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DEADLINES FOR REMOVAL OR UPGRADE OF ONTARIO'S FUEL OIL STORAGE TANKS FAST APPROACHING

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A. INTRODUCTION

For more than sixty years, fuel oil storage tanks have been installed and used in properties owned by Ontario charities, in particular churches, synagogues, mosques and other religious organizations, including residences for their spiritual leaders. In addition to the rising cost of fuel to heat these charitable facilities, owners of properties with fuel oil storage tanks should be aware of the fast approaching deadlines contained in Ontario's strict regulations that may require the fuel oil storage tank to be upgraded or removed. Some requirements may be particularly onerous for small charities, particularly some charities with aging facilities, but the potential for significant liability should there be a leak into the environment makes it an issue that charities in Ontario cannot ignore. This *Charity Law Bulletin* looks at recent developments regarding requirements for the proper management of fuel oil storage tanks in Ontario.

B. LEGISLATIVE BACKGROUND

The handling and storage of fuel oil is governed by Ontario Regulation 213/01 – *Fuel Oil* (the "Fuel Oil Regulation"), which supplements the *Technical Standards and Safety Act, 2000*.[1] The Regulation identifies two kinds of fuel oil storage tanks: aboveground fuel oil storage tanks and underground fuel oil storage tanks, defining them as follows:

[1] S.O. 2000, c. 16.

> "**aboveground tank**" means a tank that is installed at or above grade level within a building or within a secondary containment, but does not include a tank that is in direct contact with backfill material
> "**underground tank**" means a buried tank or partially buried tank that is in direct contact with earth or backfill;[2]

The Fuel Oil Regulation contains regulations of general application, as well as regulations that are specific to the type of fuel oil storage tank used in both the residential and institutional context. As such, it is important for any property owner with fuel oil storage tanks to ensure they are in compliance with both types of regulations.

C. REGULATIONS OF GENERAL APPLICATION

All fuel oil storage tanks are required to undergo annual maintenance performed by a Technical Standards and Safety Authority ("TSSA") certified oil burner technician. The TSSA adopted the Canadian Standards Association International's Installation Code for Oil Burning Equipment, B139-00 as amended, which outlines the annual examination requirements.[3] The required annual examinations are not automatic, and it is the owner's responsibility to arrange for such maintenance examinations every year.

Additionally, all existing fuel oil storage tank and appliances are required to undergo a comprehensive inspection by the Fuel Oil distributor at least once every ten years in order to ensure compliance with the regulations and code.[4]

The regulation prohibits the sale or purchase of a fuel oil storage tank unless it is approved.[5] The Regulation defines "approved" as:

> (a) with respect to a standard or a laboratory test report, that it is listed in "Titles of Standards and Laboratory Test Reports Authorized in the Province of Ontario" as published by the designated administrative authority from time to time,
> (b) with respect to an appliance, tank, equipment, component or accessory, that it bears the label or symbol of a designated testing organization or a label or symbol authorized by the director, certifying that it complies with an approved standard or laboratory test report, or
> (c) with respect to an installation, that it complies with this Regulation.[6]

[2] Section 1(1).
[3] Section 14 of the CAN/CSA-B139-00 *Installation Code for Oil Burning Equipment.*
[4] This requirement came into effect May 1, 2002.
[5] Section 17 (1).
[6] Section 1(1).

If a fuel oil storage tank is in such an unacceptable condition that it constitutes an immediate hazard, a distributor who finds or is informed of this is under a duty to:

- immediately cease supplying fuel oil;
- immediately take reasonable steps to shut off supply of the fuel oil;
- promptly give written notice of the condition to its operator stating that it is not to be used until the condition is corrected and approved by an inspector;
- affix such written notice to the fuel oil storage tank; and
- give notice to the TSSA.[7]

If the distributor finds or is informed that the fuel oil storage tank is in an unacceptable condition but is not an immediate hazard, the distributor must notify the operator with a description of the condition and a notice that the distributor will cease supplying fuel oil until the condition is corrected. Similarly, such written notice must be affixed to the fuel oil storage tank and a copy forwarded to the TSSA.[8] The distributor cannot give more than 90 days for the condition to be corrected. If the condition is not corrected within the time specified in the notice, the distributor cannot supply fuel oil to the fuel oil storage tank.

Contractors (i.e. a person who installs, removes, repairs, or services fuel oil appliances) have a similar duty in such situations.[9]

D. UNDERGROUND FUEL OIL STORAGE TANKS

All underground fuel oil storage tanks must be registered with the TSSA. Failure to register an underground fuel oil storage tank results in the inability of the supplier to provide fuel.[10] There is no charge for registering an underground fuel oil storage tank, and applications are available online through TSSA's website.[11]

[7] Section 23.
[8] Section 24.
[9] Sections 25 and 26.
[10] Section 7(4). Note that, according to the TSSA website, "TSSA has advised fuel oil distributors that unregistered tanks are to be considered non-immediate hazards and fuel should be provided to clients and notice given to them to obtain a registration number within a timeframe not exceeding 90 days."
[11] See www.tssa.org.

After the application for registration is processed, the applicant will receive written notification that the fuel oil storage tank is registered with TSSA with its own unique registration number. This registration number should be provided to the fuel oil distributor in order to prevent potential disruptions in delivery.

Property owners wanting to abandon an underground fuel oil storage tank must submit an application for a Variance to TSSA. Again, application forms are available on TSSA's website. Upon submitting such an application, TSSA will determine whether the underground fuel oil storage tank must be removed, or whether it can remain in place with conditions. Similarly, once use of an underground fuel oil storage tank has been permanently discontinued, the fuel oil storage tank must be removed by a qualified TSSA registered Petroleum Mechanic 2 ("PM 2").[12] Owners can only install or remove underground fuel oil storage tanks if they receive approval through a variance technical review process by TSSA.

One of the biggest areas of concern for owners of fuel oil storage tanks is the possibility of leaks. Many metal fuel oil storage tanks rust from the inside out, often occurring due to the accumulation of condensation inside the tank. As the fuel oil floats on top, the water is able to slowly corrode the base of the tank until fuel oil is able to leak out.[13] For owners of aboveground fuel oil storage tanks, this may only be a minor inconvenience, requiring fuel to be cleaned from the basement floor. More significant damage, of course, can occur should the fuel oil get into the drain and be pumped over larger areas, requiring a major environmental cleanup. For owners of underground fuel oil storage tanks, a leak will almost always result in significant environmental damage, such as impacting sewer, oil, surface water and groundwater systems, and in most circumstances the damage is greater because the underground fuel oil storage tank has been leaking for many years without it notice. For charities facing such a problem, this may result in both the charity and its directors being found liable for the cost of clean-up of the contamination, as well as damages suffered by adjoining land owners.

If an underground fuel oil storage tank is leaking, the owner must call a PM 2 to repair the leak, and the Spills Action Centre of the Ministry of Environment and Energy must also be notified of the spill incident.[14] The contractor and the owner's insurance company may assist in the clean up that is required and for which the owner is responsible. Fuel oil storage tanks with a capacity of over 5000 liters need to be leak-tested annually.

[12] Owners can visit the Ontario Petroleum Contractors' Association (OPCA) website at www.opcaonline.org for a list of PM 2s in their area.
[13] AmeriSpec of Canada, www.amerispec.ca.
[14] Available at 1-800-268-6060.

Due to the potential for an underground fuel oil storage tank to result in a fuel oil leak or spill, the TSSA requires all underground fuel oil storage tanks to be either removed or upgraded with leak and spill-protection equipment. The deadline for doing so depends on the date of the fuel oil storage tank's original installation:[15]

Age of Underground Tank System (Years from date of original installation)	**Deadline for Removal or Upgrade**
25 or more (or if unknown)	October 1, 2006
20-24	October 1, 2007
10-19	October 1, 2008
0-9	October 1, 2009

TSSA advises potential buyers of property to consider whether there are any underground fuel oil storage tanks on the property before purchasing it, as the new property owner may be responsible for removing any such tanks.[16] Owners are also responsible for the maintenance and/or upgrading costs of an underground fuel oil storage tank, as well as for those costs associated with cleaning up any contamination.

E. ABOVEGROUND FUEL OIL STORAGE TANKS

The Fuel Oil Regulation provides greater flexibility for owners of aboveground fuel oil storage tanks. Unlike underground fuel oil storage tanks, aboveground fuel oil storage tanks are not required to be registered with the TSSA. However, the aboveground fuel oil storage tanks must meet certain standards unless they are grandfathered from previous regulations.[17]

So long as the aboveground fuel oil storage tank is not leaking, there is no time limit in which the tank must be replaced. However, the tank must be replaced if it was installed after 1971 and does not have an Underwriters' Laboratories of Canada (ULC) label reflecting its certification.[18] Tanks installed prior to 1971, and therefore prior to the inception of the CSA *Installation Code for Oil Burning Equipment*, are grandfathered and deemed approved if the house was built prior to 1971.

[15] See TSSA's FAQ for underground fuel oil tank owners at www.tssa.org.
[16] To determine a property's history, buyers can contact the TSSA Records Department at (416) 734-3402 or 1-877-682-8772.
[17] Section 1(3) provides that equipment installed in accordance with predecessor regulations shall be deemed approved under the current Fuel Oil Regulation so long as the equipment complied with the predecessor regulation at the time it was installed.
[18] The label is a square or rectangular identification piece commonly found on the top upper half of a tank. See www.tssa.org.

F. OTHER JURISDICTIONS

Regulations concerning fuel oil storage tanks differ from province to province. For example, in Western provinces, where the use of fuel oil storage tanks is less prevalent than in the East, regulations may be found in the province's fire and/or building code, and individual municipalities may have their own regulations. Such is the case in British Columbia. Prince Edward Island, on the other hand, has similar regulations to those of Ontario. The *Petroleum Storage Tanks Regulation*,[19] under the *Environmental Protection Act*,[20] requires contractors to be licensed in order to install, alter or remove either an above ground fuel oil storage tank or an underground fuel oil storage tank. Contrary to regulations in Ontario, both types of fuel oil storage tanks must be replaced every 15 to 25 years, depending on the tank design and its thickness, and an underground fuel oil storage tank that has been out of service for more than one year must be removed. All fuel oil storage tanks must be registered under the regulation, and the regulation prohibits fuel oil to be supplied without a valid registration tag being permanently affixed to the fuel oil storage tank.

In Nova Scotia, the Petroleum Management Regulations,[21] under the *Environment Act*,[22] govern the use of fuel oil storage tanks. The Nova Scotia regulation has a graduated system for registering, all dependent on the capacity of the fuel oil storage tank, and requires that systems be regularly monitored. Fuel oil storage tanks that have been abandoned for more than 24 months must be removed.

With the differing regulations, it is important for charities and other property owners to determine those regulations that apply to their property, while at the same time being cognizant of developments in other parts of the country, especially when it comes to preventing environmental contamination.

[19] P.E.I. Reg. EC322/01.
[20] R.S.P.E.I. 1988, c. E-9.
[21] N.S. Reg. 44/2002.
[22] S.N.S. 1994-95, c. 1.

G. CONCLUSION

Charities and other property owners in Ontario with aboveground or underground fuel oil storage tanks must be aware of the significant regulatory requirements governing their use and existence. This includes the need for registration of underground fuel oil storage tanks, the need for regular inspections, and the owner's liability for any spills. Ontario's Fuel Oil Regulation is intended to help protect the province's environment from possible fuel oil leaks by creating a registry of the location and age of each underground tank in the province and ensuring that aboveground and underground fuel oil tanks that are in danger of leaking do not continue to receive fuel oil. Current and future property owners, including charities and their boards of directors, are encouraged to determine the scope of the requirements under the applicable legislation in order to ensure compliance.

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