

EPA Update Implementing UST Provisions Of The Energy Policy Act Of 2005

Who Should Read This Update?

EPA developed this update as a way to share implementation activities for the underground storage tank (UST) provisions of the Energy Policy Act with interested and affected underground storage tanks stakeholders.

What's In The Update?

On the following pages, you'll find details -- the requirement, deadlines, work group's purpose, timing, key issues, and contact information -- about six primary implementation areas (listed below). EPA received a number of questions about these areas and may, in the future, include additional implementation areas of work.

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Why Did EPA Develop This Update?

States, regions, and tribes are participating on implementation work groups; and in some instances, EPA is consulting with industry, other federal agencies, and tank owners and operators. Yet, EPA heard from some stakeholders that they wanted additional information about implementing the new legislation, including key issues the work groups are addressing. This update is one way of sharing that information.

How Often Will EPA Issue This Update?

EPA plans to develop and distribute this update periodically, as new information is available.

What Is The Background About The New Legislation?

On August 8, 2005, President Bush signed the Energy Policy Act of 2005. Title XV, Subtitle B of this act (entitled the Underground Storage Tank Compliance Act of 2005) contains amendments to Subtitle I of the Resource Conservation and Recovery Act -- the original legislation that created the underground storage tank (UST) program. This new law significantly affects federal and state underground storage tank programs and requires major changes to the

programs. Gas station owners and operators, as well as other non-marketers who own underground storage tanks, will be impacted by the changes EPA and states make in their tank programs as a result of the law.

The UST provisions of the Energy Policy Act focus on preventing releases. Among other things, the Energy Policy Act expands eligible uses of the Leaking Underground Storage Tank (LUST) Trust Fund, extends the LUST Trust Fund tax through 2011, and includes provisions regarding inspections, operator training, delivery prohibition, secondary containment and financial responsibility, and cleanup of releases that contain oxygenated fuel additives.

Some of these provisions require implementation by August 2006; others will require implementation in subsequent years. To implement the new law, EPA and states are working closely with tribes, other federal agencies, tank owners and operators, and other stakeholders to bring about the mandated changes affecting underground storage tank facilities.

To see the full text of the new legislation, see: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ058.109.pdf (scroll to Title XV - Ethanol And Motor Fuels, Subtitle B – Underground Storage Tank Compliance, on pages 500-513 of the pdf file) for the UST/LUST provisions.

Inspecting Underground Storage Tanks (Section 1523)

Requirements

EPA or a state receiving funding, as appropriate, under Subtitle I shall conduct on-site inspections to determine compliance within two years for all tanks not inspected since December 22, 1998. After completion of these inspections EPA or a state receiving funding, as appropriate, under Subtitle I shall conduct on-site inspections at least once every three years. EPA may extend the first three-year inspection interval up to one additional year if a state demonstrates it has insufficient resources.

Deadlines

August 8, 2007 - Complete inspections of tanks not inspected since December 22, 1998

August 8, 2010 (or earlier) - Complete first three-year inspection cycle; (extend first three-year inspection cycle for one year, if necessary, in selected states)

Purpose Of Work Group

Develop grant guidelines that will apply to any state receiving federal UST money from EPA

Timing

Spring 2006 - EPA's goal is to have the draft guidelines available

Key Issues

Developing a definition for pre-August 8, 2005 inspections

- Considering whether the definition of "inspection" in the pre-August 8, 2005 context allows for more flexibility of interpretation than does "on-site inspection" in the post-August 8, 2005 context
- Considering whether non-traditional forms of inspections, such as self-certifications and third-party inspections can be counted as inspections in the pre-August 8, 2005 context
- Considering different categories of inspectors, to determine whether their pre-August 8, 2005 inspections should be counted

Developing guidelines for post-August 8, 2005 inspections

- Considering what procedures need to be followed for EPA to count post-August 8, 2005 inspections
- Considering the nature of and extent of data on state-conducted inspections which EPA would require
- Considering whether follow up enforcement needs to be a part of state post-August 8, 2005 inspection plans

Determining need for and availability of financial and other support for states

- Determining which states will need outside assistance in meeting the two-year inspection cycle
- Determining types of inspection assistance which would be or could become available
- Developing criteria to determine where assistance should be targeted

Determining inspection data needs and state and EPA data systems' capabilities

- Considering what inspection data is needed and how it should be collected
- Assessing the capabilities states currently possess for data collection and transmission
- Considering whether EPA's Central Data Exchange Network (CDX) could be used as the primary vehicle for inspection information centralization

For More Information

Contact Jerry Parker, workgroup leader, at parker.jerry@epa.gov or 703-603-7167

Contact Steve Crimando, Association of State and Territorial Solid Waste Management Officials (ASTSWMO) at swmsbc@sso.org or 202-624-7883 for information about ASTSWMO's participation in the workgroup

Operator Training (Section 1524)

Requirement

EPA Administrator, in consultation and cooperation with states and after public notice and opportunity for comment, must issue guidelines that specify training requirements for three distinct classes of operators responsible for operation and maintenance of federally regulated UST systems. The guidelines have to take into account:

- State training programs in effect when guidelines are finally published.
- Training programs used by owners and operators as of August 8, 2005.
- High turnover rate of tank operators and other personnel.
- Frequency of improvement in underground storage tank equipment technology.
- Nature of the businesses in which the tank operators are engaged.
- Substantial differences in the scope and length of training needed for the different classes of operators.
- Other factors determined necessary by EPA Administrator.

States receiving funding under Subtitle I shall develop state-specific training requirements consistent with EPA's guidelines. The state-specific training requirements must:

- Be consistent with EPA's guidance.
- Be developed in cooperation with tank owners and operators.
- Take into consideration training programs implemented by owners and operators.
- Be appropriately communicated to tank owners and operators.

Deadlines

August 8, 2007 - EPA must publish operator training guidelines

August 8, 2007 - States need to follow EPA's guidelines and develop state-specific training requirements (in order to receive funding)

Purpose Of Work Group

Develop grant guidelines that will apply to any state receiving federal UST money from EPA

Timing

Summer 2006 - EPA's goal is to have the draft guidelines available

Key Issues

Developing definitions for three operator classes outlined in the act

- Reviewing existing programs (state and owner/operator)
- Considering defining the classes by those responsibilities the operator would perform at the facility versus identifying a distinct individual

Identifying responsibilities and key knowledge for each operator class

- Scoping boundaries to be established between 40 CFR requirements versus beneficial best management practices
- Identifying responsibilities that might be assigned to each operator class
- Identifying key knowledge that might be required by each operator class to appropriately perform operation and maintenance activities
- Determining levels of knowledge that might need to be possessed by each operator class
- Identifying operator training requirements for gasoline service stations as well as other UST facilities

Notify public and provide opportunity for comment

- Determining best approach to communicate most effectively and efficiently with the public on this requirement

For More Information

Contact Tim Smith, work group leader, at smith.timr@epa.gov or 703-603-7158

Contact Steve Crimando, Association of State and Territorial Solid Waste Management Officials (ASTSWMO) at swmsbc@sso.org or 202/624-7883 for information about ASTSWMO's participation in the work group

Public Record (Section 1526)

Requirement

States which receive federal funds to carry out Subtitle I must maintain, update at least annually, and make available to the public a record of USTs regulated under this subtitle. EPA Administrator must prescribe the manner and form for the information after consulting with states. The public record shall include (to the maximum extent practicable, for each year) the number, sources, and causes of UST releases; the record of compliance by USTs in the state with Subtitle I or approved state program; and data on equipment failures.

Deadlines

Inferred - needs to be included in FY07 state grants

Purpose Of Work Group

Develop grant guidelines describing the public record requirements that will apply to any state receiving federal UST money from EPA

Timing

Spring 2006 - EPA's goal is to have draft guidelines available

Summer 2006 - guidelines finalized and ready for inclusion in state grants

Key Issues

Deciding when states must make the initial public record available

- Need to consider time frames for developing and data-gathering

Determining how the public record must be made available

- Electronic, hardcopy, public room, etc.

Developing criteria and defining terms for minimum public record content

- Summary information versus site-specific information
- Sources and causes of releases
- Inspection and compliance information
- Samples of public record content

Ensuring data quality

For More Information

Contact Paul Miller, work group leader, at miller.paul@epa.gov or 703-603-7165

Contact Steve Crimauco, Association of State and Territorial Solid Waste Management Officials (ASTSWMO) at swmsbc@sso.org or 202/624-7883 for information about ASTSWMO's participation in the work group

Fuel Delivery Prohibition (Section 1527)

Requirement

EPA Administrator, in consultation with states, underground storage tank owners, and product delivery industries, must issue guidelines to implement delivery prohibition. The guidelines must address these five processes and procedures:

- Criteria for determining ineligibility to receive delivery.
- Mechanisms for identifying ineligible facilities for delivery.
- Process for reclassifying ineligible facilities as eligible for delivery.
- One or more processes for providing adequate notice to UST owners and operators and suppliers that an UST has been determined ineligible for delivery.
- Process for determining the specific geographic areas subjected to the requirements. Rural and remote areas, as determined by EPA or a state, can be exempt from delivery prohibition if it would jeopardize the availability, or access to, fuel unless there is an urgent threat to human health (exemption only applies for 180 days following date of exemption determination).

Additionally, a person must be provided a notice of ineligibility to prohibit delivery, and any person making or accepting delivery at an ineligible facility is subject to the same civil penalty for each day of the violation.

Deadlines

August 8, 2006 - EPA must publish guidelines detailing processes and procedures

August 8, 2007 - Unlawful to deliver to "identified" tanks

- States need to implement EPA's guidelines (in order to receive funding)

Purpose Of Work Group

Develop grant guidelines that will apply to any state receiving federal UST money from EPA

Timing

Spring 2006 - EPA's goal is to have draft guidelines available

Key Issues

Developing criteria to determine which facilities are ineligible for delivery

- Considering whether to create different tiers, depending upon the severity of a facility's noncompliance (e.g., immediate prohibition for severe violations, X days to return to compliance before delivery prohibition for less severe violations)

Developing processes/procedures to identify a facility as ineligible and return a facility to eligibility

- Exploring different state approaches (e.g., red tagging, permitting, web lists)
- Considering whether to allow states to use various approaches or to push for national consistency
- Considering appropriate methods and timeframes for returning a facility to compliance (i.e., how long after confirmation of compliance must a state return a facility to eligibility)
- Considering appropriate method for notifying delivery community of a facility's ineligibility (e.g., direct mailing, web list, notice on red tag at facility)

Determining specific areas (such as rural and remote) that should be exempt from the requirements

- Considering requirements for facilities that should not be determined ineligible. For example:
 - Areas where delivery prohibition would jeopardize fuel availability to rural communities
 - Situations where continued operation is in the greater public interest (e.g., emergency generator tanks at hospitals)

Determining how to develop programs that comply with due process requirements

Identifying how to address hazardous substance (non-petroleum) tanks (i.e., should hazardous substance tanks be subject to the same policies and procedures)

For More Information

Contact Mark Barolo, work group leader, at barolo.mark@epa.gov or 703-603-7141

Contact Steve Crimardo, Association of State and Territorial Solid Waste Management Officials (ASTSWMO) at swmsbc@sso.org or 202/624-7883 for information about ASTSWMO's participation in the work group

Secondary Containment (Section 1530)

Requirement

This is one of two options for each state that receives funding under Subtitle I. New or replaced tanks and piping within 1,000 feet of an existing community water system or existing potable drinking water well must be secondarily contained (includes interstitial monitoring). New dispenser systems within 1,000 feet of an existing community water system or existing potable drinking water well must have under-dispenser spill containment. This requirement does not apply to repairs meant to restore a tank, pipe, or dispenser to operating condition. EPA Administrator must issue regulations or guidelines implementing the requirements. Guidance must differentiate between repair and replace.

Deadlines

February 8, 2007 - States must implement secondary containment or financial responsibility requirements to receive funding

Purpose Of Work Group

Develop grant guidelines describing the secondary containment requirements that will apply to any state receiving federal UST money from EPA (and chooses not to implement the manufacturer/installer financial responsibility and installer certification option)

Timing

Spring 2006 - EPA's goal is to have draft guidelines available

Summer 2006 - Guidelines finalized and available to states; final guidelines would also be part of FY07 state grant

Key Issues

Defining important terms

- Community water system
- Potable drinking water well
- Replace - when does a repair become a replace?
- Under-dispenser containment

Tank and piping secondary containment and interstitial monitoring

- What are the acceptable options for tank and piping secondary containment?
- What is not acceptable?
- Consistency with current requirements for hazardous substance tanks

Determining whether a new or replaced tank, pipe, or dispenser is within 1,000 feet of a community water system or potable drinking water well

- How is this determination made?
- Who can make it?

Notification of replacements and new installations

- How can states know that a replacement or new installation is occurring before construction begins so they can ensure the secondary containment requirements are being met?

For More Information

Contact Paul Miller, work group leader, at miller.paul@epa.gov or 703-603-7165

Contact Steve Crimando, Association of State and Territorial Solid Waste Management Officials (ASTSWMO) at swmsbc@sso.org or 202/624-7883 for information about ASTSWMO's participation in the work group

Financial Responsibility/Installer Certification (Section 1530)

Requirements

This section requires each state that receives funding under Subtitle I to require either: tank and piping secondary containment for new and replacement tank systems *or* evidence of financial responsibility (FR) and certification.

If states choose the financial responsibility option, they are required to implement regulations requiring that “a person that manufactures an underground storage tank (UST) or piping for an underground storage tank system or that installs an underground storage tank system is required to maintain evidence of financial responsibility ... in order to provide for the costs of corrective actions directly related to releases caused by improper manufacture or installation” This provision did not alter or affect the liability of any owner or operator of any underground storage tank.

Additionally, this section requires that a person who installs an underground storage tank system be certified or licensed, or has his underground storage tank system installation certified, etc. This requirement (for new installations and repairs) already exists in the existing federal UST regulations.

Deadline

February 8, 2007 - States must implement financial responsibility or secondary containment requirements to receive funding

Purpose Of Workgroup

Develop grant guidelines describing the financial responsibility requirements that will apply to any state receiving federal UST money from EPA (and chooses not to implement the secondary containment option).

Timing

Spring 2006 - EPA’s goal is to have draft guidelines available

Summer 2006 - Guidelines finalized and available to states; final guidelines would also be part of FY07 state grant

Key Issues

The current federal financial responsibility requirements on owners and operators require coverage of \$1 million per occurrence and \$1 or \$2 million aggregate

- Are these amounts appropriate?
- Is “per occurrence” coverage the appropriate type of coverage? For example, should it be

“per tank manufactured” or “per tank installed”, etc.?

How long must the manufacturer or installer maintain coverage?

- For “eternity”?
- For the “operational life of the tank or tank installation”?
- For *X* years after installation?

What does it mean to “maintain evidence”, considering that a tank or piping may go through several hands between the manufacturer and the ultimate customer?

- How does the ultimate customer know about the FR coverage?
- How does the manufacturer know when it is no longer required to main FR coverage for the tank or piping in question?

If the manufacturer or installer changes its FR mechanism, how is this change communicated and to whom?

The current financial responsibility regulations allow a wide variety of mechanisms that can be used to demonstrate FR. Are all these mechanisms appropriate or should we allow just the ones that are appropriate for this particular requirement?

The Act requires that “installers of tank systems” maintain evidence of FR

- What is an appropriate definition of “installer of the tank system” given there may be several companies involved in the installation of the tank system (e.g., the firm that digs the trench; the firm that installs the tank in the ground; the firm that hooks up the electrical system for the automatic tank gauge system; etc.)?
- Should each of these firms be required to maintain FR or just the “general contractor”?

What is the definition of “installation”?

For More Information

Contact Sammy Ng, work group leader, ng.sammy@epa.gov or 703-603-7166

Contact Steve Crimando, Association of State and Territorial Solid Waste Management Officials (ASTSWMO) at swmsbc@sso.org or 202/624-7883 for information about ASTSWMO’s participation in the work group