

# Important Information for Landlords/Lenders Regarding Facilities with Petroleum Storage Tanks

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**Laurel Lockett**

## **Alert: Important Information for Landlords/Lenders Regarding Facilities with Petroleum Storage Tanks**

The major FDEP deadline for underground tank upgrades (requiring secondary containment for tanks and lines), just occurred on December 31, 2009. As expected, FDEP did not extend the compliance deadline, although tank owner/operators that have a signed contract to complete the upgrades, that have submitted required information to FDEP, may have another 90 days to complete the required upgrades.

Many smaller gas station tenants/owner/operators have found that they cannot afford the cost of tank upgrades, and many banks have been unwilling to finance the required upgrades. Further, some insurance carriers that provide the FDEP required tank insurance have been very conservative on policy renewals this year, leaving many operators unable to renew coverage, further complicating financing of the required work. Generally, we are talking about \$100,000 - \$300,000 in work, depending on the size of the facility. If tank upgrades require removal of canopy and dispensers, the cost can be substantially more.

The result of all this is that many gas station operators are now in a state of major non-compliance, and it is likely that they will not be able to bring themselves back into compliance without substantial expenditures that they are without the resources to make.

FDEP is aggressively pursuing enforcement of these cases, and when the operator fails to respond by closing the tanks as required, FDEP holds the property owner responsible. The cost to the property owner -- tank closure costs, assessment and remediation of discovered releases not covered by insurance, as well as FDEP penalties -- can be very high, not to mention the loss of rent!

If you own these types of properties/facilities, lease property to convenience gas station/store operators, or are a lender that has these types of facilities in your portfolio -- there are likely to be significant compliance issues that need immediate attention. We can help quickly determine the regulatory status of your facilities, and help formulate a compliance and enforcement strategy with respect to both governmental agencies and operator/borrowers.

For further information, please contact:

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