

GAO

Testimony

For Release On  
Delivery  
Expected at  
1:00 p.m EST  
Wednesday  
November 18,  
1987

Availability of Insurance for  
Petroleum Underground Storage Tanks

Summary Statement of  
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134451



Before the Subcommittee on Energy and Agriculture  
Of the House Committee on Small Business

040622-134451

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss our draft report dealing with the availability of insurance for petroleum underground storage tanks. Section 205 of the Superfund Amendments and Reauthorization Act (SARA) of 1986 mandated that we make this study. The act directed that we determine whether liability insurance is generally available and to what extent other financial assurance methods might be used to demonstrate financial responsibility. The draft report is currently being reviewed by the Environmental Protection Agency (EPA) so that we may consider its comments before we issue our final report to the Congress.

#### RESULTS IN BRIEF

Insurance will be one of the primary methods sought by tank owners for demonstrating financial responsibility. However, the availability of tank insurance is currently limited because many insurers remain unwilling to enter this market. They perceive tank leaks and the magnitude of potential losses resulting from leaks to be unpredictable. While self-insurance and methods other than insurance may be used to demonstrate financial responsibility for the many tanks accounted for by large corporations and by some other tank owners, most owners do not have the resources to qualify for these methods. In addition, many of these other methods have not been traditionally used to cover tank leaks.

EPA and others expect that over the next several years, the risks associated with tanks will be minimized and the insurance situation will improve once tank owners make technical safety improvements, such as installing leak detection devices or replacing tanks with ones less likely to corrode. Until such changes occur, however, the possibility exists that thousands of tank owners would be unable to comply with financial responsibility requirements proposed by EPA. These circumstances, in our view,

warrant changes in EPA's timetables for implementing proposed regulations covering financial responsibility requirements and technical standards dealing with tank safety.

## BACKGROUND

There are about 1.4 million petroleum underground storage tanks at nearly 500,000 facilities.<sup>1</sup> EPA estimates that hundreds of thousands of these tanks at facilities such as gas stations, utility companies, or car dealerships have corroded and are leaking. Leaking tanks can contaminate groundwater and cause fires or explosions, seriously threatening health and the environment. To protect against such risks, in the Hazardous and Solid Waste Amendments of 1984 and later in SARA, the Congress required EPA to develop regulations to prevent, detect, and correct tank leaks.

SARA further directed EPA to issue regulations containing a \$1 million minimum financial responsibility requirement for many tank owners and operators who sell petroleum products. Noncompliance could subject tank owners to fines up to \$25,000 a day. However, SARA also allows EPA to temporarily suspend enforcement of financial responsibility requirements if insurance and other financial assurance methods are generally unavailable and progress is being made toward meeting financial responsibility. Additionally, SARA states that in developing regulations, EPA may consider the impact of any rules on small businesses.

In April 1987, EPA published two sets of proposed regulations. The first, to be implemented upon final issuance, requires all petroleum tank owners and operators to maintain evidence of financial responsibility of \$1 million to \$6 million, depending on

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<sup>1</sup>The law exempts certain tanks, such as farm and residential tanks holding less than 1,100 gallons or those used to store a home's heating fuel.

the number of tanks they own.<sup>2</sup> The second set of rules, the technical safety requirements, proposes a 3-to 5-year period for installing leak detection devices and a 10-year period for upgrading or replacing tanks already in the ground, which generally are not protected against corrosion. EPA estimated that both sets of regulations will be issued in final form in mid-1988. EPA plans to rely on states to enforce the regulations. However, it will be several years before most states will be ready to begin to undertake this responsibility.

In performing our study, we generally relied on information obtained during interviews with a broad cross section of the affected regulated community. For example, our review included discussions with past and present insurers, selected tank owners, providers of other financial assurance methods, environmental groups, and a variety of associations representing thousands of tank owners and operators, such as bus companies, car dealers, refiners, and gas station owners. We also discussed these issues with EPA's headquarters staff within the Office of Underground Storage Tanks. In addition, we reviewed EPA's proposed tank regulations, various EPA and private-sector studies, and other relevant reports and documents.

#### AVAILABILITY OF TANK INSURANCE

We identified two sources that provided virtually all the tank coverage sold in the United States over the last 3 years--The Planning Corporation<sup>3</sup> and Federated Mutual Insurance Company.

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<sup>2</sup>For example, owners of 1 to 12 tanks would need \$1 million in coverage, while owners of more than 340 tanks would need \$6 million.

<sup>3</sup>The Planning Corporation is a brokerage firm that had an exclusive agreement with the International Surplus Lines Insurance Company to provide pollution liability insurance to petroleum marketers.

These two firms provided insurance to about 100,000 tanks each, or about 15 percent of all U.S. tanks. Tank age, state cleanup requirements, number and locations of tanks, and inventory and other tank management practices were the key factors that firms considered when deciding whether to insure tanks. The two firms primarily provide insurance for tanks owned by bulk sellers of petroleum products, known as jobbers.

In January 1987, both firms offered maximum policy limits of \$2 million. By July 1987, The Planning Corporation, which had sold tank insurance since 1982, withdrew from this market, leaving Federated as the only substantial provider of tank insurance at the present time. The Planning Corporation is continuing to assist some tank owners in pooling their risks and obtaining insurance through a risk-retention group.

In addition, over the last several years, at least six companies have withdrawn or became inactive in this insurance market. Although several new or existing firms have indicated they intend to enter this market, for the most part they are many months away from actually offering insurance policies. At least two firms began selling tank insurance or expanded their tank insurance programs during 1987. The number of policies sold by them has been quite small, the policies are available only in limited geographic areas, and they have limits which may be less than EPA's proposed regulatory requirements.

EXPERIENCE OF GAS STATION  
OWNERS AND JOBBERS IN  
OBTAINING INSURANCE

To obtain the views of tank owners, we contacted eight firms located in Connecticut, Florida, Maine, Massachusetts, Vermont, and

Wisconsin. Firms were referred to us by state environmental officials and various trade associations. Because they were not randomly selected and because we spoke with only eight firms, their views may not be representative of all gas station owners'.

The firms selected were considered small, medium, and large, owning 1 to 750 tanks. All of them have been in business over a decade and have annual revenues ranging from \$1.5 million to \$150 million. Two of the firms are currently without tank insurance. The remaining six have coverage, but their policies will expire by June 1988. All eight firms are concerned about how they will be able to demonstrate financial responsibility at the levels proposed by EPA, particularly now that there is only one major supplier of tank insurance whose limits are substantially lower than many of the levels proposed by EPA.

The firms told us that it has been extremely difficult for them to obtain adequate pollution liability insurance for tanks. One firm told us, for example, that it had contacted 44 insurance companies and was unable to find any coverage. Other firms said their insurance brokers had to contact as many as 20 insurance companies before they were able to obtain insurance.

The firms also said that, when available, tank insurance has become increasingly more expensive. One small firm told us that between 1986 and 1987, premiums tripled from \$3,000 to \$10,000, while coverages were reduced from \$4 million to \$2 million by the same insurer. In another example, a firm's premiums increased from \$10,000 in 1985 to \$73,000 in 1987, although coverage declined significantly.

USE OF OTHER FINANCIAL  
ASSURANCE METHODS

Aside from insurance, EPA allows eight other methods for demonstrating financial responsibility. These methods are (1) financial test of self-insurance; (2) risk-retention groups; (3) state trust funds and other state assurances; (4) state-required mechanisms; (5) letters of credit; (6) surety bonds; (7) indemnity contracts; and (8) guarantees. Major oil companies (which own approximately 175,000 tanks), as well as other large corporations, such as national bus companies or car rental agencies (which own a sizable but unknown number of tanks), have resources sufficient to qualify as self-insurers. However, for most of the remaining tank owners, these methods generally are not appealing or applicable because they are more expensive than insurance, do not transfer the risk as insurance does, or require assets to be pledged beyond the resources of the average tank owner. In addition, some of these methods have not traditionally been used to cover liabilities resulting from tank leaks (surety bonds and letters of credit), or are still in the developmental phase and are not yet operational (risk-retention groups or state trust funds).

While they could not speak for all tank owners, the eight firms we interviewed did not consider these methods of demonstrating financial responsibility as viable options for them. They told us that they either did not have the financial resources to qualify for other methods or could not afford to have resources tied up. They believed that the lack of insurance would drive some marginally profitable gas stations out of business and strengthen the dominance of the major oil corporations.

PROPOSED OPTIONS FOR  
DEALING WITH THE PROBLEM

As previously stated, the availability of tank insurance has declined significantly in the past few years. Many tank owners and operators--especially small businesses--are unable to obtain insurance for tank releases; nor, they report, can they obtain alternatives to insurance. If insurance or other alternatives do not become more available, thousands of owners and operators, particularly in the retail motor fuel sector, may be unable to satisfy EPA's proposed financial responsibility requirements. Moreover, if the regulations are enforced, the possibility exists that many firms without insurance or other protection could be forced out of business. To address this problem, our draft report examines and analyzes the advantages and disadvantages of a number of options. While all have some merit, we believe that one option would more effectively balance the congressional objectives of protecting the public health and the environment and ensuring that responsible parties pay for pollution cleanups, while, at the same time, considering the economic impact on small businesses.

The option entails a two-pronged approach of accelerating the implementation of the technical safety standards and phasing in the implementation of the financial responsibility regulations. Concerning the safety standards, the technology already exists to upgrade tanks and detect leaks. Therefore, the time spans now proposed by EPA seem too long. Concerning the financial responsibility regulations, we believe they should be implemented over a timetable that provides incentives for technical improvements and the development of state regulatory and enforcement programs. In addition to addressing public safety issues, this option also allows additional time for insurers to reevaluate the uncertainties that have discouraged them from offering insurance and tank owners time to pursue some of the other financial responsibility methods.

Our work also suggests that, concurrent with the two-pronged approach, EPA may want to reevaluate the proposed \$1 to \$6 million minimum aggregate level and the self-insurance requirements. In this regard, many tank owners have already begun to upgrade or replace their tanks and install leak detection devices to minimize the risk of leaks. EPA did not consider these improvements in establishing the aggregate levels. Because tank improvements lower risks, and therefore potential cleanup and other costs, perhaps making aggregate reductions contingent on tank improvements would be an incentive for tank owners and operators to be more safety conscious and promptly install more protective tanks.

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Mr. Chairman, this concludes my statement. I would be pleased to respond to any questions you or other members might have.