environmental agency records/files
- Government (state (ODH), county, city, township) health and fire department records/files
- Government (local) tax/planning/building/zoning/water/sewer division records/files
- Utility company records and maps
- Property title and deed search results (from tax records and historical street/phone directories)
- Map review (geology, topography, water, soil, tax, wetland, fire, flood, etc.)
- Structure evaluation (storage, HVAC, stains, asbestos containing materials, lead paint, PCBs)
- Site walkover (storage/disposal, dumping, stains, dead/stressed vegetation, wells, ponds)
- Interviews (local officials, historical owners, persons with good knowledge of site/area)

Typically, costs associated with the performance of a Phase 1 ESA may range between \$1,000 and \$3,000, depending on the level of detail required, and take approximately 3 to 6 weeks to complete. However, if a REC is identified during a Phase 1 ESA, a Phase 2 ESA may be necessary. A Phase 2 ESA may involve the sampling (and laboratory analyses) of soil and/or ground water in specific areas (based on the Phase 1 ESA), and/or some type of remedial (corrective) action.

For additional information, the Ohio Environmental Protection Agency, Ohio Department of Natural Resources, and Ohio Department of Health maintain websites at [www.epa.state.oh.us](http://www.epa.state.oh.us), [www.dnr.state.oh.us](http://www.dnr.state.oh.us), and [www.odh.state.oh.us](http://www.odh.state.oh.us), respectively.