

FY 2005 Mid-Year Report

State of Wisconsin

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Performed by:

Underground Storage Tank Section
Program Management Branch

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Table of Contents

Executive Summary	1
Introduction	2
Compliance Issues	2
Financial Responsibility	2
State Program Approval	3
FY05 Mid-Year UST Action Items	4

**FY05 Subtitle I
Underground Storage Tank Program
Mid-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).

During the first half of Fiscal Year 2005 (FY05) Commerce reported high levels of compliance from owners/operators. Commerce reported an 82% significant operational compliance (SOC) with release prevention and a 78% SOC with release detection. In order to ensure compliance with the UST regulations, Commerce inspects each facility annually and requires an annual operating permit. If a facility is not in compliance Commerce has the authority to red tag the tanks until the facility is back in compliance.

One issue of major concern for both the U.S. EPA and Commerce is compliance with the financial responsibility requirements. Although insurance is one of the more popular methods of financial responsibility there are many problems associated with it. Commerce is concerned that insurance companies are not meeting the needs of the facilities. The owner is ultimately responsible to ensure that the facility has the proper financial responsibility. Commerce is planning a study to try and identify some of the major problems associated with insurance.

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.

**FY05 Subtitle I
Underground Storage Tank Program
Mid-Year Evaluation**

Introduction

Commerce was successful in meeting all its commitments and objectives for the first half of its FY05 UST cooperative agreement work plan. Wisconsin continues to achieve high levels of operational compliance as a result of Commerce's field presence and enforcement capabilities. Financial responsibility continues to be a big concern for Commerce and the U.S. EPA. Commerce proposed some statutory changes to the Wisconsin Legislators in an effort to meet the Federal requirements for SPA.

Compliance Issues

Wisconsin maintains high levels of compliance from owners/operators of USTs. For the past year Wisconsin has reported a SOC of 82% for release prevention measures and 78% for release detection measures. This is an increase of 1% for release prevention measures and an increase of 2% for release detection measures reported at the end of Fiscal Year 2004. 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. During the first half of the fiscal year Commerce performed approximately 2,500 compliance inspections. Compliance with the financial responsibility regulations has both the U.S. EPA and Commerce concerned. Most facilities have insurance; however, there is a concern on how reliable the coverage is.

Financial Responsibility

As stated earlier, a majority of the owner/operators rely on private insurance as their sole method of financial responsibility. The U.S. EPA and Commerce are concerned that the insurance companies may not meet the needs of the owner/operator when it comes to cleaning up a release from a UST. The concern is that the insurance companies are finding ways to deny claims, forcing the owner/operator to be liable for the cleanup cost. Insurance companies are not required to cover any release that occurred before the insurance policy was written. Therefore, there is anecdotal information that insurance companies typically deny any claims until the owner/operator can provide proof that the release occurred while covered under the policy. Commerce indicated some insurance companies may also be able to deny a claim if the facility does not comply with the UST requirements. This seems inconsistent with the Federal regulations and may warrant further discussion. Another concern is that owner/operators are providing the insurance companies with false information regarding their UST system. The owner/operator provides false information to save money on their insurance premiums or because they are not familiar with their UST system. In this case the insurance company can deny any claim because the owner/operator falsified their information. However, insurance companies are not performing any due diligence to verify the application. It almost suggests the insurance company is looking for a way to invalidate the policy should there be a release. Ultimately, the owner/operator is responsible for maintaining the proper insurance.

Since these insurance issues are relatively new to the UST program, the U.S. EPA would like to gather more information regarding some of the problems associated with this requirement. There are only three insurance companies that actually provide UST insurance. The U.S. EPA will use this information with these three companies to perhaps make some changes to the financial responsibility requirements, or to help educate owner/operators regarding financial responsibility. The Wisconsin Department of Commerce UST and Wisconsin's Leaking Underground Storage Tank programs are planning to work together and identify sites that have been denied coverage and try to determine why the facility was denied the claim.

State Program Approval

The U.S. EPA has reviewed Wisconsin's draft application for SPA and has determined that it cannot accept the draft application as is. The U.S. EPA has concluded that Wisconsin cannot meet the maximum daily fine of \$5,000 as required in 40 CFR Part 281.41. On March 21, 2005 the U.S. EPA sent a letter formally rejecting Wisconsin's draft application. As a result Commerce has proposed a statutory change, which would increase the maximum daily fine to \$5,000. The Wisconsin legislators are currently reviewing this statutory change. If the statutory change is not approved Commerce will discuss their options with the State's Attorney General. Commerce is convinced that they can meet the maximum daily fine of \$5,000 with the use of their red tag authority.

FY05 Mid-Year UST Action Items

1. EPA – Identify possible funding to bring Marcel Moreau to Wisconsin for some training.
2. EPA – Identify possible funding to help with study regarding financial responsibility (Check with OECA and OUST).
3. Commerce – Continue to push for new statutory change, which would increase the maximum daily fine to \$5,000.
4. Commerce – Provide EPA with information regarding ethanol training.