

## ***Tips for Homeowners – What to do if you Find an Underground Fuel Oil Tank in Your Backyard***

By [Jacquelyn Stevens](#), Partner and Certified Environmental Law Specialist, [Matthew Gardner](#), Senior Associate, [Nicole Petersen](#), Associate and Victoria Chai, Student-at-Law.

© Willms & Shier Environmental Lawyers LLP.

May 3, 2017

Fuel oil leaks from underground storage tanks (“USTs”) into the soil and groundwater can result in environmental damage and significant costs to homeowners. Property owners should be proactive in addressing a UST upon discovery to minimize liability for potential damage arising from a UST.

Prior to the 1970s, fuel oil stored in USTs was a common method of heating homes and businesses in Ontario. In the 1970s, many property owners switched to natural gas as a heating source.<sup>1</sup> Frequently, USTs were left in the ground, unbeknownst to subsequent property owners.

Property owners in Ontario are responsible for any USTs on their properties, whether the owner installed the UST or not. This responsibility may extend to investigating impacts arising from leaks or spills of fuel oil, as well as remediating resulting impacts to soil and groundwater.

Property owners should be aware of the significant consequences that may arise from a leaking UST, including

- ◆ reduced property value
- ◆ the Technical Standards and Safety Authority (“TSSA”) may require delineation and/or clean up of environmental impacts to soil and groundwater
- ◆ regulatory action from the Ministry of the Environment and Climate Change (“MOECC”) where contamination migrates off-site, including prosecutions and Orders, and
- ◆ lawsuits from neighbours if fuel oil migrates to neighbours’ lands.

### **So You Found A Tank. Now What?**

If you discover a UST, you need to be diligent, take action and assemble your environmental team.

Consider retaining an environmental lawyer before taking any steps.

An experienced environmental lawyer will be able to assist you to retain, under legal privilege, a reputable environmental consultant to investigate and make recommendations about the UST and possible impacts to the subsurface.<sup>2</sup>

<sup>1</sup> “Evolution of Canada’s Oil and Gas Industry”, online  
<<http://www.energybc.ca/cache/oil/www.centreforenergy.com/shopping/uploads/122.pdf>>

The environmental lawyer will also assist you to understand your legal obligations. There are various regulatory requirements that apply to both USTs and aboveground storage tanks, including the CSA-B139 Series-15 Installation Code for Oil-Burning Equipment, 2015, the TSSA's Fuel Oil Code Adoption Document Amendment FS-219-16 dated April 4, 2016, and O Reg 213/01: Fuel Oil.<sup>3</sup>

Depending on the size of the UST, the regulatory requirements for small or large installations may be applicable. Age may also be an important consideration.

In the event that fuel oil from a UST has impacted your property or properties beyond, the environmental lawyer can assist you in determining next steps and explaining the legal risks and liabilities that you may face (including civil lawsuits and/or regulatory action by the TSSA, MOECC or others).

With the right environmental team, you can successfully navigate and mitigate the risks and liabilities associated with USTs.

[Jacquelyn Stevens](#) is a partner at Willms & Shier Environmental Lawyers LLP in Toronto and is certified as a Specialist in Environmental Law by The Law Society of Upper Canada. She can be reached at 416-862-4828 or by e-mail at [jstevens@willmsshier.com](mailto:jstevens@willmsshier.com).

[Matthew Gardner](#) is a senior associate at Willms & Shier Environmental Lawyers LLP. He can be reached at 416-862-4825 or at [mgardner@willmsshier.com](mailto:mgardner@willmsshier.com).

[Nicole Petersen](#) is an associate lawyer at Willms & Shier Environmental Lawyers LLP in Toronto. Nicole may be reached at 416-642-4872 or by e-mail at [npetersen@willmsshier.com](mailto:npetersen@willmsshier.com).

*The information and comments herein are for the general information of the reader only and do not constitute legal advice or opinion. The reader should seek specific legal advice for particular applications of the law to specific situations.*

Document #: 1197152

---

<sup>2</sup> The environmental consultant must be a Qualified Person, and only a licensed tank contractor may remove a UST. See Environmental Management Protocol for Fuel Handling Sites in Ontario TSSA EMP-2012, August 2012, s 4, and O Reg. 213/01: Fuel Oil, s 4.

<sup>3</sup> O Reg. 213/01: Fuel Oil under the *Technical Standards and Safety Act*, 2000, S.O. 2000, c. 16.