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

SEP 30 2003

MEMORANDUM

SUBJECT: Significant Operational Compliance (SOC) Performance Measures For The Underground Storage Tank (UST) Program

FROM: Cliff Rothenstein, Director
Office of Underground Storage Tanks

FOR Walker B. Smith, Director
Office of Regulatory Enforcement

TO: State Underground Storage Tank Program Directors
Regional UST/LUST Division Directors, Regions I-X
RCRA Enforcement Managers, Regions I-X

We are writing to share with you the underground storage tank (UST) program revised performance measures for significant operational compliance (SOC) with the release detection and release prevention regulations (see attachments). As many of you know, EPA and its state partners have been working to develop a uniform method for measuring certain aspects of operational compliance in the UST program. The SOC program performance measures explained below and in the accompanying SOC Determinations Document are the result of a multi-year effort. In addition, we are requesting your support in implementing these revised measures beginning in fiscal year (FY) 2004.

The purpose of using a uniform method is to measure specific elements of operational compliance, as described in this document as "significant", and not "comprehensive" operational compliance. The two SOC measures developed in 2000 – compliance with release detection and compliance with release prevention requirements – have been revised to include a third "combined" measure which provides a single number for the percentage of UST facilities in a state in significant operational compliance with all SOC requirements. This new measure will make it easier to communicate the compliance of the UST community and to consider the relative impact on human health and the environment because the measure focuses on aspects of the UST program that provide significant controls to detect and prevent releases.

Background

EPA's Office of Underground Storage Tanks (OUST) uses a set of performance measures to track progress in the UST program. (EPA's Office of Enforcement and Compliance Assurance separately collects data from EPA regions to track the number of inspections and enforcement actions taken by regions.) States and EPA regions report UST program measures to OUST on a semiannual basis. From FY 97 through FY 00, EPA used two measures to track compliance with the UST regulations: "Number of UST Systems Equipped to Meet the Requirements for Upgrading" and "Number of UST Systems Equipped to Meet the Requirements for Leak Detection". These measures served a valuable purpose as EPA prepared for the 1998 deadline. After the deadline passed and most substandard USTs had been upgraded or removed, EPA began to shift its focus to ensuring and measuring operational compliance. Operational compliance means that a facility not only has the required release detection and release prevention equipment, but that the equipment is in use, functioning, and properly maintained. EPA's first approach to measuring operational compliance depended on voluntary submissions from states and was generally based on best professional judgment. EPA used this approach in FY 99 and FY 00.

In December 2000, EPA issued UST performance measures for assessing compliance with selected aspects of the UST regulations. The select aspects EPA measured were: "Percentage of UST Facilities in Significant Operational Compliance with the UST Spill, Overfill, and Corrosion Protection Regulations (the 1998 Regulations)" and "Percentage of UST Facilities in Significant Operational Compliance with the UST Leak Detection Regulations". Along with the measures, EPA provided general guidance which explained how the determinations should be made, based on actual inspections rather than best professional judgment. States have been providing EPA with this data since then.

During the past two years, both EPA and states decided that more specific guidance on the determination of significant operational compliance was essential in order to produce more accurate and consistent reporting. To that end, EPA, in cooperation with the Association for State and Territorial Solid Waste Management Officials (ASTSWMO), convened a state-EPA work group to advise EPA on developing the new SOC guidance.

The Work Group's Efforts

In June 2002, the work group began meeting; it worked to develop and recommend new guidance on measuring the most significant aspects of release detection and release prevention requirements of the federal UST regulations. The work group developed matrices listing specific requirements of the federal UST release prevention and release detection regulations. An UST facility is considered to be in significant operational compliance if that facility meets each element of both matrices.

The fact that other aspects of the UST program (i.e. other statutory and regulatory requirements) are not listed in the matrices is not intended, nor should it be interpreted, to mean that those other aspects of the UST program are less important. The work group was tasked with developing an efficient means of gathering consistent data for the purpose of evaluating national compliance rates with select aspects of the UST program. As such, this endeavor required the work group to choose the most significant regulatory requirements for measurement purposes. Those regulatory requirements not listed on the SOC matrices are enforceable regulatory requirements and still an integral part the UST program. Owners and operators of USTs must comply with all UST regulations.

In January and February of 2003, EPA field tested this new guidance by 16 states conducting 1,100 inspections. EPA presented and discussed the results at the March 2003 UST/LUST National Conference in San Francisco, California. Based on feedback from states, the work group revised the guidance and the matrices. In May, five states conducted a second round of field tests, conducting nearly 500 inspections. ASTSWMO sent the complete set of SOC draft documents to all states for a final review in July of this year. EPA assessed the final review comments and the attached SOC Determinations Document and Matrices represent the final SOC measures.

We acknowledge the valuable contributions of the members of the State and EPA SOC Work Group. They, and supporting state and EPA regional staff, were instrumental in bringing this effort to a successful conclusion. Many states not on the work group also helped by either participating in the pilot tests or offering comments on the draft documents at several points along the way. Thank you for all your efforts.

Need Support Of Regions And States

Because EPA was not able to finalize the revised measures before regions and states completed their FY 04 grant negotiations, many of the regional UST programs worked with their states to include placeholders in their grants for these revised measures. OUST has emphasized several times during the past year that states should be planning to implement SOC reporting using this revised approach starting October 1, 2003. State and EPA members of the work group believe it is very important that states do not delay data collection. However for FY 04 SOC reporting purposes, EPA will accept results based on a smaller number than the total number of UST inspections a state conducted – as long as those results are based on inspections using the revised SOC criteria. By FY 05, EPA wants the SOC performance measure reports to be based on all UST inspections conducted. EPA encourages states to use SOC measures in conjunction with a state's full regulatory inspection protocol.

Some states have indicated that because they have more stringent requirements than the federal SOC requirements in some areas, their reporting percentages might be incorrectly perceived. We appreciate that concern. Consequently on EPA's semiannual reports, we will mark with an asterisk any reporting of the percentages of SOC for states with more stringent requirements. EPA will also develop an accompanying addendum that spells out in detail those state requirements that are more stringent than the corresponding federal requirements.

We appreciate your support of this effort to revise the performance measures for significant operational compliance with the UST regulations. If you have questions about these measures, please contact Jerry Parker in the Office of Underground Storage Tanks at (703) 603-7167 or Diana Saenz in the Office of Regulatory Enforcement at (202) 564-4209.

Attachments

cc: Regional Branch Chiefs, Regions I-X
Regional UST Program Managers, Regions I-X
OUST Managers