



EPA's Proposed Tribal UST Compliance Pilot: Improving UST Compliance at Tribal Facilities

U.S. Environmental Protection Agency

Consultation August 3, 2020 through October 30, 2020

Overview

- Why Is UST compliance important?
- What is the state of compliance in Indian country?
- What happens when EPA finds a violation at a tribal UST facility?
- What is the Proposed Pilot approach to improving and achieving compliance more quickly?

Why is UST Compliance Important?



- ▶ UST regulatory requirements are aimed at preventing leaks from USTs.
- ▶ Leaks can result in contamination of surface or groundwater with potential threat to public health via drinking water, possible fire or explosion
- ▶ Leaks can also result in -
 - ▶ Costly investigation and cleanup
 - ▶ Liability to people injured by contamination
 - ▶ Penalties for regulatory violations

Snapshot of UST Compliance in Indian Country

- Universe:
 - About 2,400 active USTs at roughly 900 UST facilities
 - Tribal governments own/operate many USTs
- On-site inspections of Indian country USTs occur at least once every 3 years
- Roughly 71% of UST Facilities are not meeting the Technical Compliance Rate (in compliance with all Technical Compliance Rate categories) (Mid-year 2020)



1984 EPA Indian Policy's "Enforcement Principle"

- "Tribal facility"
 - Owned/operated by tribe or tribe has "substantial" interest
 - If noncompliance, EPA generally provides compliance assistance and seeks to consult with tribal governments
 - May escalate to enforcement if compliance assistance does not or is not likely to achieve timely compliance

- Non-tribal facilities
 - EPA responds to noncompliance at non-tribal facilities the same inside and outside Indian country

Why Propose the Pilot Approach to Address Noncompliance at Tribal UST Facilities?

- ▶ Compliance assistance is sometimes ineffective in achieving prompt compliance
- ▶ EPA rarely enforces at tribally owned/operated USTs, even if noncompliance is delayed
- ▶ Expedited enforcement tools are very effective at non-tribal facilities:
 - ▶ Protect human health and environment by ensuring rapid return to compliance in exchange for reduced penalties
 - ▶ Ensure level playing field at all USTs in Indian country

Proposed Pilot Approach to Noncompliance at Tribal UST Facilities

- Ensure tribal governments are provided with information on, and notice of, consultation opportunities related to announced inspections, compliance assistance, noncompliance, and possible enforcement responses
- Utilize expedited enforcement tools when appropriate

Proposed Pilot Approach to Noncompliance at Tribal UST Facilities

- Early communication with the tribal leadership regarding inspections at tribal UST facilities
 - Includes compliance assistance information
 - Describes the Pilot and potential consequences of noncompliance

Proposed Pilot Approach to Noncompliance at Tribal UST Facilities

- ▶ Post-inspection notice about potential violations provided prior to the use of any expedited enforcement tools
 - ▶ Identifies potential violations and provides compliance assistance information
 - ▶ Sets forth timeline to address any potential violations
 - ▶ Explains potential enforcement consequences of noncompliance
 - ▶ Serves as compliance plan

Proposed Pilot Approach to Noncompliance at Tribal UST Facilities

- The proposed Pilot facilitates use of the following UST expedited enforcement response tools
 - Field Citations
 - Expedited Settlement Agreements
 - Delivery Prohibition Actions
- Traditional administrative enforcement would occur if expedited tools don't result in return to compliance

UST Field Citations

- For over 25 years, EPA has used Field Citations for most UST violations at non-tribally owned/operated USTs
- Owners/operators who get Field Citations usually:
 - Accept and sign the Field Citation
 - Certify return to compliance within 30 days
 - Pay a lower penalty
- Field Citations are used for:
 - Easily corrected violations
 - First-time violators

UST Expedited Settlement Agreements (ESAs)

- Offered for:
 - Repeat violations
- Owner/operator must:
 - Correct within 30 days
 - Certify compliance
 - Pay a penalty (higher than a Field Citation but lower than traditional enforcement)

Field Citations and Expedited Settlement Agreements

- ▶ Communication with tribal leadership regarding these enforcement tools will occur if the tribe owns or operates the tribal UST facility
 - ▶ Includes notice of consultation opportunity
- ▶ Optional – an owner/operator may reject a Field Citation or Expedited Settlement Agreement.
 - ▶ However, if the owner/operator does not accept either a Field Citation or Expedited Settlement Agreement, it may be assessed higher penalties under a more traditional enforcement action

EPA UST Delivery Prohibition (a.k.a. “Red Tagging”)

- “Immediate” Delivery Prohibition
 - For emergencies or potential emergencies (e.g., ongoing leak or evidence of a leak)
 - Immediate notification:
 - Why fuel delivery has been stopped
 - Actions owner/operator must take before delivery can resume
 - Used infrequently

“Non-Immediate” Delivery Prohibition Actions

- ▶ Situations where “non-immediate” delivery prohibition may be warranted:
 - ▶ Violations present serious threat (e.g., tank has no corrosion protection, no functioning spill prevention equipment)
 - ▶ No financial responsibility
 - ▶ Recalcitrance in correcting violations
- ▶ Before fuel delivery would be halted:
 - ▶ EPA sends Notice of Intent to Prohibit Delivery (“NIPD”) that delivery of fuel will stop if violations are not corrected within 30 days
 - ▶ Copy of NIPD sent to tribal leaders, with the opportunity to meet and consult with EPA during 30-day correction period

Non-Immediate Delivery Prohibition (continued)

- Exception to 30-day correction period for USTs in rural & remote areas:
 - UST is in a “rural and remote area” if there are no other USTs that contain similar motor fuel within 30 miles
 - EPA may delay red-tagging for up to 180 days

- Delivery prohibition tool:
 - NIPD issued only once for violations at a tribally-owned/operated UST
 - Tribe came into compliance 1 day after receiving the NIPD so delivery was **not** stopped

Closing Remarks

➤ Goals:

- Improve compliance with public health and environmental protections
- Shorten the time between inspection and return to compliance

➤ For tribally owned/operated USTs:

- EPA's 1st response is usually to work cooperatively to achieve compliance, and advise tribal government of noncompliance and possible enforcement
- If no timely return to compliance, EPA may escalate to enforcement

Specific Areas on Which the EPA is Seeking Input from the Tribes

- ▶ What impact(s) do you think the proposed Pilot will have on Tribal leadership receiving information about noncompliance at tribal government owned/operated USTs and the possible consequences of noncompliance, including the possibility of a penalty?
- ▶ What impacts do you think the proposed Pilot will have on UST compliance at tribal facilities?
- ▶ Should the proposed Pilot include USTs owned and operated by the federal government (i.e., the Department of the Interior's Bureau of Indian Affairs and Bureau of Indian Education, the Department of Energy, the Department of Defense, etc.)?
- ▶ Is the COVID-19 public health emergency impacting the ability of tribal UST facilities to perform required compliance activities?
 - ▶ If yes, what are the impacts?

For More Information....

- For UST compliance assistance resources, see EPA's [USTs Program in Indian Country website](#)
- For general information, see [EPA's Environmental Protection in Indian Country Portal](#)
- For compliance-related background, policies, and more see [EPA's Compliance & Enforcement in Indian County website](#)

Consultation Period: August 3 – October 30, 2020

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Wednesday, **August 12, 2020**, 4-5 pm EST

➤ Call: 202-991-0477, Code: 970 055 947#

➤ Participate by Video: [Join Microsoft Teams Meeting](#)

➤ Tuesday, **August 25, 2020**, 12-1pm EST

➤ Call: 202-991-0477, Code: 784 046 981#

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➤ Wednesday, **September 9, 2020**, 4-5 pm EST

➤ Call: 202-991-0477, Code: 726 641 439#

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➤ Thursday, **September 24, 2020**, 11 am–12 pm EST

➤ Call: 202-991-0477, Code: 619 638 959#

➤ Participate by Video: [Join Microsoft Teams Meeting](#)

➤ Friday, **October 16, 2020**, 1-2 pm EST

➤ Call: 202-991-0477, Code: 199 519 55#

➤ Participate by Video: [Join Microsoft Teams Meeting](#)

For More Information & to Submit Comments

- For questions on the Proposed Pilot:
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- Send comments to: ustpilotconsultation@epa.gov
- Send comments via U.S. Postal Service to:
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