



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

JUN 25 2012

**MEMORANDUM**

SUBJECT: EPA Policy on Underground Storage Tanks Delivery Prohibition

FROM: Pamela J. Mazakas, Acting Director  
Office of Civil Enforcement (OCE)

Handwritten signature of Pamela J. Mazakas in blue ink.

Carolyn Hoskinson, Director  
Office of Underground Storage Tanks (OUST)

Handwritten signature of Carolyn Hoskinson in black ink.

TO: UST Regional Division Directors  
UST Regional Deputy Division Directors  
UST Regional Branch Chiefs  
UST Regional Enforcement Managers  
UST Regional Program Managers  
Regional Counsels

We are writing to provide you with the attached *EPA Policy on Underground Storage Tanks Delivery Prohibition* (the Policy). This Policy provides recommended procedures for prohibiting deliveries and describes when delivery prohibition may be appropriate. The Energy Policy Act of 2005 (EPAct) amended the Solid Waste Disposal Act by adding section 9012, which provided EPA with the authority to prohibit deliveries of regulated substances to federally regulated underground storage tanks (USTs). As a result of EPAct requirements, nearly all state UST programs now use delivery prohibition.

Delivery prohibition makes it unlawful to deliver, deposit, or accept a regulated substance into an UST that EPA has identified as ineligible for delivery, deposit, or acceptance. EPA can identify USTs as ineligible due to violations of federal UST regulations (including federally approved state regulations), and in emergency situations, or potential emergency situations.

Many states have used delivery prohibition for a number of years and have found it to be a very successful enforcement option in improving compliance. EPA believes delivery prohibition will be an invaluable tool for EPA to quickly return facilities to compliance with UST requirements. However, given the potential impact of this enforcement option, it should only be used in more serious situations such as those described in the Policy, and not for minor violations. The use of delivery prohibition does not prevent the use of other enforcement options. The violations described in the Policy may also warrant the imposition of civil penalties as described in the *UST Enforcement Response Policy*, OSWER Directive 9610.12.

Regions wishing to implement delivery prohibition should do so consistent with their delegations of authority (see attached EPA Delegation 8-25). If delivery prohibition is implemented against a tribal entity, regions should follow the *Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy*, USEPA, January 2001.

By June 2012, EPA headquarters expects to provide EPA regions with red tags and uniquely numbered zip ties, which personnel will attach to the fill pipe of tanks when prohibiting deliveries. All of the tags will be identical; however, each zip tie will have a unique number, which begins with the region's number (for example, R100001).

Initially, please notify Tim Roberts of OUST and Tom Charlton of OCE each time your office prohibits deliveries. We will reevaluate the need for continued notification after an appropriate track record has been established. Also, each region is expected to report the following information to OUST at the same time as the semiannual data so we can assess how the Policy is working:

- Number of times notices of intent to prohibit deliveries are issued;
- Number of times delivery prohibition is used;
- Violations being addressed with delivery prohibition;
- Number of days each delivery prohibition lasted; and
- Location of the delivery prohibitions (i.e., name of state or tribe).

Many thanks to EPA headquarters and regional workgroup staff who developed the Policy. If you have any questions regarding the Policy or delivery prohibition in general, please contact Tom Charlton of OCE ([charlton.tom@epa.gov](mailto:charlton.tom@epa.gov) or 202-564-6960) or Tim Roberts of OUST ([roberts.timothy-p@epa.gov](mailto:roberts.timothy-p@epa.gov) or 703-603-7144).

#### Attachments

EPA Policy on Underground Storage Tanks Delivery Prohibition  
Sample Notice of Intent to Prohibit Deliveries  
Sample Notice of Immediate Delivery Prohibition  
Image of Sample Red Tag and Zip Tie  
Delegation of Authority 8-25 – Administrative Enforcement: Issuance of Complaints and  
Signing of Consent Agreements (Subtitle I)

cc: Earl Salo, OGC  
Katherine Nam, OGC

# EPA POLICY ON UNDERGROUND STORAGE TANKS DELIVERY PROHIBITION

This document sets forth guidance for the U.S. Environmental Protection Agency (EPA or the Agency) to use in determining when the use of the delivery prohibition is appropriate and how to implement the prohibition. The goal of this policy is to allow the Agency to promptly address certain violations or emergency situations occurring at underground storage tanks (USTs)<sup>1</sup> while ensuring fair and equitable treatment of the regulated community.

Contents		Page
Delivery Prohibition – General		1
When to Use Delivery Prohibition		2
Who Decides When to Prohibit Delivery		3
USTs in Rural and Remote Areas		3
Steps for Prohibiting Deliveries		3
Non-Immediate Delivery Prohibition		3
Immediate Delivery Prohibition		4
Recommended Meeting Procedures		5
Delivery Prohibition Mechanisms		6
Red Tags		6
Other Mechanisms		6
Reclassifying an Ineligible UST as Eligible to Receive Product		7

## Delivery Prohibition – General

The Energy Policy Act of 2005 amended the Solid Waste Disposal Act (SWDA) by providing EPA the authority to prohibit deliveries of regulated substances to underground storage tanks in section 9012. 42 U.S.C. § 6991k. This policy describes when delivery prohibition may be appropriate and provides EPA regional offices with recommended procedures for prohibiting deliveries.

“Delivery prohibition” as used in this policy means EPA’s prohibition of delivery, deposit, or acceptance of a regulated substance into an UST that EPA has identified as ineligible for delivery, deposit, or acceptance. EPA can identify USTs as ineligible due to violations of federal UST regulations,<sup>2</sup> emergency situations, or potential emergency situations.

In most cases, the procedure for prohibiting deliveries consists of these steps:

1. Notifying an UST owner or operator of EPA’s intention to prohibit deliveries to an ineligible UST,<sup>3</sup>
2. Offering to schedule a meeting between an owner or operator and EPA, at the request of the owner or operator, and
3. Physically attaching of a red tag (“tagging”) to an ineligible UST.<sup>4</sup>

A notice of intent to prohibit delivery (NIPD) gives an owner or operator up to 30 calendar days to correct violations before EPA tags an UST. Where there is an emergency or potential emergency, EPA

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<sup>1</sup> Subtitle I exempts certain classes of USTs from federal regulation. *See* SWDA § 9001, 42 U.S.C. § 6991. This guidance applies to those USTs that are regulated under Subtitle I.

<sup>2</sup> This includes federally approved state regulations.

<sup>3</sup> Where there is an emergency or potential emergency, notice may be given at the time the red tag is attached, as described on page 4, *Immediate Delivery Prohibition*.

<sup>4</sup> A region may identify an ineligible UST using another mechanism, as described on page 7, *Other Mechanisms*.

may prohibit deliveries to an UST immediately upon discovery. Below is information regarding: when to use delivery prohibition; steps for prohibiting delivery; recommended meeting procedures; delivery prohibition mechanisms; and reclassifying an ineligible UST.

## When to Use Delivery Prohibition

Delivery prohibition is an enforcement option to address the situations described below. Regions are encouraged to prohibit deliveries in situations that fit within this policy. Regions should apply delivery prohibition on a tank-by-tank basis and not to an entire facility, unless appropriate under the circumstances.

This policy provides regions with basic information for determining when an UST is ineligible for deliveries. It does not provide a list of all violations or situations for when delivery prohibition is appropriate. Regions should take into account the circumstances of each case and determine those instances when prohibiting delivery is appropriate. When one or more of the following exists, it is generally appropriate for regions to use the delivery prohibition:

- **Serious violations** – Violations that pose a serious threat to human health, safety, or the environment. Some examples include:
  - Required equipment is not installed or is installed so poorly that it is unlikely to work (for example, where corrosion protection is not installed on a steel tank);
  - Non-functioning spill prevention equipment, overfill protection equipment, release detection equipment, or corrosion protection equipment;
  - Any other violation that threatens the structural integrity of any portion of the UST system; or,
  - Other serious violations a region determines are best addressed by the delivery prohibition, including any violations that pose a high likelihood of a leak.
- **No financial responsibility** – The owner or operator has no financial responsibility.
- **Recalcitrance** – An owner or operator has a history of non-compliance and not responding to previous enforcement or compliance assistance.
- **Emergency or potential emergency situations**<sup>5</sup> – Emergencies, such as an ongoing leak or evidence of a leak, or potential emergencies where the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate the actual or potential damages to human health, safety, or the environment. This includes instances where an emergency is likely to occur if the UST receives another delivery.

When one or more of the above situations exist, regions should consider the following factors when issuing an NIPD:

- seriousness of violations,
- number of violations,
- length of violations,
- owner's or operator's history of repeat violations, and

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<sup>5</sup> In most cases, an emergency situation would result from a violation or violations of UST requirements. For example, a release from a steel tank due to no corrosion protection is a violation. However, there may be emergency situations where the Agency may not observe a violation. For example, a party might inadvertently puncture or damage a pipe that causes a leak or creates a situation where a leak is likely to occur even though a violation does not exist.

- potential for harm posed by the violations, or an emergency situation, including environmental sensitivity of the UST's location.

The term "violation" as used in this policy includes serious violations, no financial responsibility, and recalcitrance as described above. The term "emergency situation" as used in this policy includes both emergency and potential emergency situations.

### ***Who Decides When to Prohibit Delivery***

Given the potential severity of prohibiting fuel delivery, the final decision on whether or not to prohibit deliveries should be made by a supervisor or manager. According to EPA Delegation of Authority 8-25, a region may re-delegate authority to prohibit deliveries to a section chief or equivalent or higher level manager (the delegated official is hereafter referred to as "EPA manager"). As required by Delegation 8-25, an EPA manager, rather than an inspector, must make the decision on whether or not to prohibit deliveries.

An inspector can be a state, local, tribal, or federal UST inspector and can be a contractor of a state, local, tribal, or federal government. Before making a delivery prohibition decision, an EPA manager should verify a potential delivery prohibition violation exists. If an emergency situation exists where deliveries should be prohibited immediately, any inspector – federal, state, local, tribal, or contractor – must first receive at least oral approval from an EPA manager prior to attaching a red tag to an UST (see page 5, *Immediate Delivery Prohibition*).

### ***USTs in Rural and Remote Areas***

Pursuant to Section 9012(a)(4) of the SWDA, a region that receives such evidence may decide not to identify the UST as ineligible to receive fuel or delay prohibiting deliveries for up to 180 days. 42 U.S.C. § 6991k(a)(4). This exception only applies to USTs at retail facilities selling motor fuel in rural and remote areas. When receiving an NIPD, an owner or operator can provide evidence to a region that the UST subject to delivery prohibition is in a rural and remote area. An UST is considered to be in a rural and remote area if there are no other USTs that contain similar motor fuel for sale within 30 miles by automobile on a road. A motor fuel is considered similar to another motor fuel if it can run the same motor engine. For example, if a facility's regular gasoline UST is subject to delivery prohibition, but the facility's premium gasoline UST is eligible to receive deliveries, the rural and remote exemption does not apply even if there is no other retail gas station within 30 road miles. However, if the facility's lone diesel UST is subject to delivery prohibition, and there is no other retail diesel UST within 30 road miles, then the rural and remote exemption should generally apply.

### **Steps for Prohibiting Deliveries**

For violations that do not result in an emergency situation, a region should provide an owner or operator with advance notice and a right to meet before prohibiting deliveries. When an inspector determines an UST has at least one violation appropriate for delivery prohibition, the region should follow the steps below.

### ***Non-Immediate Delivery Prohibition***

1. Consistent with EPA Delegation 8-25, an inspector must obtain permission from an EPA manager to initiate delivery prohibition. The EPA manager should make a reasonable effort to

consult with the Office of Regional Counsel or Legal Enforcement Office before giving permission to initiate delivery prohibition.

2. If a decision is made to issue an NIPD, the region should place documentation of that decision and supporting materials in the facility's inspection file.
3. When an inspector receives permission to initiate delivery prohibition, the inspector should issue an NIPD to the UST owner or operator (see *sample NIPD* attached). The inspector should deliver an NIPD in person, by express mail, or by certified mail with return receipt. The NIPD should:
  - a. Notify an owner or operator that the region intends to identify an UST as ineligible for delivery and the reasons for this determination;
  - b. Inform the owner or operator that the UST will be prohibited from receiving deliveries if these violations are not resolved within 30 calendar days of the date of the NIPD;
  - c. Inform the owner or operator that they may request a meeting with the region; and
  - d. Provide meeting details to the owner or operator; the meeting should take place within ten business days of the region receiving an owner's or operator's request.
4. Meet with an owner or operator, if requested (see page 5, *Recommended Meeting Procedures*). If a meeting is not requested, proceed to next step.
5. If an owner or operator resolves the violation in the NIPD before a region identifies the UST as ineligible to receive product, the region should provide written notice to the owner or operator that delivery will not be prohibited.
6. If a violation has not been satisfactorily resolved by the time specified in the NIPD, the region should promptly determine whether or not the UST is ineligible to receive product deliveries.
7. If a region identifies an UST as ineligible, then a red tag should be placed on or near the fill pipe of the ineligible UST. An EPA inspector, EPA-credentialed inspector (including a senior environmental employee (SEE)), tribal official, state official, local official, or a contractor of a state, local, tribal, or federal government may attach the tag after receiving approval from an EPA manager.
8. When prohibiting deliveries, the region should document the number of the zip tie being used to attach the red tag on or near the fill pipe.
9. When prohibiting deliveries, a region should provide an owner or operator with instructions on how to resolve the violation and how to get the red tag removed (see page 7, *Reclassifying an Ineligible UST*).
10. At the time deliveries are prohibited, a region may, at its discretion, notify the companies that have delivered product to the UST that is now ineligible to receive product. A region can obtain this information by requesting drop tickets from an owner or operator.
11. The time between expiration of an NIPD and tagging an UST generally should not take more than five business days.
12. When an owner or operator notifies a region that the violation for an ineligible UST has been corrected, the region should reclassify the UST as eligible to receive product after determining that the violation has been corrected (see page 7, *Reclassifying an Ineligible UST*).

A region should carefully document decisions about issuing or withdrawing delivery prohibition in the affected facility's inspection file.

### ***Immediate Delivery Prohibition***

When prohibiting delivery, EPA must, as required by Section 9012(a)(2)(D) of the SWDA, provide notice to an owner or operator. 42 U.S.C. § 6991k(a)(2)(D). However, if a region believes an emergency situation exists (see page 2, *Emergencies or potential emergency situations*), the region may immediately prohibit deliveries. In an emergency situation, an inspector must still receive advance

authorization from an EPA manager to prohibit deliveries consistent with EPA Delegation 8-25. That authorization can be made orally provided it is later memorialized by the region in writing. When contacted by an inspector, an EPA manager should make a reasonable effort to consult with the Office of Regional Counsel or Legal Enforcement Office before prohibiting delivery. Once the inspector has received advance authorization, they can apply the red tag (see step 7 above) and provide to the owner or operator a notice of immediate delivery prohibition at that time (sample notice attached).

The notice of immediate delivery prohibition should contain the information below:

- Why an UST was identified as ineligible;
- What the owner or operator can do to resolve the emergency situation and obtain reclassification of the UST as eligible (see page 7, *Reclassifying an Ineligible UST*);
- How an owner or operator can request a meeting with the region; and
- When and how the region will meet with the owner or operator. The region should offer to meet in person, by telephone, or by video conference within five business days from the receipt of the request from the owner or operator.

As soon as practicable after delivery is prohibited, an EPA manager should inform the Office of Regional Counsel or Legal Enforcement Office and other relevant EPA personnel about the delivery prohibition decision. The region should also include a copy of the notice documenting the decision in the facility's inspection file.

### **Recommended Meeting Procedures for Immediate and Non-Immediate Delivery Prohibition**

A meeting provides an owner or operator with an opportunity to discuss the case and informally exchange information with the region. During a meeting, the region should consider all facts to determine whether there is a reasonable basis for identifying an UST as ineligible. The conference is not a formal evidentiary hearing as required by 40 C.F.R. Part 22. During a meeting, an owner or operator may present information, arguments, and comments regarding a region's intention to prohibit delivery or in emergency situations, its decision to prohibit delivery. An owner or operator, his or her attorney, or other representative (such as an environmental consultant) may participate in the meeting in person, by telephone, or by video conference; however, an attorney or other representative is not required to participate.

For non-immediate prohibition situations, a region should offer to meet with an owner or operator and discuss the NIPD as soon as possible and generally within 10 business days after receiving a meeting request. An owner or operator may request in writing to meet at a later date, but the meeting should take place within 30 calendar days of an owner or operator receiving the NIPD. For immediate delivery prohibition situations, EPA should offer to meet with an owner or operator within five business days of receiving the meeting request. An owner's or operator's meeting request does not suspend or delay delivery prohibition.

A region should carefully review information presented by an owner or operator during the meeting regarding the delivery prohibition decision. For non-immediate violations, a region should notify the owner or operator in writing after the meeting whether or not the region will prohibit delivery. If a region intends not to prohibit delivery and notifies the owner or operator in writing, then no further action is required. If a region intends to prohibit delivery, written notification should provide reasons for the delivery prohibition. Notification should also provide the effective date of the proposed delivery

prohibition and reiterate that the owner or operator can prevent this from occurring by resolving the violations listed in the NIPD prior to expiration of the NIPD. A region should document its decisions and reasons in the facility's inspection file (see page 4, *Non-Immediate Delivery Prohibition*, steps 6 through 12).

For immediate delivery prohibition situations, a region should notify an owner or operator in writing whether or not the region intends to continue prohibiting deliveries. If revoking delivery prohibition, a region should follow the procedures on page 7, *Reclassifying an Ineligible UST*. If continuing delivery prohibition, a region should provide written notification of the decision and reasons to the owner or operator. Notification should also reiterate that the owner or operator can prevent continued delivery prohibition by adequately addressing the emergency situation. A region should document this in the facility's inspection file (see page 5, *Immediate Delivery Prohibition*).

### **Delivery Prohibition Mechanisms**

EPA recommends red tags as the primary mechanism for prohibiting deliveries. Regions may use other mechanisms in instances when red tags cannot be attached to ineligible USTs.

#### ***Red Tags***

Prohibited USTs should be identified with a tamper-resistant red tag that states in bold face type:

(Front)

**WARNING**

**DO NOT FILL**

**It is unlawful to deliver, deposit, or accept deliveries of product into this tank.**

(Back)

**The United States Environmental Protection Agency (U.S. EPA) under § 9012 of the Solid Waste Disposal Act prohibits deliveries to this tank.**

**Making or accepting deliveries to this tank, unless authorized by U.S. EPA, can result in fines up to \$16,000 per day per occurrence.<sup>6</sup>**

**Unauthorized removal or defacement of this tag is subject to fines up to \$100,000 or by imprisonment for up to one year, or both.<sup>7</sup>**

A region should attach the red tag to the fill-pipe, using a uniquely numbered zip tie. Anyone who makes or receives a delivery to an ineligible UST is subject to a fine up to \$16,000 per day per occurrence. Also, whoever removes or defaces the tag is subject to additional fines up to \$100,000 and the possibility of imprisonment

#### ***Other Mechanisms***

A region may use a mechanism other than a red tag in circumstances where it is infeasible to attach a red tag to the ineligible UST. For example, if attaching a tag puts someone at risk or creates an unsafe condition, it is considered infeasible to attach a tag. In circumstances where it is infeasible to attach a red

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<sup>6</sup> SWDA § 9006(d), 42 USC § 6991e(d), as adjusted by penalty inflation adjustment rule (see 40 CFR § 19.4). This amount may increase in the future to account for inflation.

<sup>7</sup> 18 USC § 3559(a), 1361, and 3571.

tag, a region must clearly communicate to the owner or operator and to product deliverers in the area that the UST is ineligible to receive deliveries of regulated substances.

### **Reclassifying an Ineligible UST as Eligible to Receive Product and Removing a Delivery Prohibition Tag**

An EPA manager should provide a written authorization reclassifying an UST as eligible to receive product prior to anyone removing the red tag.<sup>8</sup> Because prohibiting deliveries impacts an owner's or operator's business, reclassifying an UST as eligible to receive product should be done as soon as practicable (and generally within three business days) after documentation is provided to a region demonstrating that violations or emergency situations are resolved.

All violations or emergency situations that led to delivery prohibition must be corrected before an UST is reclassified as eligible to receive product.<sup>9</sup> According to EPA Delegation 8-25, an EPA manager must make the determination to reclassify an UST and may request additional information, if necessary. In order to determine if violations or emergency situations that led to delivery prohibition are corrected, a region can request that an owner or operator provide sufficient documentation (per section 9005 of the SWDA), such as contractor invoices or receipts, as proof. A region should review the documentation, determine whether or not the delivery prohibition should continue, and respond to the owner or operator in a timely manner. A region may decide a re-inspection of the tagged UST is necessary to make a determination.

Although almost anyone can be authorized to remove a red tag, an EPA manager typically authorizes these individuals: an UST owner or operator; EPA or other government personnel (including state, local, or tribal representative); or a government contractor. A region may use facsimile, email, express mail, certified mail, or other appropriate means to provide written authorization for removing a tag. If using email, a region should send the authorization from a registered EPA email address. If using facsimile or email, a region should also send the authorization via express or certified mail.

Written authorization should indicate that the UST is now eligible to receive product and include:

- A statement that all relevant violations and emergency situations have been corrected;
- Identifying information about the UST, which is now eligible to receive product;
- Identification number of the zip tie an owner or operator is legally authorized to remove; and,
- Instructions about returning the tag and clipped zip tie to a region.

After making a decision to reclassify an UST as eligible to receive product, a region should place written documentation of that decision and supporting materials in the facility's inspection file.

#### **Attachments**

Sample Notice of Intent to Prohibit Delivery

Sample Notice of Immediate Delivery Prohibition

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<sup>8</sup> In cases where a region chooses to use a different delivery prohibition mechanism, follow this information for reclassifying an UST as eligible, except for removing a red tag.

<sup>9</sup> A region may also allow a delivery if it is necessary to test or calibrate an ineligible UST. The delivery should only consist of the amount of product necessary to conduct the test or calibration.



U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA), REGION \_\_\_\_\_

[Add Street Address, City, State, Zip Code]

UNDERGROUND STORAGE TANK (UST) NOTICE OF INTENT TO PROHIBIT DELIVERIES NO. \_\_\_\_\_

**PART I: REASONS FOR POTENTIAL DELIVERY PROHIBITION**

On: \_\_\_\_\_ Time: \_\_\_\_\_  
(date of inspection) (AM or PM)

At: \_\_\_\_\_  
(facility name and identification number)

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(name of on-site representative if not the owner or operator)

UST Identifying Information:

Tank no.: \_\_\_\_\_ Capacity: \_\_\_\_\_

Product stored: \_\_\_\_\_

Other identifying information: \_\_\_\_\_  
(if multiple USTs, attach identifying information or use multiple notices)

Name and address of the UST owner or operator (circle which applies).

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

A duly designated officer, employee, or representative of EPA, or a duly designated officer or employee or representative of the state or tribe, inspected or assessed this facility. EPA has identified the following situation(s) or violation(s) of the UST regulations promulgated or approved by EPA under subtitle I of the Solid Waste Disposal Act, as amended (SWDA) (42 U.S.C. § 6991 et seq.).

1. **[Insert reasons for planned delivery prohibition here with specific details for each reason. Be sure to include specific dates of inspection, violations, photos, etc.]**
2. **The more specificity the better.]**
- 3.

Based on the information identified above, EPA finds the UST(s) identified in this notice subject to delivery prohibition, in accordance with § 9012 of SWDA (42 U.S.C. § 6991k), if the situation(s) and violation(s) are not corrected within 30 calendar days of the date of this notice, which is **no later than mm/dd/yyyy [Region enter specific date]**.

\_\_\_\_\_  
(Signature of EPA Representative) Date: \_\_\_\_\_

**PART II: RESOLUTION OF REASONS FOR POTENTIAL DELIVERY PROHIBITION**

**A. Certification:** The owner or operator certifies, subject to civil and criminal penalties for making a false submission to the U. S. Government, that he or she has corrected all situation(s) and violation(s) identified in Part I and is submitting true and accurate documentation to EPA of their resolution.

SIGNATURE BY OWNER, OPERATOR, OR AUTHORIZED REPRESENTATIVE:

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Company name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**B. Request for meeting with EPA (optional):** You may request a meeting with EPA to discuss the planned prohibition of deliveries to your UST identified in Part I. If requested, EPA will hold the meeting by telephone, video conference, or at the EPA offices at **[Region must insert address]** within ten business days of the date of your meeting request. If you desire to meet with EPA please contact, or have your representative contact, **[Region must add name and contact information]** to make arrangements. A request for a meeting by the owner or operator does not suspend or delay the date by which you must correct all of the situation(s) and violation(s) to avoid delivery prohibition.

**Notes:**

## INSTRUCTIONS

On the reverse side is an Underground Storage Tank (UST) Notice of Intent to Prohibit Deliveries (NIPD). You (the Owner or Operator) can resolve all of the situation(s) and violation(s) identified in Part I of the NIPD, request to meet with EPA, or do both. If you do neither, your UST(s) may be prohibited from receiving deliveries of regulated substances.

**Certification:** If you, the owner or operator, wish to avoid delivery prohibition, you must do the following before the date specified at the bottom of Part I of this NIPD:

1. Correct all violation(s) and situation(s) cited in Part I of the NIPD ("Part I");
2. Sign the Certification in Part II of the NIPD ("Part II") (or in the case when an owner or operator is a corporate entity, have an authorized representative sign it);
3. Return the NIPD along with documentation that you have corrected all of the violation(s) and situation(s) identified in Part I to the following address: ***[Region must add specific office contact information]***

**Request for meeting:** If you wish to discuss with EPA the planned prohibition of deliveries to your UST, you may request a meeting with EPA. If requested, EPA will hold the meeting within ten business days of the date of its receipt of your meeting request. A request for a meeting by the owner or operator does not suspend or delay the deadline by which an owner or operator must correct any violations or situations. To request a meeting, you, the owner or operator must contact, or have your representative contact, ***[Region must add name and contact information]*** to make arrangements.

The purpose and scope of any meeting is limited to issues involving EPA's planned prohibition of deliveries to the UST identified in this NIPD. The meeting is not an evidentiary hearing under 40 CFR part 22. However, you may present information, arguments, and comments to EPA regarding our intention to prohibit delivery. You, your attorney, or other representative (such as an environmental consultant) may participate in the meeting in person, via telephone, or via video conference; however, an attorney or other representative is not required to participate.

**Failure to resolve the situation(s) and violation(s) identified in Part I within 30 days may result in EPA's determination that your UST is ineligible to receive regulated substances.** Should EPA make such a determination, deliveries will be prohibited in accordance with § 9012 of SWDA (42 U.S.C. § 6991k) and you will be provided with notice of the ineligibility determination either in writing or by virtue of a tag being affixed on or near the fill pipe for the UST(s), or both.

In addition, section 9006(d)(2)(E) of SWDA (42 U.S.C. § 6991e(d)(2)(E)), provides that any owner or operator of an UST – and any person making or accepting a delivery or deposit of a regulated substance to an ineligible UST – who fails to comply with the delivery prohibition requirement established by § 9012 of SWDA shall be subject to a civil penalty not to exceed \$10,000 for each tank for each day of violation. Pursuant to the federal law, that amount may be adjusted for inflation. For violations occurring after January 12, 2009, EPA may assess penalties of up to \$16,000 for each tank for each day of violation. Because fuel deliverers may be subject to penalties, at the time any UST at your facility is deemed to be ineligible for deliveries, EPA may also provide notification to your fuel deliverers of the ineligibility of your UST to receive deliveries.

**EPA Review:** Once EPA has received the NIPD containing a signed certification by the owner or operator that the situations/violations have been resolved, EPA will review it and any documentation submitted by the owner or operator. If EPA agrees that the owner or operator corrected all of the situation(s) and violation(s), EPA will provide written notice to you specifying that deliveries will not be prohibited at the UST(s).

If you have any questions, please contact ***[Region must add specific office contact information, including email address]***.

U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA), REGION \_\_\_\_\_

[Add Street Address, City, State, Zip Code]

UNDERGROUND STORAGE TANK (UST) NOTICE OF IMMEDIATE DELIVERY PROHIBITION NO. \_\_\_\_\_

**PART I: REASONS FOR DELIVERY PROHIBITION**

On: \_\_\_\_\_ Time: \_\_\_\_\_  
(date of inspection) (AM or PM)

At: \_\_\_\_\_  
(facility name and identification number)

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(name of on-site representative if not the owner or operator)

UST Identifying Information:

Tank no.: \_\_\_\_\_ Capacity: \_\_\_\_\_

Product stored: \_\_\_\_\_

Other identifying information: \_\_\_\_\_  
(if multiple USTs, attach identifying information or use multiple notices)

Name and address of the UST owner or operator (circle which applies).

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Delivery prohibition zip tie number: \_\_\_\_\_

A duly designated officer, employee, or representative of EPA, or a duly designated officer or employee or representative of the state or tribe inspected or assessed this facility. EPA has identified situation(s) or violation(s) of the UST regulations promulgated or approved by EPA under subtitle I of the Solid Waste Disposal Act, as amended (SWDA) (42 U.S.C. § 6991 et seq.) that present an emergency or potential emergency. They are:

1. **[Insert reasons for immediate delivery prohibition here with specific details for each reason. Be sure to include specific dates of inspection, violations, photos, etc.]**
2. **The more specificity the better.]**
- 3.

Based on the information identified above, EPA is, effective this date mm/dd/yyyy **[Region enter today's date]**, prohibiting deliveries of regulated substances to the UST(s) identified above, in accordance with § 9012 of SWDA (42 U.S.C. § 6991k).

\_\_\_\_\_  
(Signature of EPA Representative) Date: \_\_\_\_\_

**PART II: RESOLUTION OF SITUATIONS/VIOLATIONS**

**A. Certification:** The owner or operator certifies, subject to civil and criminal penalties for making a false submission to the U. S. Government, that he or she has corrected all situation(s) and violation(s) identified in Part I and is submitting true and accurate documentation to EPA of their resolution.

SIGNATURE BY OWNER, OPERATOR, OR AUTHORIZED REPRESENTATIVE:

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Company name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**B. Request for meeting with EPA (optional):** You may request a meeting with EPA to discuss the prohibition of deliveries to your UST identified in Part I. If requested, EPA will hold the meeting by telephone, video conference, or at the EPA offices at **[Region must insert address]** within five business days of the date that EPA receives your meeting request. If you desire to meet with EPA, please contact, or have your representative contact, **[Region must add name and contact information]** to make arrangements. A request for a meeting by the owner or operator does not suspend or delay the delivery prohibition.

**Notes:**

## INSTRUCTIONS

On the reverse side is an Underground Storage Tank (UST) Notice of Immediate Delivery Prohibition (“Notice”). You (the owner or operator) can resolve all of the situation(s) and violation(s) identified in Part I of the Notice, request to meet with EPA, or do both. From the time of this Notice until the time the situation(s) and violation(s) are adequately addressed, your UST(s) will be identified as ineligible to receive deliveries by a red tag attached to or near the UST’s fill pipe *[If the Region is using another method, replace red tag information with description of the other method]*.

**Certification:** If you, the owner or operator, wish to have the delivery prohibition removed, you must do the following:

1. Correct all violation(s) and situation(s) cited in Part I of the Notice ("Part I");
2. Sign the Certification in Part II of the Notice (“Part II”) (or in the case when an owner or operator is a corporate entity, have an authorized representative sign it);
3. Return the Notice along with documentation that you have corrected all of the violation(s) and situation(s) identified in Part I to the following address: *[Region must add specific office contact information]*

**Request for meeting:** If you wish to discuss with EPA the prohibition of deliveries to your UST(s), you may request a meeting with EPA. If requested, EPA will hold the meeting within five business days of the date of its receipt of your meeting request. A request for a meeting by the owner or operator does not suspend or delay the delivery prohibition. To request a meeting, you, the owner or operator must contact, or have your representative, contact, *[Region must add name and contact information]* to make arrangements.

The purpose and scope of any meeting is limited to issues involving EPA’s prohibition of deliveries to the UST identified in this Notice. The meeting is not an evidentiary hearing under 40 CFR part 22. However, you may present information, arguments, and comments to EPA regarding our intention to prohibit delivery. You, your attorney, or other representative (such as an environmental consultant) may participate in the meeting in person, via telephone, or via video conference; however, an attorney or other representative is not required to participate.

**Failure to resolve the situation(s) and violation(s) identified in Part I will result in EPA continuing to identify your UST as ineligible to receive deliveries of regulated substances.** EPA is prohibiting deliveries to the UST(s) identified above in accordance with § 9012 of SWDA (42 U.S.C. § 6991k) and a red tag will be affixed on or near the fill pipe for the UST(s) until you adequately address all situation(s) and violation(s) for the UST.

In addition, section 9006(d)(2)(E) of SWDA (42 U.S.C. § 6991e(d)(2)(E)), provides that any owner or operator of an UST – and any person making or accepting a delivery or deposit of a regulated substance to an ineligible UST – who fails to comply with the delivery prohibition requirement established by § 9012 of SWDA shall be subject to a civil penalty not to exceed \$10,000 for each tank for each day of violation. Pursuant to federal law, that amount may be adjusted for inflation. For violations occurring after January 12, 2009, EPA may assess penalties of up to \$16,000 for each tank for each day of violation. Because fuel deliverers may be subject to penalties, at the time any UST at your facility is deemed to be ineligible for deliveries, EPA may also provide notification to your fuel deliverers of the ineligibility of your UST to receive deliveries.

**EPA Review:** Once EPA has received the Notice containing a signed certification by the owner or operator that the situations/violations have been resolved, EPA will review it and any documentation submitted by the owner or operator. If EPA agrees that the owner or operator corrected all of the situation(s) and violation(s), EPA will provide written notice to you specifying that deliveries will not be prohibited at the UST(s).

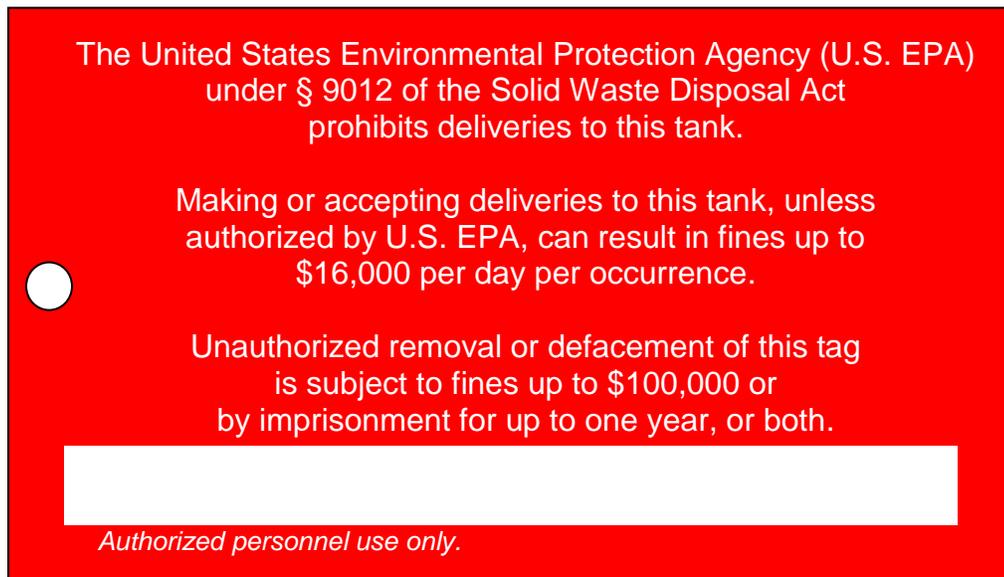
If you have any questions, please contact *[Region must add specific office contact information, including email address]*.

## Delivery Prohibition Tags

Front



Back



The bottom blank space is for regions to write additional information in permanent marker. The tags are 3" x 5".

The tags are attached to or near the UST fill pipe with red straps. The straps are red and are printed with the following information on one end of the strap:

DO NOT FILL

U.S. EPA – R# (*region number*)

0000001 (*sequentially numbered*)





# Delegation of Authority

## SOLID WASTE DISPOSAL ACT (SWDA)

### 8-25. Administrative Enforcement (Subtitle I)

1200 TN 350  
02/26/2010

1. **AUTHORITY.** Pursuant to Subtitle I of the Solid Waste Disposal Act (SWDA), as amended, to:
  - a. Proffer field citations;
  - b. Take action under Section 9012 of the SWDA;
  - c. Issue notices to States;
  - d. Issue initial administrative orders under Section 9003(h) of the SWDA;
  - e. Issue administrative complaints;
  - f. Sign consent agreements memorializing settlements between the Agency and respondents prior to filing an administrative complaint; and,
  - g. Take other enforcement action authorized under Subtitle I of the SWDA.
  
2. **TO WHOM DELEGATED.** Regional Administrators and the Assistant Administrator for Enforcement and Compliance Assurance.
  
3. **LIMITATIONS.**
  - a. This authority does not include the authorities addressed in delegations 8-26 or 8-27.
  - b. The following limitations apply to authorities 1.a. through 1.g.:
    - i. This authority may only be exercised prior to the deadline for filing an answer to an administrative complaint.
    - ii. Before the Assistant Administrator for Enforcement and Compliance Assurance, or delegatee, exercises this authority, the Assistant Administrator for Enforcement and Compliance Assurance, or designee, must notify any affected Regional Administrator, or designee.

- iii. Before a Regional Administrator, or delegatee, issues complaints, the Regional Administrator, or designee, must consult with the Regional Counsel, or designee. This limitation does not apply to the proffering of field citations.
- iv. Before the Regional Administrator, or delegatee, exercises this authority at a Federal facility, the Regional Administrator, or designee, must consult with the Assistant Administrator for Enforcement and Compliance Assurance, or designee. This limitation does not apply to authority 1.a.
- v. Before a regulation or policy directive is promulgated for Section 9012 of the SWDA,:
  - 1. The Assistant Administrator for Enforcement and Compliance Assurance, or delegatee, may take action under Section 9012 of the SWDA after the Assistant Administrator for Enforcement and Compliance Assurance, or designee, receives the concurrence from the Assistant Administrator for Solid Waste and Emergency Response, or designee.
  - 2. Regional Administrators, or delegates, may take action under Section 9012 of the SWDA after the Regional Administrator, or designee, receives the concurrence from the Assistant Administrator for Solid Waste and Emergency Response, or designee.

**4. REDELEGATION AUTHORITY.** This authority may be redelegated as follows:

- a. Authority 1.a. may be redelegated to Inspectors and Compliance Officers assigned to do inspections, and no further;
- b. Authorities 1.b., 1.c. 1.e., 1.f., and 1.g. may be redelegated to Section Chiefs, or equivalent, and no further; and,
- c. Authority 1.d. may be redelegated to Division Directors, or equivalent, and no further.

**5. ADDITIONAL REFERENCES.**

- a. See delegation 8-9-A in EPA's "Delegations Manual."
- b. See delegation 8-32 in EPA's "Delegations Manual."