

United States  
Environmental Protection  
Agency

Office of  
Solid Waste and  
Emergency Response



<b>DIRECTIVE NUMBER:</b>	9610.8
<b>TITLE:</b>	FY 1989 - FY 1990 Compliance and Enforcement Strategy for the Underground Storage Tank Program
<b>DATE:</b>	January 5, 1989
<b>ORIGINATING OFFICE:</b>	OSWER

---

**OSWER**

**OSWER**

**OSWER**

---

**DIRECTIVE**

**DIRECTIVE**

**DIRECTIVE**

---

## Table of Contents

I. Purpose .....	1
II. Overview: Goals.....	1
III. Promoting Compliance .....	1
IV. State Compliance and Enforcement Activities.....	2
V. Federal Enforcement Situations .....	3
A. States Without UST-Specific Authorities .....	4
B. State Regulatory Programs with Gaps in Authorities.....	4
C. Corrective Actions for Petroleum Releases.....	4
D. Hazardous Substance USTs .....	4
E. State-Owned and Federal Facilities.....	5
F. Indian Lands .....	5
VI. Suspension of Enforcement of the Financial Responsibility requirements .....	6
VII. Conclusion.....	6

**Appendix A.** Existing or Upcoming Outreach Tools. The original list of tools has been updated substantially since this directive was first published on January 5, 1989, and is NOT reproduced here to avoid confusion. A new listing of OUST publications may be found on this web site. [View the List of OUST Publications.](#)

## **I. Purpose**

This document puts forth the framework for the Underground Storage Tank (UST) program's compliance and enforcement strategy for FY 89-FY 90. The document includes goals of the strategy, State and Federal activities to promote compliance, and situations appropriate for Federal enforcement actions.

## **II. Overview: Goals**

The overall mission of the UST program is to protect human health and the environment, primarily by preserving ground water for present and future use. The UST program's compliance and enforcement goals are for all States to develop strong compliance and enforcement programs, and as the Federal regulations are phased in, for a continuously increasing proportion of owners and operators to comply with regulations for new and existing tanks, corrective action, and financial responsibility. Given the large size and the diverse nature of the regulated community, EPA will seek, and will encourage States to seek, maximum voluntary compliance and to provide technical assistance where necessary to enhance voluntary compliance. Where enforcement is necessary, EPA will utilize, and will encourage States to use informal or expedited enforcement approaches. EPA will work with States to establish and enhance effective State enforcement programs.

EPA realizes that comprehensive Federal or State UST compliance and enforcement programs will not be completely in place nationwide on the day the Federal regulations become effective. Many States, however, already have UST statutory authorities and working compliance and enforcement programs in support of these authorities. EPA will focus its enforcement resources on strengthening State programs with a view toward increasing compliance with the regulations.

## **III. Promoting Compliance**

Given the large number of owners and operators in the regulated community, the UST program's ability to promote voluntary compliance is critical to the success of the program. Promotion of voluntary compliance will be achieved through a broad-based information sharing campaign and the provision of limited funding. States will be asked to take an active role in educating and working with owners and operators to promote compliance.

Many owners and operators may be reluctant to shoulder the short term costs of upgrading their USTs to comply with the new regulatory requirements. To demonstrate that it is in the owners' and operators' long term financial interest to comply with regulations and to adopt sound UST management practices, EPA, through the States, will provide information for owners and operators about their liabilities and the high cost of cleaning up releases. Voluntary compliance will not be achieved in all cases, however, and a need for a visible and effective Federal and State enforcement presence exists. States will be expected to conduct the majority of enforcement actions, though there will be some instances when a Federal enforcement presence is appropriate (for examples see below, Section V, Federal Enforcement Situations).

EPA is helping State and local UST program efforts to promote compliance by providing information, developing and sharing effective methods and tools that promote compliance, testing these tools with pilot projects in States, and providing funding for compliance monitoring and enforcement activities.

Several documents have been, and are being, developed to assist States that are in the initial stages of developing UST programs, as well as those States that are further along and have specific programmatic needs. The first product, "Building State Compliance Programs," contains information on the compliance and enforcement programs in several States, and highlights successful approaches and tools, such as expedited enforcement forms. In November 1988, Headquarters and ASTWMO sponsored an all-States meeting to facilitate the exchange of program information among Federal, State and local program personnel. Together with State and local governments, EPA Headquarters and Regions will develop additional tools, including:

- Region-sponsored meetings with State program personnel at which successful compliance assistance and enforcement initiatives are shared and promoted.
- A "marketing/outreach package" developed by Headquarters to foster compliance with leak detection requirements and the raise awareness of the consequences of non-compliance. States are encouraged to adapt these materials to their own requirements and circumstances and send them out under their letterhead to owners and operators. The package may include form letters for owners and operators, pamphlets for inclusion in permit fee notices, and public service announcements.
- A document, "Assessing Civil Penalties for Violations of UST Regulations" (draft, December 1988) that will be completed by Headquarters in early 1989.
- Handbooks, brochures, and videos to train State and local personnel in effective compliance monitoring and enforcement techniques for UST programs. Three recently completed videos focus on installation and closure practices. They are targeted for an audience of UST inspectors. Additional tools on subjects such as leak detection are forthcoming. (Appendix A contains a list of upcoming outreach/ marketing materials).
- An enforcement response document developed by Region IV that will outline what formal enforcement mechanisms are available and how to use them.

#### **IV. State Compliance and Enforcement Activities**

Informal enforcement mechanisms are an integral part of an effective, comprehensive compliance monitoring and enforcement program. The large size of the regulated universe, the diverse nature of the community, and the phase-in of regulatory requirements underscore the importance of promoting the less resource intensive informal enforcement actions. Phone calls, warning letters, and the provision of technical assistance directly to owners and operators are some of the more commonly utilized informal actions. Such informal actions can be carried out at the State and local, as well as Federal, level.

For those owners and operators who do not bring their facilities into compliance, however, formal enforcement actions are necessary. Formal enforcement actions at the State and local level center on the use of administrative compliance orders and judicial orders, though there may be additional procedures required or available under State and local codes. In addition, there will be some instances in which a Federal enforcement presence is appropriate.

During the transition period, as States are applying for program approval, and the Federal regulations are being phased-in, State-lead compliance and enforcement actions will be the norm. The State program approval objectives provide the States with the minimum standards for EPA's approval, but at the same

time do not dictate the methods States may use in meeting these standards. EPA believes this approach to State program approval will provide the States with significant flexibility, permit alternative methods of implementation, and still ensure that State UST programs adequately protect human health and the environment. EPA seeks to approve a variety of State programs and to encourage States to use innovative approaches in all program areas. The Regions will have flexibility and will work with States to resolve State-specific compliance issues that arise during the transition period. Again, the goal of EPA's compliance and enforcement efforts is to constantly improve existing State and local compliance and enforcement programs. Each percent increase in compliance nationwide is 20,000 tanks, a significant improvement in a regulated universe of almost two million USTs.

EPA will be supporting State and local compliance and enforcement activities through the mechanisms listed above, and funding will continue to be available through State program grants and LUST Trust Fund cooperative agreements. Among other activities funds are available and enforcement activities. States will be asked to disseminate regulatory and technical information to local governments and the regulated community. Suggested priority areas include outreach to owners and operators on their responsibilities related to the standards for new tanks, release detection, corrective action and closure. Funds are also available for enforcement activities to identify, investigate, and resolve violations of Federal and State regulations. States are not limited to these suggested areas and are encouraged to focus on State-specific compliance issues.

As outlined in OSWER Directive 9650.7 "Supplemental Guidelines for FY 89 Lust Trust Fund Cooperative Agreements," Trust Fund monies may be used for site investigations to identify the responsible party and for the development, issuance, and oversight of enforcement actions related to suspected releases from USTs containing petroleum, recovery of costs from liable owners and operators, and administration and management activities directly related to the above.

## **V. Federal Enforcement Situations**

EPA anticipates that most, if not all, States will submit State program approval applications to implement an UST program, including compliance and enforcement activities, which would operate in lieu of the Federal program in that State. If the number of States that have entered into LUST Trust Fund Cooperative Agreements is an indication, 54 States and territories now have cooperative agreements with EPA.

While many States already have active and comprehensive UST programs, some States are in the process of setting up new programs in response to the Federal regulations or new State legislation. Thus EPA's role in providing enforcement assistance and back-up will vary from State to State.

EPA does not intend to run Federal enforcement program as a substitute for State actions, but that does not preclude the taking of Federal enforcement actions. Although formal Federal enforcement actions will be limited in number, there are six instances in which formal Federal enforcement actions may be necessary. These six situations are discussed below.

The specific formal mechanisms available for Federal enforcement actions include warning letters, administrative enforcement responses, and civil/judicial enforcement responses. These responses will be

described and a strategy for their application will be presented in the future document entitled "Federal Enforcement Procedures."

#### **A. States Without UST-Specific Authorities**

For those few States without UST specific enforcement authorities, the Region can work with the State to develop a State-specific compliance and enforcement strategy. The strategy can include a communication and outreach component designed to educate owners and operators about the Federal regulations. Informal Federal actions, such as requests for information, will be used to establish a Federal presence, deter potential violators, and may provide an example to the States as it builds and improves its UST program. In these States, EPA may pursue a limited number of targeted formal Federal enforcement actions designed to establish a Federal enforcement presence to deter potential violators and to encourage the State to acquire the necessary enforcement authorities.

#### **B. State Regulatory Programs with Gaps in Authorities**

Over the next few years, States will continue to develop authorities and regulations that are no less stringent than the Federal objectives. During this period, for States that do not yet have enforcement authority applicable to a given violation of the Federal regulations, there may be instances in which a State, after taking steps to persuade the owner or operator to correct the situation (such as calling or sending warning letters), refers the case to EPA. At the Federal level, the Region will decide on the appropriate course of action, given the circumstances of the case.

Working with the State, a Region may decide to take a limited number of formal actions. EPA will continue to work with the State to build program capabilities and to resolve State-specific enforcement issues.

#### **C. Corrective Actions for Petroleum Releases**

In corrective action situations, Federal enforcement actions will occur as outlined in "OSWER Directive 9360.0-16, Guidance for Conducting Federal Lead UST Corrective Actions." Under this directive, Federal-lead enforcement is appropriate in situations where a release from an UST (1) poses a major public health or environmental emergency, (2) the State can demonstrate a lack of capability or authority, and (3) the State requests Federal assistance for an eligible site.

#### **D. Hazardous Substance USTs**

The UST program's approach to compliance monitoring and enforcement for hazardous substance USTs is similar to that for petroleum USTs with three exceptions. First, LUST Trust Fund monies cannot be used for enforcement with respect to hazardous substance tank releases, as Federal law [RCRA Section 9003(h)] limits its use to petroleum USTs. Second, if a Federal enforcement action is necessary, EPA has authority under the National Oil and Hazardous Substances Contingency Plan (40 CFR Part 300) to respond to most hazardous substance releases from UST systems. Finally, hazardous substance USTs on RCRA facilities may be subject to corrective action regulations under RCRA Subtitle C.

As in the case of petroleum USTs, and wherever possible, State and local programs will be relied on to conduct most of the compliance and enforcement actions related to hazardous substance USTs (MOAs may be necessary to clarify the State-Federal relationship in these situations).

EPA recognizes that some States with petroleum UST programs may not have hazardous substance UST programs. The Regions, using their discretion, may choose to focus resources on helping a State to develop authorities in this area. It is important to note that hazardous substance USTs account for less than 5% of all regulated USTs.

## **E. State-Owned and Federal Facilities**

### **1. State-Owned Facilities**

Enforcement activities at State-owned and Federal facilities will be conducted primarily at State and local levels. EPA will assist State and local UST enforcement programs wherever possible by providing needed information and technical assistance. However, should a State demonstrate a pattern of reluctance to make any effort to ensure that its own facilities comply with the State UST regulations, (or, where the State's program has not been approved, with the Federal Regulations), Federal enforcement actions against the State-owned facilities may be appropriate.

### **2. Federal Facilities - State Enforcement**

States will be expected to use the full range of their enforcement authorities to address Federal facility violations to the same extent they are used for other facilities. States are also encouraged, wherever possible, to pursue bilateral, negotiated agreements, consent orders, decrees as appropriate with Federal facilities, or three party agreements (EPA/State/Federal Agency, see Chapter VII B.1.c. of the EPA Federal Facilities Compliance Strategy, November 1988), to facilitate compliance.

### **3. Federal Facilities - Federal Enforcement**

EPA will encourage Federal facility compliance with the UST regulations primarily through informal mechanisms, providing needed information and technical assistance. However, EPA recognizes that a formal enforcement presence may at times be necessary.

Although EPA retains legal authorities to enforce UST regulations against Federal facilities, in order to avoid duplication of effort, EPA will consider formal enforcement actions against Federal facilities only in cases where 1) a State lacks adequate enforcement authorities and capabilities; 2) the State requests EPA to take the lead or decides that a joint enforcement response is appropriate, or 3) other appropriate circumstances consistent with the EPA Federal Facilities Compliance Strategy.

## **F. Indian Lands**

In cases of releases with identified responsible parties, EPA's aim is to have the responsible party conduct the cleanup with tribal enforcement and oversight. Federal enforcement actions may be appropriate in those instances where (1) a Federal-lead clean-up occurs, the criteria for which are described in "OSWER Directive 9610.9, Draft Interim Guidance on Conducting Federal Lead Corrective Actions for petroleum Releases on Indian Lands," or (2) a Tribe is unable to enforce successfully against an owner/operator or responsible party, the situation presents a serious public health or environmental threat, and the Tribe requests assistance.

On the prevention program side, EPA has developed compliance assistance and outreach activity pilot projects on Indian Lands in Regions 5, 8, and 9. These projects are designed to assess the nature and the extent of the underground storage tank-related problems on Indian Lands, while providing compliance assistance, education and outreach to owners and operators. The results of these activities will feed into

the development of future guidance documents on Federal Compliance and enforcement, and Federal-lead corrective action activities on Indian Lands.

## **VI. Suspension of Enforcement of the Financial Responsibility requirements**

The suspension of enforcement provisions of Subtitle I were written to help EPA enforce the financial responsibility requirements fairly and equitably by directing this enforcement efforts against owners and operators who can obtain coverage, but willfully chose not to obtain it. Because the Agency is phasing in its financial responsibility requirements and because many of the comments on the proposed procedures were critical, EPA is reconsidering its options in the area. While this work is underway, EPA will monitor the formation of State financial responsibility funds, the availability of coverage from the private sector, and the approval of State programs. These factors will affect the potential demand for suspensions and the type of procedure EPA develops.

## **VII. Conclusion**

The UST program's goal of protecting human health and the environment will be achieved through promoting compliance with the regulations. States will continue to develop and strengthen compliance and enforcement programs, thereby bringing an ever increasing proportion of owners and operators into compliance. EPA's approach to compliance and enforcement will be to assist State efforts by supporting State compliance and enforcement programs. EPA Regions will work with States to identify and resolve State-specific enforcement issues, and will provide assistance and tools. These tools will include: providing information, developing and sharing effective methods to promote compliance, and providing funding for compliance monitoring and enforcement activities. EPA recognizes that voluntary compliance will not be achieved in all cases and that a need for a visible and effective enforcement presence exists. Formal and informal enforcement actions at the State and local level will be the norm and although formal Federal enforcement actions will be limited in number, there are six instances described when a formal Federal enforcement action may be necessary.