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The Beast Lurking Under the Lawn; Weak Regulations and High Water Tables Conspire to Rot Residential Oil Tanks, and Cleaning Up Is Expensive

By VIVIAN S. TOY

DREW and BETH **BERGMANN** have been living a homeowner's nightmare for nearly four years.

It started in the fall of 1996, when they noticed the unmistakable smell of fuel oil permeating their tidy Massapequa home and soon discovered that oil from a neighbor's underground storage tank had seeped onto their property. After seemingly endless haggling with insurance companies, environmental companies and state officials, the contaminated soil on their property was finally cleaned up last summer.

But there was no happy ending for the Bergmanns. To their dismay, they received a dunning letter from state officials last month demanding \$20,811.85 for the cleanup costs and warning of penalties of up to \$25,000 a day for nonpayment, even though they had nothing to do with the source of the oil spill.

"Believe me, after all we've been through, these threats are no fun," said Beth **Bergmann**, 51. "Especially when you're the innocent party."

Theirs is a cautionary tale for homeowners across the Island, especially those who live along the shore, where the water table rises and falls with the tide. The saltwater that meanders below ground speeds the corrosion of underground tanks and can carry leaked fuel oil from one neighbor's yard to another's.

Environmentalists warn that there could be thousands, if not tens of thousands, of similar tales ready to unfold. As the suburban homes that sprouted in the 1950's and early 60's mature into middle age, the underground oil tanks have become brittle and sometimes corroded.

There are an estimated 500,000 residential underground oil tanks on the Island. Since 1986, the state has learned of 11,000 leaks; 1,200 involve more than 25 gallons of oil and have not yet been properly cleaned up, according to a survey

by Toxics Targeting Inc., a private company in Ithaca, N.Y., that uses government data to identify spills.

The average life span for an underground oil tank is about 25 years. In a routine notice to homeowners, Nassau County urges the replacement of old metal tanks with more reliable fiberglass ones because any tank that is 30 years or older "may be about ready to fail."

Federal regulations passed in the late 1980's required the replacement of hundreds of thousands of industrial underground tanks, but no such requirement was ever made for residential tanks. In fact, residential tanks need not be registered with state or federal agencies.

Sarah Meyland, executive director of the Citizens Campaign for the Environment, estimates that 60 to 70 percent of the homes on the Island still use oil.

"No one, not politicians and officials or homeowners, has really dealt with the reality that with so many homes reaching the 40- or 50-year mark, it's really just a matter of time before oil leaks become a major problem," she said.

Walter Hang, president of Toxics Targeting Inc., said most homeowners do not know that they can be held liable for a leaking tank.

"Ordinary citizens have no inkling how dangerous these spills can be or that they need to be more vigilant if they have an underground tank," he said. "With the ground-water system so shallow and horizontal on Long Island, a leak can migrate very far, very quickly, and if it's under your house, you could potentially be saddled with a very big problem that could be financially ruinous."

The Bergmanns have learned that lesson all too well. They are mystified how they could be held liable for a problem they did not cause, but their case is complicated.

A spokesman for the State Attorney General's office, which is pursuing the case for the Department of Environmental Conservation, said last week that even though the Bergmanns were ordered to pay nearly \$21,000 by June 30, the order had been put on hold while the agency reviewed the case.

The spokesman, Brad Maione, said, "They may not be as culpable as the demand letter indicates." He said a final determination would be made within four weeks.

State documents indicate that after the Bergmanns' neighbor's insurance had been exhausted and that when the D.E.C. took over the cleanup, the Bergmanns were informed that they could be held liable.

As they wait to find out whether they will be sued, they just shake their heads and wonder how the home where they have invested more than 20 years of

improvements and renovations could have become such a source of heartache.

They moved into the house, which sits 1,000 feet from a canal that leads into South Oyster Bay, in 1979. Coal-burning stoves were all the rage then, so that's how they heated their home. (They now use natural gas.)

In 1982 they had their unused underground oil tank removed. "It looked like it came out of the Great South Bay, it was so thick with rust," said Drew **Bergmann**, an electrician.

Years later, in October 1996, when they first noticed a strong oil smell coming from a crawl space beneath their house and a circular stain about a foot wide on the basement's cement floor, they knew the oil could not be coming from their property.

They notified D.E.C. officials, who instructed them to bore a hole in soil on the west side of the house to try to pinpoint the source. The 30-inch deep boring, which they dubbed Mount Vesuvius, filled immediately with black oil.

For months, whenever rain fell and the water table rose, the oil would bubble up. Mr. **Bergmann** filled more than two dozen gallon jugs with the oil-infused water. He keeps the bottles in the garage as proof of their oily misery.

Within days of the Bergmanns' discovery, state officials determined that the contamination was coming from the home of their neighbor, Gail Petagno. Mrs. Petagno's insurance company hired a contractor the next month to remove the tank and to begin cleaning up her property.

Dave Parisi, a manager at Environmental Services Inc., the Mastic Beach contractor hired to do the work, said that when they dug out Mrs. Petagno's tank, "it was like Swiss cheese -- there were holes the size of quarters."

In December 1996 the contractor set up about a dozen monitoring wells on both properties to try to determine the extent of the contamination. Holding tanks were also installed to collect contaminated ground water and shrink the plume of pollution.

To keep the smell of oil out of the house, Mr. **Bergmann** lined the basement with insulation. Mrs. **Bergmann** stopped gardening on the west side and front of the house.

It was around that same time that the Bergmanns and Mrs. Petagno stopped speaking to one another. They had always been fairly friendly. The Bergmanns' two children, now 18 and 13, had played with Mrs. Petagno's grandchildren. But the stress severed their neighborly ties. Mrs. Petagno did not return phone calls to her home seeking comment.

The monitoring wells and holding tanks stayed through May 1998, when Mrs. Petagno's \$100,000 in liability insurance ran out and her insurance company would not authorize further work.

The Bergmanns were dumbfounded that in all that time, not a spadeful of contaminated soil had been removed from their property, and that all the remediation had entailed was the monitoring of wells and the bailing of contaminated ground water.

In July 1998, the state notified the Bergmanns that the state would continue the required cleanup and removal of soil from their property and that they would be named a "potential responsible party." But the Bergmanns said they never dreamed that would mean they would get stuck with the bill.

It was not until August 1999, nearly three years after the contamination was first discovered, that cleanup of the Bergmanns' property began. The cement floor in the crawl space was removed, along with 25 cubic yards of contaminated dirt. A truck known as a guzzler used a vacuum to suck the dirt into a tank, leaving a trench two feet wide and three feet deep that was filled with clean soil.

Through the years, tensions mounted. When it became clear that Mrs. Petagno's insurance company planned to do nothing to remove the contaminated soil from the Bergmanns' property, the Bergmanns decided to sue Mrs. Petagno and her insurance company. That lawsuit is still pending. And state documents show that state officials sometimes felt the Bergmanns were not being cooperative because they refused to let contractors onto their property.

In a recent letter to the Bergmanns, Ray E. Cowen, Long Island's regional director for the D.E.C., suggested that the 13-month delay from the time the state took over the cleanup and the beginning of work on their property was caused largely by the Bergmanns. He noted that it took two months for the state's contractor to get access to their property, and that it was only "after nearly five months of letters and phone calls to you regarding our cleanup proposal" that the Bergmanns hired their own consultant for advice.

Mr. **Bergmann** admitted that he had refused access to workers on several occasions, but he said he merely wanted liability releases from the contractors. He also said that other delays were caused when he or his wife requested more detailed information about what was going to be done.

"We were just trying to protect ourselves because nobody else was doing it," Mrs. **Bergmann** said.

Last fall, about two months after the clean soil had been placed around their home, the Bergmanns decided to revisit "Mount Vesuvius," their initial hole, after a particularly heavy rain. They were furious and devastated when a plastic jug in the hole filled with oily water.

"We're never going to get rid of it," Mrs. **Bergmann** recalled worrying.

When the Bergmanns demanded further cleanup of Mrs. Petagno's property, Mr. Cowen responded with a letter saying Mrs. Petagno had fully complied with the agency's requirements and had removed contamination "to the extent

practicable." He said some contamination remained on both properties, but "this soil cannot be removed without significant disruption to both yours and Mrs. Petagno's property."

"Any residual contamination present in areas where soil removal was not practicable does not pose a threat to your property based on our experience," he added.

That is small comfort to the Bergmanns, who say that even though they have no intention of moving, they fear they will never be able to sell their house.

"People are a lot more environmentally aware now than when we bought the house," Mrs. **Bergmann** said, "but so many still have to be educated about underground tanks. Even if it winds up costing a couple thousand dollars to remove a tank, it's worth every penny because otherwise you or your neighbor will end up in a situation like this."

Richard L. Brodsky, chairman of the Assembly's committee on the environment, has frequently criticized Gov. George E. Pataki for being lax in enforcing laws that require polluters, specifically corporate ones, to clean up any contamination they might have caused.

"It is not enough to clean up your mess," he explained, "but the law has to require people to clean up the mess where ever it goes to, and it has to be enforced."

Ms. Meyland, of Citizens Campaign, said that since the public is not exactly clamoring for regulation of residential underground tanks, it is not likely that politicians will do much.

"Long Island is at a point where something has to be done," she said. "And politicians are going to have to take the initiative and say that even though no one wants to deal with the cost of removing all these tanks, it's the prudent thing to do."

How to Respond to Fears of a Spill

What to do if a leak is suspected:

TEST THE TANK -- Licensed contractors can use a vacuum to suck all the air out of a tank and then determine whether any air is leaking back into the tank. The test, which does not put any pressure on the tank, costs about \$550. It costs \$800 to \$1,800 to remove a tank where there has been no leak.

CHECK OIL CONSUMPTION -- Watch oil bills closely for any unusual increases and keep tabs on how long a full tank of oil usually lasts at different times of the year to get a sense if a larger than usual amount is being used.

CHECK FOR SMELLS -- By the time oil can be smelled, a leak has probably already become a bad spill.

Information on how to care for or remove a tank is available from the Department of Environmental Conservation in Albany at (518) 457-3891 or its regional office in Stony Brook at (631) 444-0345.

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