

Grant Guidelines To States For Implementing
The Provision Of The Energy Policy Act Of 2005
Requiring States To Report On The Compliance Of
Government Underground Storage Tanks

U.S. Environmental Protection Agency
Office Of Underground Storage Tanks
Washington, D.C. 20460
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Overview Of The Government Underground Storage Tanks Compliance Report Grant Guidelines

Why Is EPA Issuing These Guidelines?

The U.S. Environmental Protection Agency (EPA), in consultation with states, developed these grant guidelines to implement the provision in Section 9003(j)¹ of the Solid Waste Disposal Act, enacted by the Underground Storage Tank Compliance Act, part of the Energy Policy Act of 2005 signed by President Bush on August 8, 2005.

Subsection (b) of Section 1526 of the Energy Policy Act amends Subtitle I of the Solid Waste Disposal Act by requiring states that receive Subtitle I funding to report on the compliance status of their government-owned and/or -operated underground storage tanks (UST). EPA must require each state that receives funding under Subtitle I to submit a state compliance report on government underground storage tanks no later than two years after the date of enactment of the Act. States must submit their compliance reports to the EPA Administrator. The Administrator will make the reports available to the public. The law specifies that each state report:

1. List the location and owner of each underground storage tank regulated under Subtitle I and owned or operated by the federal, state, or local government in the state that, as of the date of submission of the report, is not in compliance with Section 9003;
2. Specify the date of the last inspection; and
3. Describe the actions that have been and will be taken to ensure compliance of the government underground storage tank listed.

When Do These Guidelines Take Effect?

States must submit reports to EPA on or before August 8, 2007. This is a one-time report required under Subsection (b) of Section 1526 of the Energy Policy Act.

To Whom Do These Guidelines Apply?

Any state receiving Subtitle I funding must submit to EPA a state compliance report on government underground storage tanks.

¹ This provision, originally identified as 9003(i) in the Energy Policy Act, was changed to 9003(j) in Public Law 109-168, January 10, 2006.

Requirements For The Government Underground Storage Tanks Compliance Report

What Must A State Compliance Report On Government Underground Storage Tanks Include?

A state compliance report on government underground storage tanks must provide the following information for each *noncompliant* federal-, state-, and local-government underground storage tank in its jurisdiction:

1. The location and owner of each government underground storage tank² that, as of the date of submission of the report,³ is not in compliance with 40 CFR Part 280 or with state requirements that are part of a state underground storage tank program EPA has approved under the state program approval (SPA) procedures. At a minimum, states must include the owner's name; UST identification number(s); facility address(es); and city, county, state, and zip code. The compliance determination should be based on the following areas:
 - Notification (failure to notify)
 - Corrosion protection
 - tanks and piping have appropriate corrosion protection
 - documentation available including testing, inspections, and other records
 - Overfill prevention in place and operational
 - Spill prevention in place and operational
 - Tank and piping release detection
 - appropriate method and appropriate equipment or procedures in place
 - documentation of proper monitoring and testing
 - Reporting suspected releases
 - Records of tank and piping repairs
 - Secondary containment where required
 - Financial responsibility
 - Temporary closure

If a state is reporting compliance based on a determination pursuant to requirements that are more stringent than Subtitle I, the state should identify and may list its more stringent requirements.

² If a state is unable to separate violations on a tank-by-tank basis, the state may list all tanks at the facility.

³ In order to provide each state agency adequate time to meet the August 8, 2007, reporting submittal deadline, each state should base its noncompliance determination cutoff on the date that its report was submitted for final review.

2. The date of the last on-site inspection that was used to identify each noncompliant underground storage tank. Alternatively, for compliance monitoring activities that occurred prior to August 8, 2005, states may report the date of the last compliance monitoring activity as described in the June 8, 2006, EPA memorandum (see Appendix).
3. The actions that have been and will be taken to ensure the compliance of each noncompliant underground storage tank identified. Note: States are not expected to divulge enforcement confidential information in the report.

States may submit their reports in whatever format they deem appropriate.

What Definitions Are Used In These Guidelines?

On-site inspection is defined in these guidelines as an inspection that is:

- On-site;
- Conducted by a state, local (when contracted or delegated by a state), EPA, or certified third-party inspector; and
- Sufficient to determine compliance with federal underground storage tank requirements in Subtitle I or state requirements that are part of a state underground storage tank program EPA has approved under the SPA procedures in 40 CFR Part 281.

Local government shall have the meaning given this term by applicable state law. The term is generally intended to include: (1) Counties, municipalities, townships, separately chartered and operated special districts (including local government public transit systems and redevelopment authorities), and independent school districts authorized as governmental bodies by state charter or constitution; and (2) Special districts and independent school districts established by counties, municipalities, townships, and other general purpose governments to provide essential services.

Operator is defined in 40 CFR 280.12 (http://www.epa.gov/oust/fedlaws/280_a.pdf).

Owner is defined in 40 CFR 280.12 (http://www.epa.gov/oust/fedlaws/280_a.pdf).

Underground Storage Tank (UST) has the same meaning as defined in 40 CFR 280.12, except it does not include those tanks identified in 40 CFR 280.10(b) and 280.10(c) as excluded or deferred (http://www.epa.gov/oust/fedlaws/280_a.pdf).

When And Where Must A State Submit Its Compliance Report On Government Underground Storage Tanks?

Each state that receives Subtitle I funding must submit its government underground storage tanks compliance report to the EPA Administrator on or before August 8, 2007.

The state report should be sent to the U.S. EPA Administrator. The mailing address is: Administrator, Attn: State Government UST Compliance Report Submittal, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, MC 0001, Washington, DC 20460-0001. An electronic submittal can be e-mailed to Johnson.Stephen@epa.gov with the title "Submittal of State Government UST Compliance Report" in the subject field.

How Will States Demonstrate Compliance With These Guidelines?

After August 8, 2007, and before receiving future grant funding, each state must provide one of the following to its EPA Regional Office:

1. If a state has submitted its compliance report to the EPA Administrator, nothing more needs to be submitted, or
2. For a state that has not yet submitted its compliance report, a document that describes the progress that the state has made so far, the plans for future efforts to complete the compliance report, and the date by which the state expects to meet the requirements.

How Must A State Ensure The Quality Of Its Government Underground Storage Tanks Report Data?

To the maximum extent practicable, states must provide accurate and complete data to EPA. States must use quality assurance practices that will produce data of quality adequate to meet project objectives and minimize reporting of inaccurate data.

How Will EPA Enforce States' Compliance With The Requirements In These Guidelines?

As a matter of law, each state that receives funding under Subtitle I, which would include a Leaking Underground Storage Tank (LUST) Cooperative Agreement, must comply with certain underground storage tank requirements of Subtitle I. EPA anticipates State and Tribal Assistance Grants (STAG) funds will be available for inspection and other underground storage tank compliance activities. EPA will also condition STAG grants with compliance with these guidelines. Absent a compelling reason to the contrary, EPA expects to address noncompliance with these STAG grant conditions by utilizing EPA's grant enforcement authorities under 40 CFR Part 31.43, as necessary and appropriate.

For More Information On The Government Underground Storage Tanks Compliance Report Grant Guidelines

Visit the EPA Office of Underground Storage Tanks Web site at www.epa.gov/oust or call 703-603-9900.

Background About The Energy Policy Act Of 2005

On August 8, 2005, President Bush signed the Energy Policy Act of 2005. Title XV, Subtitle B of this act (titled the Underground Storage Tank Compliance Act) contains amendments to Subtitle I of the Solid Waste Disposal Act – the original legislation that created the underground storage tank (UST) program. These amendments significantly affect federal and state underground storage tank programs, will require major changes to the programs, and are aimed at reducing underground storage tank releases to our environment.

The amendments focus on preventing releases. Among other things, they expand eligible uses of the Leaking Underground Storage Tank (LUST) Trust Fund and include provisions regarding inspections, operator training, delivery prohibition, secondary containment and financial responsibility, and cleanup of releases that contain oxygenated fuel additives.

Some of these provisions require implementation by August 2006; others will require implementation in subsequent years. To implement the new law, EPA and states will work closely with tribes, other federal agencies, tank owners and operators, and other stakeholders to bring about the mandated changes affecting underground storage tank facilities.

To see the full text of this new legislation and for more information about EPA's work to implement the underground storage tank provisions of the law, see: http://www.epa.gov/oust/fedlaws/nrg05_01.htm

Appendix

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 

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.¹ 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 9004.² Any UST that had undergone such a state or federal activity from December 22, 1998, through August 8, 2005, is

¹ 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.

² 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 or 703-603-7158.

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