

**⑩ What happens if I find contaminated soil when redeveloping the property?**

If you caused the spill, regulations require you to report the contamination to NDEE as soon as it's discovered. If you didn't cause it, you are not required to notify NDEE but it may still be a good idea to call and discuss it. (See question 5.)

**⑪ If I buy a closed gas station and it's contaminated, will NDEE make me tear down any buildings to clean up the site?**

No. Although there are some instances where a petroleum contamination cleanup can go much faster by removing an unwanted building and digging up underlying contaminated soils, NDEE will not require it. NDEE makes every effort to respect property owners and their property.

**⑫ If I buy an old gas station, but will not use the property to sell fuel, could I be required by NDEE to investigate and clean up a fuel leak that occurred before I bought the property?**

NDEE does not normally ask new owners of a former gas station who were not involved in operation or ownership of the tank system to investigate or clean up petroleum released from a tank system. NDEE has a 'Legal Liability' form letter available by request explaining this.

**⑬ NDEE records show that the gas station I'm selling/purchasing is on something called the "Priority List." What does that mean?**

NDEE makes every effort to require the person who released petroleum from their tank system to investigate and clean up their release. In cases where the person or company responsible for the leak has died, become insolvent, or has dissolved the business, NDEE will do the necessary work at these "orphan" sites at NDEE's expense using a contractor of our choice. There is a backlog of these "orphan" sites, and we can only pay our contractors to do work as funding is available.

**⑭ How long does an NDEE investigation and cleanup take, and what does it cost?**

A NDEE-required Tier 1/Tier 2 investigation normally takes a few months, and possibly longer if site access or other problems are encountered. Cleanups can take from several months to a number of years, depending on how far the contamination has spread and the cleanup contractor's approach. A Tier 1 investigation often costs around \$15,000. A Tier 2 investigation can cost tens of thousands of dollars. Overall, cleanups can cost hundreds of thousands of dollars. NDEE manages the Petroleum Release Remedial Action Cash Fund which may provide funding assistance. The Fund acts similar to an insurance policy for tank owners who have had a release. More information can be found at:

<http://deq.ne.gov/NDEQProg.nsf/OnWeb/PR-Fund>

**⑮ If I find contamination on my property during construction, must I stop construction?**

No, the NDEE Petroleum Remediation Section will not order you to stop construction. However, it may be in your best interest to inform NDEE and discuss ways to limit petroleum impact to your new structure. It is also possible NDEE may allow you access to the reimbursement fund to remove soils that are highly contaminated with petroleum that would be in direct contact with a basement. If you have questions about disposal of petroleum contaminated soils, call NDEE Integrated Waste Management at (402) 471-4210.

**⑯ What is my obligation if I own an "orphan" site?**

NDEE asks that property owners allow reasonable property access to environmental contractors for them to do necessary investigation and cleanup. At "orphan" projects, this work is done at no expense to the property owner. Contractors work to minimize disruption to any operating business at the property.



## Frequently Asked Questions about the Sale and Purchase of a Retail Petroleum Convenience Store

January, 2020

The Nebraska Department of Environment and Energy (NDEE) Petroleum Remediation Section often fields questions from real estate agents, lenders, and the public regarding the sale or purchase of a convenience store/gas station. Many of the questions relate to concerns about environmental problems due to leaks of petroleum from the fuel storage tank system or concerns about costs the buyer may incur if the system needs to be upgraded to meet current requirements. Here are some commonly asked questions and suggested methods the public can use to gather information needed to make an informed buying or selling decision.



### Contact for more information

NDEE-Petroleum Remediation Section	(402) 471-2186 <a href="http://deq.ne.gov/NDEQProg.nsf/OnWeb/LUST">http://deq.ne.gov/NDEQProg.nsf/OnWeb/LUST</a>
NDEE Records Management Section	(402) 471-3557 <a href="http://deq.ne.gov/NDEQProg.nsf/OnWeb/PRR">http://deq.ne.gov/NDEQProg.nsf/OnWeb/PRR</a>
NE State Fire Marshal-Fuels Division	(402) 471-9465 <a href="https://sfm.nebraska.gov/fuels-safety">https://sfm.nebraska.gov/fuels-safety</a>

**① What is the purpose of investigating and cleaning up old gas stations?**

The state and our citizens are committed to protecting human health and the environment from contaminated groundwater.

**② I hear the terms “Phase I / Phase II” and “Tier 1 / Tier 2.” What are those, and how do they differ?**

There are two types of reports commonly associated with old gas stations in Nebraska: an Environmental Site Assessment or ESA (Phase I and Phase II) and a Risk-Based Correction Action (RBCA) investigation (Tier 1 and Tier 2). Phase I and Phase II ESAs are commonly performed as part of a property transaction and may be initiated by the buyer, seller, and/or lender. Their purpose is to determine if soil and/or water contamination may have occurred at the property.

- Phase I: records search and facility walk-through
- Phase II: soil (and sometimes groundwater) samples collected for laboratory analysis

NDEE is not involved in directing the ESA.

RBCA Tier 1 and Tier 2 reports are thorough subsurface investigations required by NDEE when a fuel leak is reported. A complete description of the RBCA process can be found at <http://deq.ne.gov/NDEQProg.nsf/OnWeb/PR-Invest>. NDEE issues a “no further action” letter for sites that pass the RBCA evaluation.

**③ Who performs the Phase I/Phase II ESAs and Tier 1/Tier 2 RBCA investigations?**

ESAs and RBCA Tier investigations are performed by licensed environmental consultants. Depending upon the situation, the buyer, seller, person responsible for the spill, or the state may hire the consultant. A list of consultants can be found at

<http://deq.ne.gov/ConsuDir.nsf/Groundwater.xsp>

**④ If I do a Phase II ESA and find contamination, do I have to report it to NDEE?**

Yes, if you operated the tank system on the property or owned it while it was in use. If you did not own or operate the tank system, NDEE regulations don’t require you to report finding contamination – but it may be to your advantage to do so to document that contamination was present at the time of the ESA. (Also see question 5.)

**⑤ If I buy an operating gas station and continue to sell fuel, or begin selling fuel at the site of a former gas station, am I responsible for any old contamination present when I bought the property?**

If there is no documentation (Phase II or Tier investigation) that contamination existed prior to you purchasing the property, NDEE can only assume any contamination occurred while you were operating the system, and you would be considered responsible. However, if pre-existing contamination has been documented, NDEE would normally only consider you responsible for leaks and spills in excess of what was present when you purchased the property.

**⑥ NDEE Records show that NDEE required a Tier 1 investigation a few years ago at the gas station I want to buy. Does this mean there are no environmental pollution problems there?**

Not necessarily. A Tier 1 investigation would only detect contamination present at the time of the investigation. If a tank system operated on the property after the investigation was complete, there may now be new contamination of soil and/or groundwater. If you wish to know current contaminant concentrations, a Phase II assessment would be an option to collect that information.



**⑦ How do I know if there has been a petroleum tank release at the gas station I want to buy?**

If a spill was reported to NDEE, a record will be in our files. Contact NDEE Records Management to make an appointment to view documents for the facility, or you can search digitized files on the NDEE Public Records web page at <https://ecmp.nebraska.gov/PublicAccess/index.html?&MyQueryID=340>

You can also call the Nebraska State Fire Marshal (SFM) to ask about records of facility inspections. Another option is to hire a contractor to perform a Phase II ESA to search for contamination.

**⑧ How do I find out if there are still tanks present at the gas station property I’m interested in buying? If there are tanks, will I be required to remove them? Is there funding available to help with the costs of removing tanks?**

Contact the SFM for closure and removal records for tanks installed after 1985. The presence of older tanks may be more difficult to verify and may need an ESA inspection. If tanks are present and permanently out-of-service, the SFM may require you to remove them. The SFM and NDEE do not have funds available to help property owners with the cost of removing a tank system. However, a portion of the tank removal costs (soil sampling, contaminated soil disposal, and report writing) may be eligible for reimbursement from the Petroleum Release Remedial Action Cash Fund.

**⑨ I’m thinking of buying an existing gas station and I don’t know if the tank system will need expensive repairs. How do I find out?**

The SFM is responsible for regulating existing or new tank systems. Contact them to learn the status of the system and find out if any repairs, testing, or upgrades are necessary.