



# INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We Protect Hoosiers and Our Environment.*

100 N. Senate Avenue • Indianapolis, IN 46204

(800) 451-6027 • (317) 232-8603 • [www.idem.IN.gov](http://www.idem.IN.gov)

**Michael R. Pence**  
Governor

**Thomas W. Easterly**  
Commissioner

June 30, 2014

UST Owners and Operators,  
Environmental Consultants and Contractors  
And Other Interested Parties

To Whom It May Concern:

Re: ELTF Claims & UST Notification Forms

Starting January 1, 2015, the ELTF Claims Section will verify that the applicant on each ELTF claim is eligible to receive payment per 328 IAC 1-3-1(a) and that the remaining requirements of 328 IAC 1-3-1 are met. IDEM recently implemented this process for all new eligibility determinations.

On June 5, 2014, the UST Section mailed all UST owners and operators a letter titled "UST Notification and Financial Responsibility." (Attached) The letter requests the submission of updated "Notification for Underground Storage Tanks" forms for every UST that has USTs in use (not closed) as well as financial responsibility information by July 7, 2014. This information is necessary to verify IDEM has complete and accurate information to ensure that owners and operators are satisfying their financial responsibility requirements in accordance with 329 IAC 9-8 for corrective action costs and third party damages.

If the UST is not closed in accordance with 329 IAC 9-6, the current owner or operator of the UST should be listed as the owner or operator on the UST Notification Form. Please make any necessary changes on this form to ensure there is no disruption in processing your ELTF claims.

The IDEM recognizes contractual agreements between former UST owners or operators and current UST owners or operators concerning responsibility for releases are often negotiated as part of the sale of an UST and associated real estate. However, liability for the corrective action of a release from an UST under IC 13-23-13 and 329 IAC 9-5 lies with the statutory owner, as defined at IC 13-11-2-150, and statutory operator, defined at IC 13-11-2-148. Fund access is limited to the persons listed in 328 IAC 1-3-1(a). If the applicant is not the current tank owner or operator, or a qualified property owner as described by 328 IAC 1-3-1(a)(3), IDEM-ELTF will require additional documentation from the applicant. This documentation may include, but is not limited to, necessary powers of attorney and/or appropriate assignments of rights from the current tank owner, operator, or qualified property owner.

If you have questions about this letter, please call Rita Browne at (317) 234-3606, Kathy Simonson at (317) 234-0979, or Ruth Williams at (317) 234-7602.

Sincerely,

A handwritten signature in black ink that reads "Bobbi Steiff". The signature is written in a cursive style with a large, prominent 'B' and 'S'.

Bobbi Steiff, Chief  
Excess Liability Trust Fund Claims Section  
Office of Land Quality

A handwritten signature in black ink that reads "Craig Schroer". The signature is written in a cursive style with a large, prominent 'C' and 'S'.

Craig Schroer, Chief  
Underground Storage Tank Branch  
Office of Land Quality

Attachment



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**Michael R. Pence**  
Governor

**Thomas W. Easterly**  
Commissioner

June 2, 2014

Owner Name  
Street Address  
City, ST ZipCode

Dear Owner or Operator:

Re: UST Notification and Financial  
Responsibility

State Form 45223, "Notification for Underground Storage Tanks" (Notification Form), has been updated to include new information not previously submitted to the department by UST Owners and Operators for the regulation of USTs in Indiana. In addition, we created a second form, State Form 52884, "Request for Certificate of Financial Assurance for Underground Storage Tanks" (COFA Request Form) for UST Owners or Operators to request their COFA for use of the Excess Liability Trust Fund (ELTF) as part of your financial responsibility (FR) requirements. These new forms include:

- **Notification Form** – Changes include financial responsibility (FR) information that was not previously available on the Notification Form. Previous versions of the Form did not include all the FR mechanism options that an Underground Storage Tank (UST) Owner or Operator in Indiana has available including ELTF. Additional changes to the Notification Form clarify UST ownership, property ownership and UST operator information to assist IDEM in regulating USTs and pursuing corrective action, if necessary, when there is a release from an UST system.
- **COFA Request Form** – This new form must be completed in order to receive a COFA from the ELTF Administrator for use of ELTF as a portion of your FR.

**All UST Owners and Operators that have not submitted the newest Notification Form updated in January 2014 must complete a Notification Form. In addition, you must complete the COFA Request Form if you choose to use ELTF. Both must be submitted by July 7, 2014.** It is imperative that the information provided to the department by UST Owners and Operators be accurate and up to date to ensure compliance with your requirements. These forms are available for download from the internet at [www.IN.gov/idem/5157.htm#olq\\_ust](http://www.IN.gov/idem/5157.htm#olq_ust). We recommend that you complete both forms electronically in this form-fillable, pdf file from your computer to ensure that you complete them correctly since there are several features in the form designed to assist you. The instructions for each form may be downloaded by clicking the link near the top of each form. The instructions may be occasionally updated. Please check for updated instructions each time you use these forms.

Any UST Owner or Operator that uses the ELTF as part of their FR mechanism to comply with 329 IAC 9-8 should review the regulations and ensure that they have the proper documentation available to UST Inspectors to demonstrate compliance. 329 IAC 9-8-21(b)(8) requires a UST Owner and Operator covered by the ELTF to maintain on file a copy of any evidence of coverage supplied by or required by Indiana under 40 CFR 280.101(d). This evidence of coverage, the COFA, will be issued by the ELTF Administrator in accordance with 328 IAC 1-7-1. The UST Owner and Operator must also have a Certification of Financial Responsibility (COFR) which is a legally binding document that shows you have an insurance policy, a Tangible Net Worth letter or other device outlined under 329 IAC 9-8 to meet the state and federal law for FR. **In order to demonstrate compliance with your FR requirements, the following must be available for inspection at your facility no later than January 1, 2015:**

- COFA,
- COFR (329 IAC 9-8-21(c), and
- Copy of the FR mechanism(s) (329 IAC 9-8-6 through 17).

To assist you in better understanding and complying with your FR requirements, enclosed is a fact sheet titled "Financial Responsibility and Excess Liability Trust Fund." You may also download this fact sheet from [www.IN.gov/idem/4522.htm](http://www.IN.gov/idem/4522.htm).

You must submit your COFR with your COFA request. Additionally, all UST Owner and Operator information, as well as tank information must be both current and accurate. IDEM does not need you to submit a copy of your FR mechanism.

All submittals required by this letter, must be sent to:

Nicole Wheeler, UST Fee Program Director  
Underground Storage Tank Section  
Office of Land Quality  
Indiana Department of Environmental Management  
100 North Senate Avenue  
Indianapolis, IN 46204-2251

Please direct any response to this letter and any questions to Nicole Wheeler by telephone at (317) 234-0343 or toll-free at (800) 451-6027 ext. 4-0343, or by email at [nwheeler@idem.IN.gov](mailto:nwheeler@idem.IN.gov). Thank you for your attention to this matter.

Sincerely,



Craig Schroer, Chief  
UST Branch  
Office of Land Quality

Enclosure  
cc: UST Public File

## FACT SHEET



### INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

## Financial Responsibility and Excess Liability Trust Fund Office of Land Quality

(317) 234-4112 • (800) 451-6027 [www.idem.IN.gov](http://www.idem.IN.gov) 100 N. Senate Ave., Indianapolis, IN 46204

### **Introduction:**

Every underground storage tank (UST) owner or operator of regulated petroleum USTs in Indiana must comply with the state and federal requirements for financial responsibility (FR) as required by the Indiana Code (*IC 13-23-4*), the Indiana Administrative Code (*329 IAC 9-8*), and the Code of Federal Regulations (*40 CFR, Part 280, Subpart H*).

- Owners and operators of one to 100 petroleum USTs must have an annual aggregate of \$1 million per occurrence for corrective action and third-party claims; and
- Owners and operators of 101 or more petroleum USTs must have an annual aggregate of \$2 million.

The Indiana Department of Environmental Management (IDEM) administers the Excess Liability Trust Fund (ELTF). It is an FR mechanism for owners and operators to cover up to \$2 million per occurrence with a deductible paid by the applicant of \$20,000 to \$35,000, depending on the type of UST system that had a release. The source of funding is from a \$0.01 per gallon inspection fee levied on gasoline, diesel and kerosene by the Indiana Department of Revenue.

If an owner or operator is using ELTF as their FR mechanism, they must be able to show they can pay a deductible based on the number of USTs they own or operate and the physical characteristics of those tanks as outlined in IC 13-23-8-3.

- Owners or operators of 12 or fewer USTs must be able to prove they can pay a single deductible at a rate set by IC 13-23-8-3.
- Owners or operators of 13 or more USTs must be able to prove they can pay two deductibles.

### **Environmental Impacts:**

- Indiana has over 4,300 operating UST sites that have over 13,000 USTs. If not managed properly, these sites can have negative impacts on human health and the environment from releases such as underground leaks and above ground spills.
- Refined petroleum products such as gasoline and diesel are a mixture of numerous compounds that have a detrimental effect on human health or the environment. These compounds are often toxic or carcinogenic.
- Contamination from leaking UST sites can migrate to streams or lakes, contaminate drinking water, or cause dangerous vapors in buildings and underground sewers.
- By ensuring that UST owners and operators have the financial mechanisms in place to quickly clean-up leaking USTs, the problems can be addressed quickly to protect human health and the environment.

### **IDEM's Role:**

- IDEM is responsible for protecting human health and the environment while providing for safe industrial, agricultural, commercial, and governmental operations vital to a prosperous economy. Three IDEM programs are in place to oversee compliance with UST regulations.
  - The UST Program is responsible for ensuring that UST owners and operators comply with the requirements for FR and are operating and maintaining their systems properly.
  - The Leaking UST Program is responsible for ensuring adequate cleanup of contamination from leaks and spills.
  - The ELTF Program is responsible for determining eligibility for ELTF access and reviewing claims for payment.

### **UST Owner or Operator's Role:**

If the owner and operator of a petroleum UST are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance.

A UST owner or operator that intends to use the ELTF as their FR mechanism must do the following:

- Obtain one of the financial mechanisms detailed in 329 IAC 9-8-11(c) or (d) in the amount needed to cover the applicable deductible.
- Indicate the choice of an FR mechanism in Block G of the UST Notification Form (State Form 45223).
- Create the Certification of Financial Responsibility (COFR) as required by 329 IAC 9-8-21(c).
- Request a Certificate of Financial Assurance (COFA) using the Request for COFA (State Form 52884).
- Ensure the FR mechanism documentation, COFR and COFA are available when a UST Inspector arrives to inspect the site.
- If a release from a UST is suspected or confirmed, report it immediately and submit the FR proof to IDEM within 30 days of confirmation.
- It is important for owners and operators to remember that being in compliance with the FR requirements of 329 IAC 9 is the first step in being able to submit a claim for reimbursement from the ELTF. Owners and operators must be in compliance with the UST rule technical standards in 329 IAC 9 at the time a claim is submitted in order to be reimbursed in accordance with ELTF rule in 328 IAC 1.
- **COFA Eligibility:** In order for a COFA to be issued to an owner or operator for a particular UST site, the UST fees must be paid in full and the site must not have any outstanding compliance issues. If the owner or operator is under an enforcement action, it must be resolved before a COFA will be issued.
- In order for a COFA to remain valid, the FR mechanism must not have expired and must agree with the COFR and the COFA. Any substantive changes to the FR mechanism will require a new COFR and COFA.

### **ELTF FR Mechanisms:**

- The following are the eight FR mechanisms that owners and operators can use to meet the deductible required for ELTF. Local governments have four additional options.
  - Loan Commitment Letter (see 329 IAC 9-8-11(c)(1))
  - Certificate of Deposit (see 329 IAC 9-8-11(c)(2)) and Standby Trust Fund (see 329 IAC 9-8-13)
  - Tangible Net Worth Letter (see 329 IAC 9-8-11(c)(3))
  - Liability Insurance (see 329 IAC 9-8-11(c)(4))
  - Surety Bond (see 329 IAC 9-8-11(c)(5))
  - Letter of Credit (see 329 IAC 9-8-11(c)(6))
  - Trust Fund (see 329 IAC 9-8-11(c)(7)) and Standby Trust Fund (see 329 IAC 9-8-13)
  - Guarantee (see 329 IAC 9-8-11(c)(8))
  - Local Government Bond Rating Test (see 329 IAC 9-8-11(d)(1))
  - Local Government Financial Test (see 329 IAC 9-8-11(d)(2))
  - Local Government Guarantee (see 329 IAC 9-8-11(d)(3))
  - Local Government Dedicated Fund Account (see 329 IAC 9-8-11(d)(4))

### **Additional Information:**

- For questions regarding FR, call the UST Program at (317) 234-4112 or (800) 451-6027, ext. 4-4112.
- For questions regarding ELTF eligibility and claims, call the ELTF Program at (317) 234-0990 or (800) 451-6027, ext. 4-0990.
- Applicable laws are found at:
  - UST Rule- [www.IN.gov/legislative/iac/T03290/A00090.PDF](http://www.IN.gov/legislative/iac/T03290/A00090.PDF)
  - ELTF Rule - [www.IN.gov/legislative/iac/T03280/A00010.PDF](http://www.IN.gov/legislative/iac/T03280/A00010.PDF)
- Additional information is available regarding FR at [www.idem.IN.gov/4999.htm](http://www.idem.IN.gov/4999.htm) and ELTF at [www.idem.IN.gov/5063.htm](http://www.idem.IN.gov/5063.htm).