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

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MEMORANDUM

SUBJECT: EPA's Inspection and Compliance Assistance Priorities For Underground Storage Tank Systems Not Meeting The 1998 Deadline

FROM: for Steven A. Herman, Assistant Administrator
Office of Enforcement and Compliance Assurance

Timothy Fields, Jr., Acting Assistant Administrator
Office of Solid Waste and Emergency Response

TO: Regional Administrators, Regions I-X

This memorandum clarifies some aspects of the August 10, 1998 memorandum entitled, "Underground Storage Tank 1998 Deadline Enforcement Strategy." In particular, this memorandum provides EPA Regional Offices guidance on the subsection of the strategy entitled "When EPA will take action" which contained the following:

> Because EPA believes it is essential that Regional Offices have latitude in deciding where to initiate Federal actions, the Agency will not establish criteria for such decision-making. Some degree of consistency from one Regional Office to another is nevertheless important; EPA believes that such consistency can be achieved through ongoing communication between EPA Headquarters and Regional Offices.

As part of that ongoing communication, today's memorandum reflects a continuing assessment of UST compliance levels and the best ways for EPA to use its limited resources to reach underground storage tank (UST) program environmental goals. The attached document provides further background information on this subject and states EPA's federal inspection priorities for Regional Offices.

Our primary concern remains finding the most efficient way to ensure that USTs do not leak by meeting standards for protection from spills, overfills, and corrosion. Working in partnership with States, we believe that focusing EPA's resources over the next six months on compliance assistance activities, especially for small businesses and local governments, and high priority inspections is the most effective approach to reaching our environmental goals of protecting human health and the environment from substandard USTs. Since the UST program's inception, EPA has been sensitive to the need for balancing our environmental goals with concerns about unduly impacting small businesses and local governments.

While we are not extending the deadline, we believe it necessary to set priorities to reach most effectively the environmental goals of the federal UST program. If you have any comments on this memorandum, please contact Joan Olmstead (202) 564-4018 in the Office of Enforcement and Compliance Assurance or Sammy Ng (703) 603-7166 in the Office of Underground Storage Tanks.

cc: Enforcement Coordinators, Regions I-X
UST/LUST Regional Program Managers, Regions I-X
UST/LUST Division Directors, Regions I-X
UST/LUST Regional Branch Chiefs, I-X
UST/LUST Regional Attorneys, Regions I-X
UST/LUST Enforcement Contacts, Regions I-X
Julie Kaplan, DOJ - EES

Attachment

SUPPLEMENTAL INFORMATION REGARDING THE AUGUST 10, 1998 ENFORCEMENT STRATEGY

DECEMBER 9, 1998

This document pertains to the U.S. Environmental Protection Agency's (EPA) strategy for enforcing the regulatory requirements applicable to underground storage tanks (USTs) as of December 1998.

Background

December 22, 1998 marks ten years that the U.S. Environmental Protection Agency's regulations for underground storage tanks (USTs) have been in effect. During this time, the UST program has significantly reduced the threat to human health and the environment posed by USTs:

- Over 1.2 million substandard USTs in service in 1988 have been taken out of operation, thus removing them as sources of leaks; and
- Of the 892,000 USTs currently in operation, approximately 500,000 USTs meet tough federal standards that protect human health and the environment.

EPA would like to recognize those parties that have come into compliance by upgrading, replacing or closing their tanks. Their efforts help to reduce the threat of petroleum and hazardous substances being released into the environment.

EPA has also made every effort during the past ten years to alert UST owners about the 1998 deadline:

- EPA has distributed over 1.4 million compliance assistance documents, many of which were focused on timely compliance with the 1998 requirements;
- EPA, States, and industry have used and continue to use web sites, telephone hotlines, training, and conference presentations to broadcast UST compliance information; and
- Many State UST programs and professional/trade associations have used EPA compliance assistance materials (or adapted them or made their own materials), distributing several hundred thousand documents to their constituents.

Despite these efforts by EPA, states, and industry to effect full compliance, it has become clear that a significant number of USTs will not be in compliance by December 22, 1998. For some, it is a matter of poor planning and the unavailability of equipment and contractor assistance. For others, it may be a lack of financial resources. EPA will undertake a number of efforts to address this situation.

Providing Additional Compliance Assistance and Setting Inspection Priorities

With the deadline imminent, EPA will undertake several efforts to address the many USTs that will not be in timely compliance.

State Partnership: In developing policies to assure compliance with the 1998 deadline, EPA has worked very closely with the states to assure that we take appropriate and fair action against those owners

and operators that have failed to comply with the law. In doing so, EPA continues to recognize that the states are the primary enforcers of this law and that many states have enforcement authorities that are more extensive than those of the federal government.

Compliance Assistance: Given the large number of facilities that remain in noncompliance, EPA will continue its compliance assistance efforts, especially for small businesses and local governments. EPA will continue to assist UST sectors in their compliance efforts by providing compliance assistance information and helping to identify available sources of financing for UST upgrading, closing, or replacement. Owners and operators of USTs are encouraged to take advantage of available financing to upgrade or replace their USTs as expeditiously as possible. Some states have developed assistance programs for UST owners with many programs targeted to small businesses. These programs include grants, direct loans, and loan guarantee programs. In addition, the federal government has several programs that may provide assistance to UST owners (including Small Business Administration, Rural Development Administration, Economic Development Administration, and Administration for Native Americans). For more information, please see EPA's publication entitled "Financing UST Work: Federal and State Assistance Programs."

Disclosure and Self-Correction: For those government agencies, businesses and other owners and operators of facilities that will not be in compliance by the deadline, EPA continues to encourage them to disclose their violations pursuant to EPA's "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" (Dec. 22, 1995)(60 FR 66706)(Audit Policy), EPA's "Interim Policy on Compliance Incentives for Small Businesses" (June 3, 1996)(61 FR 27984)(EPA's Small Business Policy), or similar state policies. EPA's Audit Policy encourages regulated entities to voluntarily discover, promptly disclose, expeditiously correct and prevent violations of federal environmental requirements in order to mitigate gravity penalty amounts by 75% and in some cases up to 100%. Owners and operators of underground storage tanks should recognize that disclosure of violations to EPA under the federal Audit Policy does not provide protections from state enforcement action. Indeed, except for disclosures from facilities in New York, Idaho, Hawaii, and Indian Country, EPA will share all disclosures with the appropriate state agency and consult with them before resolving any violations.

Owners and operators of facilities located in New York, Idaho, Hawaii, and Indian Country should send their disclosures to the appropriate Regional EPA office for Audit Policy consideration (see attached list of contacts). Facilities located in states with Audit Policies that meet the federal criteria articulated in the Feb. 14, 1997 memorandum entitled, "Statement of Principles Effect of State Audit Immunity/Privilege Laws On Enforcement Authority for Federal Programs," should send their disclosure to their appropriate state regulatory agency.

High Federal Enforcement Priority: During the first six months following the deadline, EPA will focus its federal inspection resources in areas that can produce the greatest environmental and human health benefit. In particular, EPA will focus its resources on:

* Federal facilities;
* Owners and operators of multiple UST facilities;
* Owners and operators of large facilities with multiple USTs; and
* Facilities that are endangering sensitive ecosystems or sources of drinking water by failing to upgrade, replace, or close USTs.

These UST owners are strongly urged to move quickly to come into compliance, as they could be subject to state enforcement actions or citizen suits. In addition, many fuel distributors have told EPA that they may not deliver fuel to USTs that have not been upgraded or replaced.

Low Federal Enforcement Priority : During the first six months immediately after the deadline, EPA will not focus its federal inspection resources on the following types of UST facilities:

* Small UST facilities (generally four or fewer tanks) owned and operated by one person not owning or operating other regulated UST facilities; and
* USTs owned or operated by local governments and states (including public service entities such as school districts, fire departments, and police departments).

Small businesses and local governments are strongly urged to move quickly to come into compliance, as they could be subject to state enforcement actions or citizen suits. In addition, as noted above, many fuel distributors have told EPA that they may not deliver fuel to USTs that have not been upgraded or replaced.

EPA has established policies for small businesses ("Interim Policy on Compliance Incentives for Small Businesses") (June 3, 1996)(61 FR 27984)(EPA's Small Business Policy) that allow qualifying parties a waiver of most penalties for prompt disclosure and correction. For example, small businesses that step forward to identify violations and agree to upgrade, replace or close USTs can expect to pay a minimal civil penalty in the first few months of 1999. That is because the Agency generally recovers only the economic benefit associated with delayed investment in compliance, which in the first few months after the deadline is quite small. The longer compliance is postponed, however, the more economic benefit accumulates, so small businesses and local governments are urged to correct problems within the next six months.

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This document does not establish or modify any regulatory requirements; it provides guidance on policies and procedures but does not constitute final Agency action on any matter. It also is not intended, and cannot be relied upon, to create any right, benefit, or trust responsibility enforceable by any party in litigation with the United States.

EPA Audit Policy Contacts

Region 1 (CT,ME,MA,NH,RI,VT) Suzanne Parent (617) 565-3351
Region 2 (NJ,NY,PR,VI) John Wilk (212) 637-3918, (212) 637-4035
Region 3 (DE,DC,MD,PA,VA,WV) Samantha Fairchild (215) 814-2627
Region 4 (AL,FL,GA,KY, MS,NC,SC,TN) Bill Anderson (404) 562-9655
Region 5 (IL,IN,MI,MN,OH,WI) Tinka Hyde (312) 886-9296
Region 6 (AR,LA,NM,OK,TX) Barbara Greenfield (214) 665-2210
Region 7 (IA,KS,MO,NE) Becky Dolph (913) 551-7281
Region 8 (CO,MT,ND,SD,UT,WY) Michael Risner (303) 312-6890
Region 9 (AZ,CA,HI,NV) Leslie Guinan (415) 744-1339
Region 10 (AK,ID,OR,WA) Jackson Fox (206) 553-1073
Violations in more than one EPA Region -- David Nielsen (202) 564-2270