

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Bureau of Environmental Cleanup and Brownfields

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TITLE: Storage Tank Program Compliance Assistance Strategy

EFFECTIVE DATE: September 8, 2012

AUTHORITY: Act 32 (P.L. 169) of 1989, the State Storage Tank and Spill Prevention Act, amendments and Chapter 245 rules and regulations of the Department of Environmental Protection (Department or DEP).

POLICY: It is the policy of the Department to carry out the provisions of the Storage Tank and Spill Prevention Act of 1989 and related regulations.

PURPOSE: This strategy provides an overview of all the storage tank program compliance tools which are available to the Department for use in the implementation of the Storage Tank Program.

APPLICABILITY: This guidance is primarily applicable to Department staff when assisting storage tank facility owners/operators in bringing their facilities into compliance with the Department's Rules and Regulations.

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.

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STORAGE TANK PROGRAM COMPLIANCE ASSISTANCE STRATEGY

The Storage Tank Program compliance assistance strategy describes a variety of “compliance tools” available to the Department for encouraging storage tank facility owners/operators to bring their facilities into compliance with the Department’s rules and regulations. Although formal enforcement actions such as field orders, administrative orders, consent orders and penalty assessments are available for use with recalcitrant owners/operators, the use of voluntary compliance tools is preferred in the Storage Tank Program. This strategy provides an overview of the majority of the Storage Tank Program compliance tools which are available to the Department for use in the implementation of the Storage Tank Program.

INTRODUCTION

The United States Congress and the Pennsylvania State General Assembly passed a series of laws to prevent environmental degradation caused by leaking storage tanks and to protect human health and the public safety. Environmental Protection Agency (EPA) regulations at 40 Code of Federal Register (CFR), Parts 280 and 281 promulgated under the Resource Conservation Recovery Act of 1976 (RCRA) and Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), effective on December 22, 1988, comprise the core federal environmental requirements regarding underground storage tank facilities.

The Storage Tank and Spill Prevention Act passed in 1989 (35 P.S. Sections 6021.101–6021.2104, known as Act 1989-32), its amendments and subsequent regulations (Pennsylvania Code Title 25, Chapter 245, Administration of the Storage Tank and Spill Prevention Program) comprise Pennsylvania’s Storage Tank Program. Pennsylvania incorporated part of 40 CFR Part 280 into its regulations by reference at 25 Pa. Code, Section 245.2 on September 21, 1991.

This document sets forth the strategy used by the Department to encourage compliance with the regulations promulgated under the Storage Tank and Spill Prevention Act. Compliance with these regulations will both help prevent releases from storage tank systems and detect releases at an early stage so they can be effectively controlled.

Compliance with the Storage Tank Program’s regulations can be achieved by applying the various compliance tools to the program components. The compliance tools are defined in Section 2 and their application to the program components is described in Section 3. The compliance tools and program components are:

Compliance Tools

1. Outreach
2. Training
3. Technical Assistance
4. Oversight
5. Inspection
6. Financial Assistance
7. Enforcement Actions

Program Components

1. Permitting
2. Certified Installer/Inspector
3. Technical Requirements
4. Spill Prevention Response Plans
5. Corrective Action
6. Financial Responsibility

COMPLIANCE ASSISTANCE TOOL DEFINITIONS

- **Outreach** - Providing of information to the regulated community, which assures that the community is aware of the regulations and are receiving guidance for coming into or remaining in compliance. Outreach may include: mass mailings of informational letters, publications, the Storage Tank Monitor, fact sheets, speaking engagements, exhibits, news releases and individual attention to tank owners/operators by the Storage Tank staff.
- **Training** - Formalized and structured presentation of administrative and technical information to a group of individuals with common interests. Training may be set up either statewide or regionally depending on needs and resource availability. Training sessions not only provide information but also the opportunity for questions and answers, and allow for the exchange of ideas.
- **Technical Assistance** - Explaining and clarifying technical issues and/or administrative procedures on a one-to-one basis. Technical assistance may be given during a telephone conversation, site visit or in written correspondence.
- **Oversight** - Review and evaluation by the Department of submitted material and site activity to determine compliance with rules, regulations and Acts. Oversight may include reviewing applications, tank handling activity forms, inspection reports, and spill prevention response plans for completeness, accuracy and compliance. Site visits may evaluate the activities conducted at a facility during the operation of the tank system, remediation efforts, the activities of certified installers/inspectors, or respond to complaints or investigations.
- **Inspection** - An on-site activity to gather information for determining if a storage tank facility is in compliance with the regulations. Routine inspections usually are performed by Department certified inspectors. Department staff inspections are used for oversight activity, enforcement follow-up, and complaints.
- **Financial Assurance** - The securing of monetary resources in meeting the financial requirements for corrective action and third party liability. The Underground Storage Tank Indemnification Fund (USTIF) is administered by the Insurance Department and makes claim payments to, or on behalf of, owners/operators of underground storage tanks for corrective action and third party liability. The Small Business First Fund, administered by the Department of Community and Economic Development, provides low interest loans of financial assistance to help owners and operators come into compliance with state or federal requirements or to adopt generally acceptable pollution prevention practices.
- **Enforcement Action** - The Department's response to continued noncompliance, if voluntary compliance efforts are not successful. An enforcement action identifies specific violations and requires specific actions within specific timeframes to be taken by the responsible party to correct the violation. Enforcement action is generally the last tool used to obtain compliance.

APPLICATION OF COMPLIANCE TOOLS TO THE PROGRAM COMPONENTS

This section describes the application of the appropriate compliance tool for each program component. It is intended to encourage compliance with the Storage Tank and Spill Prevention Act and its regulations.

Permitting

Upon adoption of permitting regulations, a permit will give storage tank systems which are in compliance with storage tank regulations the privilege to operate. These regulations also give the Department the authority to restrict the operation of a noncompliant system. The permitting process reduces the probability of a release from a tank system by requiring the storage tank owner/operator to come into and remain in compliance with all applicable administrative and technical standards.

- Outreach will be necessary to communicate permitting requirements to the regulated community. Outreach can be accomplished through such activities as mass mailings to owners, operators, installers and inspectors; articles in the Storage Tank Monitor; and news releases.
- Technical assistance to individuals can be provided through telephone conversations, written correspondence or site visits.
- Oversight should include: reviewing forms and permit applications for completeness and compliance with technical and administrative requirements. Deficiencies will be noted and recommendations needed for compliance will be provided by staff to the owner/operator.
- Routine inspections will enable the Department to determine the compliance status of the tank system. Owners/operators of tank systems not in compliance will be encouraged to meet program technical, operational and administrative requirements through technical assistance and oversight.
- Financial assistance may be available to the owner/operator of underground storage tank systems. Owners and operators who are in compliance with the permitting requirements should be eligible for USTIF or Small Business First Fund moneys.
- Enforcement actions taken against owners or operators of tank systems not in compliance with permitting requirements may include orders requiring system upgrade to meet program requirements, restrictions on the tank system operation (including permit revocation) or closure. Civil penalties may be assessed where the owner/operator refuses to come into compliance.

Certified Installer and Inspector

The Department's regulations are designed to certify only individuals who can demonstrate that they are qualified, experienced and knowledgeable in their area of certification to do work that meets technical and administrative standards. Since certified individuals are required to do tank handling activities including new installations, modifications, upgrades or removals, these tank systems should be in compliance with technical and administrative requirements. The certified individual's role includes adhering to standards of performance, communicating program expectations to the regulated community, and reporting of accurate information about the tank system to the Department.

Administration of the pool of certified installers and inspectors is the responsibility of Central Office and is accomplished through the certification program.

- Outreach is used to communicate the Storage Tank Program requirements and expectations to the certified installer/inspector. Outreach can be accomplished through informational letters, articles in the Storage Tank Monitor, news releases, formal conferences, informal meetings, training sessions and oral communications.
- Training provides current information to certified installers/inspectors regarding proper tank handling activities, inspection methods and changes in regulatory and technical requirements. Proper administrative procedures for submitting information to the Department can be reviewed during training. Continuation of training will keep the certified installer/inspector current on certification regulations and technical requirements and minimize faulty tank handling activities, inspections and reports. Training can take place through seminars, regional meetings with Department staff, and formal training courses. Certified individuals also receive copies of the “Administrative and Technical Reference Manual for Installers and Inspectors” which is published by the Department and updated as needed.
- Technical assistance is provided to certified installers/inspectors by Department staff during telephone conversations, written correspondence, site visits and joint inspections.
- Oversight of the certified installer/inspector includes the review and evaluation of tank handling activities, inspection reports and other submitted paperwork. The regional offices have the primary responsibility for installer/inspector oversight. Departmental oversight may occur during the activity, after the activity through review of submitted paperwork, or through Departmental investigation of completed activities. Oversight encourages the certified installer/inspector to perform in compliance with Department performance standards and the program requirements. Noncompliant individuals are usually notified in writing of noncompliance and initially provided with technical and administrative guidance and training.
- Enforcement action is sometimes necessary to address gross or repeated violations committed by a certified installer/inspector. These actions may include penalties, suspension or revocation of certification. Criminal activities are referred to the Office of Attorney General for further investigation.

Technical Requirements

Technical requirements for construction, installation, modification, inspection, and the removal from service or closure of storage tank systems are an integral part of the Storage Tank Program. These requirements are specially designed to protect the public and the environment from releases and to provide an early warning system for containment of releases, if they occur. The program’s requirements are based on current nationally recognized associations’ codes of practice and applicable state and federal regulations.

- Outreach is employed to assure that the regulated community is aware of and understands the technical requirements for their individual storage tank systems. The Department distributes technical information through fact sheets, technical reference manuals, informational letters, technical documents and the Storage Tank Monitor.

- Training is provided to the regulated community through regional and statewide seminars on specific technical issues such as leak detection, record keeping, site assessment, closure, upgrade requirements and operational activities.
- Technical assistance is provided to the owner/operator of storage tank systems by Department staff and certified installers/inspectors. Explanation of the program's technical, operational and administrative requirements is provided during telephone conversations, written correspondence, inspection activities and site visits.
- Oversight includes review of submitted forms containing information (such as registration forms, tank handling activity reports, inspection reports and permits) for completeness, accuracy and compliance with the technical requirements. Site visits to monitor tank handling activities, inspections and site assessments assure that the owner/operator is operating in compliance with program requirements.
- Routine inspections of storage tank systems determine if the systems are structurally sound, are maintained according to industry standards, meet technical requirements, and follow the Storage Tank Program's operating requirements. Where faulty operations, inadequate recordkeeping or a construction defect is found, the owner/operator is informed of the defect and is given assistance necessary to bring the facility into compliance.
- Financial assistance may be available for underground storage tank systems through USTIF for release liability and corrective action. The Small Business First Fund provides low interest loans to help owners and operations come into compliance with state or federal requirements or to adopt generally acceptable pollution prevention practices.
- Enforcement actions are taken against individuals who do not voluntarily comply with technical requirements or when emergency action is needed to protect the public health and safety or the environment. Examples of incident-specific appropriate enforcement actions are provided in the field staff guidance manual, "Field Compliance Order" and the technical guidance (No. 263-4180-001) "Penalty Assessment Matrix" as part of the Enforcement Strategy.

Spill Prevention Response Plan

This is an emergency and safety response plan available for immediate implementation by storage tank facility staff in the event of a release at large aboveground storage facilities. Owners of facilities with an aggregate aboveground storage tank capacity of greater than 21,000 gallons of regulated substances are required to submit a Spill Prevention Response (SPR) Plan to the Department. SPR Plans must be revised as necessary to reflect current facility conditions. The SPR Plan must include a description of the facility, the personnel organizational structure of the facility for implementation of the plan, staff training to implement the plan, a preventative maintenance program, counter measures to be used in response to a release, and a downstream notification list. A properly developed and implemented plan reduces the risk of a release and outlines procedures for containing and controlling contamination in the event of a release.

- Outreach about the SPR Plan is accomplished through mailing informational letters and articles in the Storage Tank Monitor. The Department has developed documents, such as "Guidelines for the Development and Implementation of Environmental Emergency Response Plans" and a fact sheet, to assist facility owners. Both can be obtained from Central Office.

- Technical assistance is provided to owners/operators and environmental consultants through telephone conversations, written correspondence and site visits.
- Oversight of the SPR Plans is the responsibility of the regional offices. An SPR Plan is reviewed for completeness. Where deficiencies are found, the owner/operator is notified of the deficiencies and the corrections that are required. Completed plans are held by the Department for reference in the event of a release. After a response to a release, the SPR Plan is reviewed for its effectiveness. When the effectiveness of the response can be improved, the owner/operator is requested to make these changes to the plan.
- Site inspection of the aboveground storage tank facility can be conducted in conjunction with the review of the Plan for determining the accuracy and practicality of the Plan.
- Enforcement actions are used to bring owners into compliance with the Spill Prevention Response Plan requirements of the Act when voluntary compliance cannot be achieved.

Corrective Action

Corrective action is a key component of the Storage Tank Program for the protection of the public and the environment after a release has been discovered. The Corrective Action Process (CAP) regulations, 25 Pa. Code, Chapter 245, Subchapter D, require the owner/operator to investigate any indication of a release or suspected release, report a confirmed release, perform a site characterization, develop a remedial action plan, implement the remedial action plan, and submit appropriate reports which demonstrate that the release has been cleaned up or is in the process of being cleaned up. The reporting criteria provides the Department with the opportunity to become involved in the oversight of the CAP. If the owner/operator fails to take the timely appropriate action, the Department may carry out the corrective action itself or authorize a third party to perform the corrective action. The Department is also authorized to take action against the responsible party to recover its costs in such a case.

- Outreach assures that information on the CAP is available to those responsible for CAP implementation. The Department supplies forms, fact sheets and technical guidance to the regulated community. This information can be obtained from Central Office or any of the regional offices.
- Training is provided to owners/operators and consultants through seminars developed by Department staff and industrial organizations.
- Technical assistance is provided to inform the owner/operator of or to clarify corrective action site specific issues. Technical assistance is provided during site visits, telephone conversations and written correspondence.
- Oversight is an essential element in managing the CAP. Many aspects of the process require documentation that is reviewed by the Department. Oversight includes random site visits to determine compliance with the approved corrective action plan.

- Department staff determines by inspection of the site if the corrective action plan is being followed and verifies the site characterization. During the inspection, additional technical assistance and oversight often is provided to assure compliance with the CAP regulation process.
- Financial assistance for corrective action may be available through USTIF for corrective action to owners/operators who meet USTIF's eligibility requirements. The Small Business First Fund, administered by the Department of Community and Economic Development, provides low interest loans to help owners and operators come into compliance with state or federal requirements or to adopt generally acceptable pollution prevention practices.
- Enforcement actions are reserved for owners/operators who refuse to properly address a release, cooperate with the Department, or respond appropriately to an emergency situation. Enforcement actions are dictated by the specific circumstances of the infractions.

Financial Responsibility

Owners/operators of regulated underground storage tank systems are required to meet certain Financial Responsibility (FR) requirements found at 25 Pa. Code, Chapter 245, Subchapter H. These owners/operators must participate in the USTIF and have sufficient financial resources available to meet the USTIF deductibles for both corrective action and third party liability. Upon request of the Department, the owner/operator must provide written verification of sufficient financial resources. By maintaining sufficient financial resources, prompt corrective action responses to releases are assured.

- Outreach concerning FR requirements is provided to the public and regulated community through informational letters, presentation of the topic at seminars, articles in the Storage Tank Monitor and distribution of fact sheets.
- Technical assistance on FR requirements is used to bring the UST owner/operator into compliance. Telephone conversations and written correspondence help clarify FR issues.
- Oversight is provided by review of written verifications, when requested by the Department, to determine if sufficient financial resources are immediately available. Owners/operators are notified if the verification is deficient and are given a reasonable time to correct the deficiencies.
- Enforcement actions can be taken against owners/operators who are in violation of the FR regulations. Again, the enforcement strategy guidelines should be used by the Department in calculating any penalties or taking any administrative actions.