

FY 2005 End of Year Report

State of Wisconsin

Department of Commerce
UST Cooperative Agreement
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Performed by:

Underground Storage Tank Section
Program Management Branch

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REGION 5
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**FY05 Subtitle I
Underground Storage Tank Program
End of Year Evaluation**

Executive Summary

Wisconsin's Department of Commerce (Commerce) continues to administer an effective Underground Storage Tank (UST) program. Commerce's duties include inspecting and enforcing UST regulations, maintaining a database of all the regulated USTs in the State of Wisconsin, reporting Wisconsin's compliance status, and reporting any compliance issues to the United States Environmental Protection Agency (U.S. EPA).

Commerce continues to reported high levels of compliance from owners/operators. During Fiscal Year 2005 (FY05) Commerce reported an 82% significant operational compliance (SOC) with release prevention and a 79% SOC with release detection. This is an increase of 1% in release prevention SOC and an increase of 3% in release detection SOC. Annual compliance inspections, annual operating permits, and red tag authority are some of the tools that allow Commerce to achieve these levels of compliance.

Commerce has seen a significant increase of facilities in compliance with the financial responsibility requirements; however, Commerce is concerned that facilities do not have adequate financial responsibility to cover a major release. The most common form of financial responsibility seen in WI is private insurance. Commerce has found many problems associated with the use of private insurance. Insurance companies are continuing to find ways to denying claims. Commerce is in the process of investigating the problems associated with private insurance.

In On March 21, 2005 the U.S. EPA sent Commerce a letter formally rejecting its draft State Program Approval (SPA) application. The U.S. EPA rejected the draft application because Wisconsin cannot meet the required maximum daily fine. Commerce had proposed new legislation, which will increase the maximum daily fine to meet the Federal requirements. If the legislation does not pass Commerce will meet with its State Attorney General to determine their next course of action.

In August of 2005 Congress passed into law the 2005Energy Bill which made some major changes to the UST requirements. If a State cannot meet the requirements of the 2005 Energy Bill its Leaking Underground Storage Tank (LUST) may lose some funding. At this point Commerce should be able to meet all of the requirements on time. Commerce is working on meeting the requirements for secondary containment near a drinking water system and they have proposed some changes to their open records process.

**FY05 Subtitle I
Underground Storage Tank Program
End of Year Evaluation**

Introduction

Commerce was successful in meeting all its commitments and objectives for its FY05 UST cooperative agreement work plan. Wisconsin ranks at the top in Region 5 as far as the percentage of facilities in SOC. Ensuring that all facilities have adequate financial responsibility continues to be a top priority. Commerce and the U.S. EPA continue to work towards SPA in Wisconsin.

Compliance Issues

Wisconsin continues to maintain high levels of compliance from owners/operators of USTs. Of the roughly 5000 compliance inspections performed in FY05, 82% of the facilities were in SOC with regards to release prevention and 79% of the facilities were in SOC with regards to release detection. Wisconsin has one of the highest SOC rates in Region 5. The average SOC rates, for FY05, in Region 5 are 76% with regards to release prevention and 69% with regards to release detection. Commerce is able to achieve high levels of compliance as a result of its aggressive enforcement authority. Annual compliance inspections, annual operating permits, and red tag authority are some of the tools Commerce uses to ensure compliance with the UST regulations.

One goal of Commerce's Fiscal Year 2006 workplan is to reduce the number of confirmed releases nationally. During their annual compliance inspections, Commerce inspectors have seen small drips and leaks from fuel filters and dispensers. At this time Commerce does not know if these are being reported to the Wisconsin Department of Natural Resources as a release. Commerce is looking into this and whether or not the inspector should report these releases and how to track such releases. These small releases may affect the goal to reduce the number of confirmed releases nationally.

Financial Responsibility

Financial responsibility has been a major concern since Wisconsin's State Fund – The Petroleum Environmental Cleanup Fund Act (PECFA) – stopped providing funding to cleanup new releases. As part of the permitting process in the State of Wisconsin each facility must submit proof of financial responsibility annually. In the last 6 months, Commerce has seen an increase from 60% to 85% of the facilities in compliance with the financial responsibility regulations. Despite the increase in compliance Commerce is still concerned that facilities do not have adequate financial responsibility to cover a major release.

The most common form of financial responsibility seen in WI is private insurance. Private insurance is the easiest and cheapest type of financial responsibility to obtain. Commerce continues to find many problems associated with the use of private insurance as a method of financial responsibility. Commerce is not confident that insurance companies will pay to clean up a release. The fear is that insurance companies will find any reason to deny a claim. Commerce has discovered that some owners are not willing to make a claim, because they are

afraid that the premiums will be too expensive or that their coverage will be dropped. Commerce is in the process of investigating the problems associated with private insurance.

State Program Approval

Commerce continues to work towards receiving SPA in the State of Wisconsin. SPA is being held up because Wisconsin does not have the authority to enforce the maximum daily fine of \$5,000 as required in 40 CFR Part 281.41. On March 21, 2005, the Director of the Waste, Pesticides, and Toxics Division sent a letter to Commerce indicating that the SPA application could not be accepted until Commerce meets all of the requirements. Commerce in turn used the letter to try and gain legislative support. In early 2005, Commerce proposed changes to its legislation regarding this issue; however, no action has been taken at this time. There is no guarantee that the proposed changes will be made. The U.S. EPA and Commerce continue to discuss their options.

Energy Bill

In August of 2005 Congress passed into law the 2005 Energy Bill which made some major changes to the UST requirements. Part of the 2005 Energy Bill indicates that if States do not meet the new requirements, funding for the State's LUST program could be in jeopardy. The U.S. EPA and Commerce are working closely to ensure that all of the requirements are met. At this time the State of Wisconsin should not have any problem meeting these new requirements. To ensure that all of the requirements are made on time, Commerce has proposed new rules which would require secondary containment on all new UST systems within 1000 feet of a drinking water source. Commerce is also working with the U.S. EPA to ensure that their proposed Open Records or Right-to-Know process meets the requirements of the 2005 Energy Bill.

FY05 End of Year UST Action Items

1. EPA – Determine how Commerce can regulate with the new Ultra Low Sulfur regulations.
2. EPA & Commerce – Continue discussion of SPA. Determine what the next step is going to be.
3. EPA – Talk to Milwaukee regarding notification of new UST sites.
4. EPA – Review Commerce’s proposed Open Record process to ensure that it meets the 2005 Energy Bill Requirements.
5. EPA – Determine how IL OSFM reports leaks found during an inspection.