

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Bureau of Environmental Cleanup and Brownfields

DOCUMENT NUMBER: 263-3120-002

TITLE: Storage Tank Program Internal Policy on Inspections and On-Site Visits

EFFECTIVE DATE: September 8, 2012

AUTHORITY: The Storage Tank and Spill Prevention Act of 1989, P.L. 169, No. 32, as amended and Chapter 245 rules and regulations of the Department of Environmental Protection (DEP).

POLICY: It is the policy of DEP to carry out the provisions of The Storage Tank and Spill Prevention Act (Tank Act) of 1989, P.L. 169, No. 32, as amended and related regulations in Title 25 Pa. Code, Chapter 245.

PURPOSE: To establish internal policy and uniform procedures for Storage Tank Program third-party inspections, program staff inspections and staff on-site visits, as well as follow-up activities including identifying violations, tracking violations, resolving violations and related enforcement actions.

APPLICABILITY: This policy applies to Storage Tank Program staff involved in conducting storage tank inspections and follow-up to third-party inspections, including identifying, tracking and resolving violations.

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements.

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of DEP to give the rules in these policies that weight or deference. This document establishes the framework within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

PAGE LENGTH: 13 pages

DEFINITIONS:

“Escalated Action” - A formal enforcement action which is taken by the program, against an owner, operator, responsible party, person or certified entity (installer, inspector and/or company) for alleged violation(s) of the Tank Act or related regulations. An escalated action may include, but is not limited to: DEP Order, Unilateral Order, Consent Order and Agreement, Consent Assessment, Suspension or Revocation of Certification or Operating Permit, filing of a legal action in an appropriate court, or referral to the Attorney General Office for criminal investigation and prosecution.

“Enforcement Action” - (See Bureau of Waste Management (BWM) Guidance #250-4000-002)

GENERAL:

Routine Storage Tank Program inspections for the inspection types listed below are performed by DEP Certified Third-Party Inspectors authorized under the Tank Act and administered under Title 25, Chapter 245, as well as, through the implementation of several Program Guidance and Standard Operating Procedures (SOPs). Additionally, the Underground Storage Tank (UST) Program and related UST inspections are conducted pursuant to Memorandum of Agreement (MOA) with the United States Environmental Protection Agency (EPA) Region III, through formal State Program Approval (SPA) under Section 9004 of Subtitle I of the Resource Conservation and Recovery Act (RCRA). Routine third-party storage tank inspections include:

- Aboveground Storage Tank Installation or Modification (Construction) Inspections
- Aboveground Storage Tank Integrity (In-Service and Out-of-Service) Inspections
- Underground Storage Tank Facility Operations Inspections
- Underground Storage Tank Internal Lining Evaluations

Additionally, storage tanks containing combustible and flammable liquids are inspected by the Department of Labor and Industry (L&I) at installation, replacement or relocation of a tank, pump or drawing-off device pursuant to the Combustible and Flammable Liquids Act, Act 15 of 1998 and related regulations at 37 Pa. Code Chapters 11-14. L&I requirements for applications and inspections, however, do not apply to refineries or where jurisdictional authority is granted to the Cities of Philadelphia and Pittsburgh or to Allegheny County.

DEP Storage Tank Program staff primarily conduct “*Follow-up inspections*” where routine inspections conducted by certified third-party inspectors have revealed violations, deficiencies or potential noncompliance, as well as, “*Investigations of Complaints or Incidents*,” and DEP certified installer, inspector and company oversight “*Performance Evaluations*.” DEP regional office (RO) staff also perform occasional “*Compliance Evaluation Inspections*” at storage tank facilities based on regional concerns, rather than follow-up to third-party inspection findings. *Follow-up Inspections* are high priority for the Storage Tank Program, along with known imminent threats and complaint investigations. Central office (CO) and RO staff also conduct “*Administrative or File Review Inspections*,” but these activities are only recorded in the Environment, Facility, Application, Compliance Tracking System (eFACTS) as separate inspection activities when a violation is noted through staff review of documentation or information other than an on-site inspection report (staff or third-party) and enforcement action is anticipated or initiated. Results of file reviews conducted in preparation for staff

on-site inspections are routinely documented as notes to utilize while conducting the on-site inspection and then applicable findings or violations may be included in the on-site inspection report, if applicable. CO staff may also perform certified installer, inspector and company oversight “Performance Evaluations.”

PROCEDURES:

I. Inspection Due Dates and Routine Inspection Notifications

- A. Routine inspection requirements and frequencies are prescribed in Chapter 245. Past inspection information and site history are recorded in eFACTS. The last routine inspection(s) completed and the next scheduled inspection type(s) and due date(s) are also depicted for each applicable storage tank on the current Storage Tank Registration/Permit Certificate, which the program mails to the tank owner or designated official representative annually, contingent upon prior payment of annual registration fees. Storage Tank Registration/Permit Certificates are available at the storage tank facilities and a copy must be publicly displayed at storage tank retail sales facilities.
- B. Staff may send inspection notice letters to UST facility owners closely correlating with the inspection due dates. Storage tank or facility inspection notice letters may also be sent when conditions warrant a third-party inspection or re-inspection prior to the next routine scheduled inspection due date(s) (see 25 Pa. Code §245.21) or to confirm that prior inspection findings have been corrected and compliance is being maintained.
- C. If an owner does not contract to have the required inspection(s) performed by the inspection due date(s), CO staff create an administrative inspection in eFACTS, send a Notice of Violation (NOV) to the tank owner and refer the violation to the appropriate RO for follow-up and resolution unless other arrangements are coordinated and agreed upon by both the RO and CO.
- D. Staff should notify storage tank facility owners or operators prior to conducting staff inspections or on-site visits when it is desired to have the owner present at the time of the inspection or when specific storage tank facility records will be required for viewing at the site and such records are not routinely kept at the site.

II. Routine Third-Party Inspections

- A. The storage tank owner contacts a DEP certified third-party inspector or company (inspector’s employer) and contracts to have the required inspection(s) performed. The third-party inspector conducts the required inspection utilizing DEP third-party inspector’s manual and established guidance. Inspection results are documented on the applicable DEP inspection form by the third-party inspector. The tank owner or operator and the inspector sign the completed inspection report and the inspector submits copies of the inspection report to DEP CO and to the appropriate RO within 60 days of completing the inspection (see 25 Pa. Code §245.108(a)(4) and §245.132(a)).
- B. Within 10 days of receipt, CO technical staff review third-party inspection reports, determine compliance with Chapter 245 and EPA Significant Operational Compliance (SOC) Guidelines (if applicable) and enter inspection findings into eFACTS following

eFACTS User's Guides. If CO review staff determine that inspection results are noncompliant and the third-party inspector indicated results were compliant, CO promptly sends a Letter of Non-Compliance to the tank owner and copies the inspector, as well as the appropriate RO notifying them about the change(s) in the inspection findings. CO review staff also promptly notifies the appropriate RO daily by phone, e-mail or by entry in a shared local area network (LAN) folder of any significant or environmental violation findings requiring prioritized follow-up by the RO.

- C. CO technical staff conduct oversight of certified installers and inspectors each time they review tank handling reports and third-party inspection reports and enter the applicable information in eFACTS. Certified installers, inspectors and companies are subject to standards of performance in 25 Pa. Code §245.132. Occasional minor shortcomings and administrative errors may occur and do not necessarily always merit documentation as a violation. Staff should work with certified installers and inspectors when practicable to develop consistent performance through implementation of Guidance No. 263-4180-002, "Storage Tank Program Compliance Assistance Strategy." However, continuous or repetitive minor shortcomings and administrative errors should be documented as violations, which merit progressive enforcement. CO will document continuous, repetitive and substantial violations noted during technical reviews of tank handling or third-party inspection reports and copy the appropriate RO. Any formal enforcement action administered by CO will be coordinated with the RO.

III. DEP Staff Inspections

A. Preparations

Staff should prepare for on-site inspections prior to leaving the office to inspect a storage tank system or storage tank facility. The following steps are recommended:

- Thoroughly review facility records file and previous inspection reports. Make note of previous findings and potential ongoing problems or continuing violations. Also note any variance conditions (25 Pa. Code §245.404 and §245.503), previous NOV, enforcement orders and/or agreements.
- Review facility information in eFACTS, check storage tank(s) registration and permitting status, violations noted, record of enforcement actions and any compliance schedule entries, and note for use during the inspection.
- Note any pattern of violations at other storage tank facilities operated by multi-site facility owners or operators.
- Review regulations and any pertinent compliance guidelines. Bring regulations to on-site inspection.
- Review relevant program Fact Sheets and public guidance documents and bring these to an on-site inspection to share them with the facility owner or operator.
- Discuss the upcoming on-site inspection with immediate supervisor.

- If necessary, contact the facility owner or operator in advance.
- Obtain at least two copies of 2630-FM-BECB0182, Storage Tank System Report Form - Narrative Information, and carbon sheet, to record on-site inspection/visit observations, findings, violations and compliance status at the facility. Fill in the header information and bring the forms with you to the site to document the on-site visit and to record your inspection findings.
- Assemble necessary personal protective equipment and traffic cones for use during the inspection (see Division of Storage Tanks SOP for Personal Safety During AST/UST Facility Inspections and Site Visits).

B. Performance of On-Site Inspection or Site Visit

Proceed to the site. Upon arrival at the site, park and secure DEP vehicle in an appropriate area at or adjacent to the site. Locate the storage tank facility owner, operator or representative and introduce yourself. Present yourself in a professional and courteous manner. Obtain the name of the representative at the site. Explain why you are at the site and your intention to conduct an inspection of the facility or a specific storage tank system. Request that the representative accompany you during the inspection, and understand any safety concerns or practices before proceeding with the inspection. Ask questions and explain your observations as you go through the inspection, make notes of any condition that is noncompliant or a violation of Chapter 245. When practicable, bring the condition to the attention of the facility representative as you note it.

Staff inspections should generally encompass the entire storage tank facility when inspecting UST facilities or small AST facilities, unless the immediate supervisor determines that only a given part of the facility is to be inspected. Because of staff limitations and time constraints, the supervisor may determine that it is more practical to only inspect specific areas of concern or to follow-up only on previously documented violations and deficiencies. Staff inspections of large ASTs are confined to external observations, usually of a specific tank system and the general containment structure (see Guidance No. 263-0900-022, “Verification of Emergency Containment Structures for Aboveground Storage Tanks”). Staff should rely on tank owners, operators or third-party certified individuals to operate specific storage tank system equipment and to perform specific tests or nondestructive examinations requiring specific equipment and industry qualifications. Staff shall not conduct internal tank examinations, enter vaults, walk on an AST roof or perform hydrostatic, pneumatic or other pressurized or vacuum tests or perform detailed analysis of ultrasonic metal thickness measurements. Staff who are qualified cathodic protection testers, may conduct tests of cathodic protection systems. Staff may obtain readings from tank system gauges and automated tank monitoring system printouts. Staff may also take photographs of conditions observed during an inspection. Things to check for during on-site inspections include but may not be limited to the following:

Aboveground Storage Tank Systems

- Visually examine tank system exterior for excessive corrosion, deterioration and maintenance of coatings

- Note condition of foundation and piping supports, and obvious uneven or excessive settlement
- Look for obvious control valve(s) and piping joint(s) problems
- Confirm containment structure condition, maintenance, drain valves closed, proper capacity and verified by Professional Engineer (if required)
- Look for evidence of release(s), leaks, weeps, spills or overfills
- Verify overfill protection equipment (where observable) or process
- Verify monthly maintenance and leak detection records
- Review Spill Protection Response (SPR) Plan (where required)
- Check loading racks and product dispensers (where applicable)
- Where observable, verify that vents are clear of obstruction and bird nests, long-bolt manway vents have the correct bolts and mechanical apparatus are not excessively corroded (potentially inoperative)
- Where practicable, verify third-party inspector's findings and determine if noted violations and deficiencies have been corrected or resolved

Underground Storage Tank Systems

- Verify leak detection method(s) and required monthly records; if necessary, obtain readings from gauges and automated monitoring equipment printouts
- Verify certification of leak detection equipment, proper placement and any necessary maintenance or annual tests (if required)
- Review any required tank tightness test and piping tightness test records
- Verify overfill protection equipment and alarms (visual or acceptable records)
- Review records of tank system construction, verify system proper design and piping layout (where practicable), and means of corrosion protection
- Verify operation of corrosion protection equipment and testing records
- Visually examine sumps and dispenser pans for proper protection of metal flex connectors, placement of sensors (if applicable) and water or product in sumps
- Verify presence of spill containment buckets, operability and maintenance

- Confirm presence of site evaluation or survey records (where required)
- Look for evidence of release(s), leaks, spills or overfills
- Verify third-party inspector's findings and determine if noted violations and deficiencies have been corrected or resolved

C. Follow-up Inspections

Regional staff should perform Follow-up Inspections (FLWUP) within 30 days of being notified by CO that significant or environmental violation findings were noted during a third-party inspection or a CO referred Administrative Inspection (when applicable), except where documentation may be received (such as tank handling, tightness test or corrosion test reports) that shows that violations have been corrected or where an applicable NOV has requested compliance or submission of documentation within a specific timeframe. Bring a copy of the previous third-party or staff inspection report that you are following up with you to the site to be inspected. Determine if the violations and deficiencies noted on the previous inspection report(s) have or have not been corrected or resolved. Also determine if any new or additional violations are present (see III.B above). Evaluate the entire storage tank facility or the specific AST that you are following up on, unless your supervisor has directed otherwise or agreed to only follow-up on previously documented violations.

D. Complaint and Incident Investigations

Complaint investigations are a high priority. Regional staff shall perform Complaint (COMPL) and Incident (INCDT) Investigations in accordance with the Field Operations guidelines. Initial complaint inspections are to be completed prior to the required timeframe as dictated by the established priority status. Regional response to complaints that are referred by EPA shall be routed through the Division of Storage Tanks, Aboveground and Underground Tanks Technical Section. Regional staff should follow Storage Tank Cleanup Program Guidelines for handling and tracking incidents involving reportable release(s) of regulated substances (see guidance document 255-4000-001, Guidelines for the Storage Tank Cleanup Program - Identifying, Tracking and Resolving Violations for Storage Tanks) if a release is involved.

E. Compliance Evaluation Inspections

Regional Staff occasionally perform Compliance Evaluation Inspections (CEI) based on regional concerns or knowledge of potential threats to public health, safety and the environment, not involving a Complaint or Incident. Such inspections may include storage tank facilities not recently inspected by third-party inspectors, but where third-party inspection reports may show a pattern of noncompliance at other facilities operated by multi-site facility owners. CEI should not be used to replace a FLWUP for recently conducted staff or third-party inspections. CEI usually encompasses an entire UST facility, but may only apply to a single AST system. Follow on-site inspection procedures at III.B above and determine if any violations or deficiencies are present.

F. Performance Evaluations

Regional staff and CO staff perform periodic Performance Evaluations (PFMEV) to conduct oversight of DEP certified installers, inspectors and companies. Staff may perform PFMEV by accompanying certified individuals at a storage tank facility and observing their performance while the certified individuals are conducting tank handling or inspection activities. Staff may also perform PFMEV activities while conducting other types of inspections (for example FLWUP) by verifying a third-party inspectors previous findings or by observing storage tank system layout, design, construction and operable components that were previously installed or modified by a certified tank installer. Staff can also review tank handling reports, test results, and records of tank tightness tests performed by certified installers. CO technical staff conduct oversight of certified installers and inspectors each time they review tank handling reports and third-party inspection reports and enter the applicable information into eFACTS, but this oversight is not routinely entered as a PFMEV unless compliance follow-up or enforcement is merited. Certified installers, inspectors and companies are subject to standards of performance at 25 Pa. Code §245.132. Occasional minor shortcomings and administrative errors may occur and do not necessarily always merit documentation as a violation. Staff should work with certified installers and inspectors when practicable to develop performance consistency through application of Guidance No. 263-4180-002, "Storage Tank Program Compliance Assistance Strategy." However, serious violations and continuous or repetitive minor shortcomings and administrative errors should be documented as violations, which merit progressive enforcement.

G. Administrative or File Review Inspections

Staff conduct Administrative File Review (ADMIN) Inspections as necessary. ADMIN inspections are only required to be documented and entered into eFACTS when not related to preparation review for or follow-up to an on-site inspection report (staff or third-party), and other options as needed for recording a violation that DEP intends to pursue. CO typically uses ADMIN inspections to document facility owner violations for failure to complete a required routine third-party inspection and issues NOV, which establishes a suggested timeframe to correct the violations as noted in I. above (*relating to Inspection Due Dates and Routine Inspection Notifications*).

H. Documenting Staff Inspections

Staff shall document inspection observations and findings on the Storage System Report Form - Narrative Information, 2630-FM-BECB0182, while at the site being inspected. Clearly state observations made during the inspection walkthrough in plain language. Explain any violation(s) noted. If the inspection report is intended to serve as a "Field NOV," cite the regulatory section(s) that pertains to violation(s) in writing. (Follow DEP's Model Notice of Violation and Instructions, dated October 2003). Make written recommendations for how to correct violations and suggest timeframes where appropriate. If a violation was immediately corrected, note this on the form. Staff may also take photographs to document conditions observed during the inspection. Brief the facility representative. Sign the form and request that the facility representative also sign the form. If the representative refuses to sign, note this on the form. Leave a copy of the inspection with the representative and retain the original report for DEP record.

IV. Issuing Notices of Violations

The Storage Tank Program regional staff routinely issue NOV's for recurring violations, for continuing violations and for significant violations within 14 days of their inspection, and for routine third-party inspection violations within 30 days of the inspection report review and referral by CO or within 14 days after a staff on-site FLWUP occurring within 30 days of routine third-party inspection referrals. An NOV (or an Order) may be used to establish a short-term schedule for re-inspection by a DEP certified third-party inspector. The program may limit routine issuance of NOV for first time violations that do not affect the environment or for minor administrative violations that are un-resolvable in a reasonable amount of time.

Program staff should follow BECB policy and this document for issuance of an NOV for inspections that are conducted by staff (see BWM *Guidance* #250-4000-002 "Enforcement Actions"). Staff inspection NOV should be issued in writing and mailed to the facility or violator within 14 days of completion of the inspection. However, if the violation was immediately corrected or resolved within the 14-day calendar period, an NOV need not be issued. The Regional Director may also grant extensions to the time frame based upon the particulars of the case. NOV shall be entered into eFACTS within 10 days after mailing of the document. If the NOV satisfies the enforcement initiative and the violation(s), the violation(s) should also be closed while entering the NOV into eFACTS.

The NOV should clearly and concisely identify each violation, the basis for each violation, the suggested actions (including a meeting, if applicable) to resolve each violation and any recommended time frames or date(s) for those actions; and comport with DEP's Model Notice of Violation and Instructions, dated October 2003.

V. Tracking and Resolving Violations

A. Tracking Violations

Violations shall be entered and tracked in eFACTS following applicable eFACTS User's Guides. Violations will be recorded into eFACTS within 10 working days of completion of program staff inspections or within 10 days of CO receipt of routine third-party inspections.

B. Resolution of Violations

When a facility owner or operator completes all necessary action to resolve or abate violations to the satisfaction of DEP, RO staff should provide notification within 14 calendar days to the owner or operator that the outstanding violations and areas of noncompliance have been resolved, unless an on-site inspection report already addressed that violations were corrected. When staff determines that a violation has been resolved or abated, eFACTS shall be updated within 10 days (or sooner if practicable). The update includes resolving violations on initial inspection report entries and resolving all applicable violations on linked inspections and applicable enforcement entries recorded in eFACTS.

Violations noted during inspections and not immediately corrected or resolved to the DEP's satisfaction within a suitable time should be resolved through formal enforcement actions (see BWM Guidance #250-4000-002 "Enforcement Actions") or an escalated action shall be taken. Staff on-site inspection violations should be resolved within 180 calendar days of the inspection. Significant and referred routine third-party inspection violations should be resolved, abated or an escalated action taken by DEP after receipt of the inspection report, review of inspection findings and entry into eFACTS, and within 180 calendar days from the date of referral by CO to the appropriate RO.

Violations may be abated in certain cases by emptying the storage tanks, that do not meet regulatory standards and rendering them temporarily closed. In such cases timeframes for moving from temporary closure to permanent closure of the tank systems should adhere to specific provisions in Chapter 245 for the applicable tank systems. While permanent resolution of the violations may not be achieved within 180 days an escalated action may not be necessary. Program Managers shall determine on a case-by-case basis to abate or administratively close such violations in eFACTS and no Weekly Report is required. Violations may be re-addressed at a later time if conditions warrant.

Regional program staff shall address violations that take more than 180 days to resolve via an escalated action unless the Regional Director agrees that an enforceable document is not warranted in the specific case. Violations that take less than 180 calendar days to resolve may be incorporated into an enforceable document, as appropriate. Multi-site violations should be addressed through multi-site enforcement actions when practicable. Multi-site enforcement actions involving facilities in several regions shall be coordinated with CO and applicable regions to determine if one region or CO will take the lead on the enforcement activities. Multi-site enforcement actions may exceed the 180 days for taking an escalated action when the applicable CO or RO (or lead) Program Manager determines that additional time is appropriate and necessary to formalize an agreement and the responsible party is making good progress towards achieving compliance. Case-specific extensions should be reported to the Secretary in the Weekly Report.

For all violations that are addressed via an enforceable document, program staff should finalize the negotiations for the enforceable document, including the appropriate penalty assessment, within 180 calendar days after the date that DEP notified the violator or responsible person of the violations, unless the Regional Director agrees that an extended time frame is acceptable in the specific case. Otherwise, regional program staff should take the applicable escalated action that imposes the obligations necessary to resolve or abate the violations. Negotiations can be re-established once the responsible party is under an enforceable schedule. Case-specific extensions should be reported to the Secretary in the Weekly Report.

C. Tracking Compliance Dates for Enforceable Documents

All material obligations, corrective actions or milestones for the resolution of a violation that are contained in an enforceable document shall be monitored by regional program staff and tracked in eFACTS and shall be updated within 10 working days (or sooner if practicable) of compliance with each material obligation, corrective action or milestone.

To identify that all violations have been finally resolved, regional program staff shall update eFACTS within 10 working days (or sooner if practicable) of final compliance with the enforceable document and notify the applicable individual or facility within 14 calendar days, unless already notified via an on-site inspection report. The update includes resolving violations on initial inspection report entries and resolving violations on all applicable linked inspections and applicable enforcement screen entries recorded in eFACTS.

Milestones for abatement of regulated substance release incidents should be tracked in the Land Recycling Activities Screen in eFACTS following Storage Tank Cleanup Program Guidelines and timeframes established in Corrective Action Process Regulations, Chapter 245, Subchapter D.

VI. Enforcement, Penalty Determination and Collection, and Permit Bars

A. Withholding Permits

Sections 107(e) and 1301(1) of the Tank Act provide that DEP shall not issue any permit, amend any permit and may revoke or suspend any permit previously issued, where a tank owner has failed and continues to fail to comply with the Tank Act, the regulations there under, or any permit or order of DEP. Section 1301(2) of the Tank Act provides that DEP may take such actions where a person has shown a lack of ability or intention to comply with the Tank Act, the regulations, or permits or orders of DEP issued pursuant to the Tank Act as indicated by past or continuing violations. Storage tank permits are issued by CO. RO decisions to withdraw, suspend or revoke a permit shall be coordinated by the Regional Environmental Cleanup Program Manager in consultation with the Chief, Division of Storage Tanks.

B. Enforcement Orders

Sections 107(f), 107(g), 1302(a), 1304 and 1309 of the Tank Act provide DEP with the authority to issue orders to violators and responsible parties to take action in a manner satisfactory to DEP. DEP may also order a person to allow access to the property by DEP or by a third party where necessary to determine compliance with the Tank Act or conduct corrective action. An escalated action should be reserved for significant violations and situations where there is noncompliance with an NOV. In all other cases, the regional program manager may exercise discretion in determining whether to issue an order.

For violations of obligations under an enforceable document, regional program staff shall allow settlement negotiations to continue for 60 calendar days before petitioning a court to resolve the violations because the negotiation process is not producing meaningful results, unless the Regional Director recommends and the Secretary agrees that an extended time frame for negotiations is acceptable while the responsible party is not complying with the terms of the enforceable document. Case-specific extensions, as approved by the Secretary, should be noted in the Weekly Report.

C. Criminal Provisions

The criminal provisions of the Tank Act are contained in Section 1306. Regional program staff may refer violations that meet the requirements of these provisions to the Office of Chief Counsel. The Office of Chief Counsel will consider referring the violations that meet the requirements of the criminal provisions to the Office of Attorney General for criminal investigation and prosecution. The Regional Environmental Cleanup Program Manager and the Chief, Division of Storage Tanks shall keep each other apprized of any criminal referrals. Criminal referrals require the highest degree of confidentiality.

D. Civil Actions

A violation of the Tank Act, Chapter 245, or an enforceable document issued under the Tank Act shall constitute a public nuisance (Section 1304 of the Tank Act). Section 1305 of the Tank Act provides DEP with the authority to pursue suits to abate nuisances and restrain violations. Program staff should reserve civil actions for significant situations or repeat violations. Program staff is to use discretion in determining to pursue a civil action dealing with small business owners and consider the cost to the small business owner when establishing timeframes to comply. Use discretion where appropriate and apply Guidance No. 263-4180-002, "Storage Tank Program Compliance Assistance Strategy."

E. Civil Penalties

Sections 107(f) and 1307 of the Tank Act provide DEP with the authority to assess and collect civil penalties. Further, Section 1302(b) provides that for purposes of collecting or recovering the expense involved in taking corrective action and cost recovery action pursuant to an order or recovering the cost of corrective action, litigation, oversight, monitoring, sampling, testing and investigation related to a corrective action, DEP may collect the amount in the same manner as civil penalties are collected under the provisions of Section 1307(b). Section 107(h) specifically provides DEP with the authority to recover the costs of taking or authorizing third parties to take corrective action.

Program Guidance No. 263-4180-001, "Penalty Assessment Matrix," dated October 13, 1995, provides program guidelines for assessing and calculating civil penalties. Civil penalties may be reduced in negotiated agreements. When dealing with small business owners, consideration should be given to the owner's ability to pay when making civil penalty determinations. Civil penalties that are not collected within 60 calendar days of their due date, and where no appeal is pending, are to be referred to the Office of Chief Counsel to be processed for collection.

The document titled "Cost Recovery Program", dated November 2000, establishes program policy and procedures related to cost recovery. EPA approved this document for use in recovering federal Leaking Underground Storage Tank Trust Fund money.

Section 1307(b) provides lien provisions available to the program for recovering penalties and response costs.

F. Statute of Limitations

In accordance with Section 1314 of the Tank Act, actions for civil or criminal penalties may be commenced at any time within a period of 20 years from the date the offense is discovered.