



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUN - 8 2006

OFFICE OF  
SOLID WASTE AND  
EMERGENCY RESPONSE

**MEMORANDUM**

**SUBJECT:** Inspection Requirements Of The Energy Policy Act: Determining Which Underground Storage Tanks Have Undergone An Inspection Since December 22, 1998

**FROM:** Cliff Rothenstein, Director  
Office of Underground Storage Tanks

A handwritten signature in black ink, appearing to read "Cliff Rothenstein", written over the printed name.

**TO:** EPA Regional UST Division Directors  
State UST Program Managers

I am writing to share with you the Agency's determination on how to interpret a key provision of the Energy Policy Act, that is, the requirement to inspect all underground storage tanks (USTs) that have not undergone an inspection since December 22, 1998. To implement this provision, states that receive Solid Waste Disposal Act (SWDA) Subtitle I funding must determine which USTs have undergone an inspection in the relevant time frame. As described more fully below, USTs that have undergone a compliance monitoring activity since December 22, 1998, do not need to have an on-site inspection by August 8, 2007.

This document applies to USTs regulated under Subtitle I in operation on or before December 22, 1998. As used in this document, USTs means those tanks that satisfy the definition of "UST" in 40 C.F.R. § 280.12, except for those tanks identified in 40 C.F.R. §§ 280.10(b) and 280.10(c) as excluded or deferred USTs. This document does not apply to USTs installed after December 22, 1998, because such USTs are not subject to the two-year inspection requirement.

**Energy Policy Act Inspection Requirements**

The UST provisions in the Energy Policy Act of 2005 contain amendments to Subtitle I of SWDA. Section 1523 of the Energy Policy Act amends section 9005 of SWDA by requiring periodic on-site inspections for USTs. In particular, under section 9005(c)(1), USTs that have not been inspected since December 22, 1998 must have an on-site inspection by August 8, 2007.

## **Determining Which Underground Storage Tanks Have Undergone An Inspection Since December 22, 1998**

In section 9005(c)(1), Congress uses the term “inspection” in connection with determining whether an UST had already undergone an inspection between December 22, 1998 and August 8, 2005. In contrast, however, further in section 9005(c)(1) and then in section 9005(c)(2), Congress uses the term “*on-site* inspection” (emphasis added) in connection with subsequent inspections that EPA or states must conduct within, respectively, a 2-year or 3-year timetable. When enacting section 9005(c)(1), Congress was aware that the states and EPA were using a variety of compliance monitoring activities to determine an owner/operator’s compliance with Subtitle I and its implementing regulations or a requirement or standard of a state program developed under Subtitle I.<sup>1</sup> The use of the term “inspection” without the modifier “on-site” in section 9005(c)(1) reflects Congress’ understanding of the variety of state and federal activities that had been used prior to the enactment of the Energy Policy Act to determine an owner/operator’s compliance with the applicable UST regulations and is limited to the context of this provision in this legislation. By enacting section 9005(c)(2), Congress made a deliberate choice to alter both the frequency of inspections, as well as the variety of existing activities used to determine an owner/operator’s compliance, by legislating that EPA or a state conduct on-site inspections of all USTs every three years.

Therefore, solely for purposes of implementing the requirements of section 9005(c)(1), USTs that have not undergone a compliance monitoring activity since December 22, 1998, have not undergone an inspection under section 9005(c)(1) and thus must have an on-site inspection by August 8, 2007. For the limited purpose of determining which USTs have undergone a compliance monitoring activity since December 22, 1998, the state agency responsible for implementing the UST regulatory program may count any of the activities that the state, or an entity on behalf of the state, was using from December 22, 1998, through August 8, 2005, to reasonably monitor, evaluate, or determine an owner/operator’s compliance with the federal UST regulations or the regulations of a state approved under section 9004.<sup>2</sup> Any UST that had undergone such a state or federal activity from December 22, 1998, through August 8, 2005, is

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<sup>1</sup> For instance, the Government Accountability Office (GAO) issued a Report to Congress in May 2001 describing the breadth of UST inspection programs which included the use of tank owners’ self-certification that their tanks were in compliance as one activity used to determine UST compliance. The Report also included inspections. EPA considers an inspection to be a visit to a facility or site for the purpose of gathering information, including direct observations, to determine compliance with a statutory requirement, regulation, or other legal obligation.

<sup>2</sup> While not all such state activities meet EPA’s definition of an inspection, based upon information before Congress prior to enacting section 9005(c)(1), see n.1, above, such activities were described to Congress as ways in which some states determine an owner/operator’s compliance with the applicable UST regulations.

not required to have an on-site inspection by August 8, 2007, under section 9005(c)(1).

### **Next Steps**

This summer OUST expects to publish draft inspection grant guidelines to implement section 9005(c) of SWDA Subtitle I as amended by the Energy Policy Act of 2005. These guidelines will incorporate the determination made in this memorandum, and detail what states must do to meet the on-site inspection requirements in 9005(c). If you have questions or comments about this memorandum or the inspection requirements contained in the Energy Policy Act, please contact Tim Smith of my office at [smith.timr@epa.gov](mailto:smith.timr@epa.gov) or 703-603-7158.

cc: EPA Regional UST Branch Chiefs  
EPA Regional UST Program Managers  
OUST Managers  
OUST Regional Liaisons