

## ***ASTSWMO 2006 Mid-Year Meeting***

**The Saratoga Hotel and Conference Center  
534 Broadway at City Center  
Saratoga Springs, New York 12866**

The Importance of Strategic Planning for  
Planned Events and Unplanned Disasters

### **Thursday, April 20, 2006 - Concurrent Program Sessions**

#### **Agenda**

1:45 - 5:00 pm      Tanks Program Session:  
Moderated by Richard Swanson (GA), Chair, Tanks Subcommittee

- Status reports on State - EPA Energy Act Implementation workgroups;
- Efforts by ASTSWMO and the LUST Task Force to provide comments on EPA OUST's LUST Cleanup Goals for State programs;
- Report on accomplishments at the 2006 National Tanks Conference and Expo being held March 20-22, 2006 at the Memphis, TN;
- Update on development of agenda and logistics for the 2006 State Fund Administrators Conference scheduled for June 10 - 14, 2006 in Oklahoma City, OK.

#### **Meeting Summary**

The meeting began at approximately 1:45 PM with introductions by Dick Swanson, GA. Each Task Force provided an update on recent activities.

#### **LUST Task Force**

Richard Spiese, VT announced that Jeff Kuhn would become a Co-Chair of the LUST Task Force with Spiese and provided attendees with recent activities of the Task Force:

Members of the LUST Task Force have continued to provide comments on EPA OUST's LUST Cleanup Goals for State programs. A letter detailing reasons to reduce the national LUST cleanup goals for State programs was finalized on February 8, 2006. The letter was sent from ASTSWMO President, Terrence Gray to Ms. Susan P. Bodine, Assistant Administrator, Office of Solid Waste and Emergency Response. Recently, EPA-OUST management mentioned a tentative decision to reduce the FY 2006 LUST cleanup goals target from 18,300 to 13,600. To date, nothing in writing has been distributed from EPA-OUST as a follow up. The FY 2007 national target currently is 13,000 LUST cleanups completed.

Sammy Ng, EPA-OUST reported that Ms. Bodine recently met with Marcus Peacock, OMB on matters including LUST cleanup goals.

Spiese mentioned that originally the LUST cleanup goals were presented to the states as goals and not commitments with a punitive element. The emphasis seems to have

shifted to a commitment based on the targets. The response given was that the GPRA and the present administration are basing the entire government on numerical targets.

Spiese also reported the status of efforts with EPA-OUST on EDB and Lead scavengers. (Attachment 1 – EPA-OUST Lead Scavengers Team Mission Statement)

Spiese next reported on the sessions in the LUST track conducted during the 2006 National Tanks Conference and Expo held March 20-22, 2006 in Memphis, TN. In conjunction with the National Tanks Conference the ASTSWMO MTBE and Fuel Oxygenates Workgroup conducted a half-day meeting on Wednesday, March 22, 2006.

Ng next reported that a portion of LUST dollars recovered from various sources during the recent budget rescissions is to be distributed to the States to be used to increase LUST cleanups. States are directed to contact their RPMs during FY 2006 to ask for additional rescissions dollars. Ng stated that all of the GPRA goals are a high priority at the EPA.

Swanson asked Ng that since Florida has decided not to request their portion of the UST compliance assistance dollars from the Region 4 UST distribution, will the additional dollars be available for the other Region 4 states? The answer from Ng – Florida's portion of the UST grant will be made available to all 10 EPA regions.

Spiese added that any punitive responses from EPA to states or tying performance bonuses for EPA regional managers to LUST cleanup goals would be counterproductive but additional dollars made available would help states to achieve their goals.

Ng added that OMB has always required that the LUST cleanup goals need to be ambitious.

A question was asked whether the FY 2006 STAG dollars were available to States. The answer given was yes, with an additional \$2 million.

### State Funds

Members of the State Cleanup Funds Task Force along with the Oklahoma Corporation Commission, EPA-OUST and NEIWPC are conducting periodic conference calls to develop the logistics and agenda for the 2006 State Fund Administrators Conference scheduled for June 10 - 14, 2006 in Oklahoma City.

Both the State Fund Diversion and State Fund Soundness implementation workgroups were continuing to work on definitions.

### PART

Ng next provided the members an update on the Program Assessment Rating Tool, PART, assessment of the UST Compliance program which is currently underway. The UST PART application was approved by EPA and submitted on April 14, 2006 and is being reviewed by OMB. There will be consistency reviews by OMB examiners planned

for June and additional questions expected in July. The goal is for the UST program to receive an “adequate” grade.

For more information on the PART process and other elements of the GPRA goals please refer to the following web OMB web sites –

1. For a comprehensive list of all programs that have been assessed, in categories of performing and not performing - <http://www.whitehouse.gov/OMB/expectmore/index.html>
2. For a program assessment of the Leaking Underground Storage Tank Cleanup Program - <http://www.whitehouse.gov/OMB/expectmore/summary.10000228.2005.html>
3. For a description of the Program Assessment Rating Tool, PART, program - <http://www.whitehouse.gov/OMB/part/index.html>

John Kneece, SC questioned EPA on the need for additional data collection if it was not absolutely necessary which led to a debate on data defined as output vs. outcome. This led to a debate data collection and the definition of cleanups completed, which according to the OMB web site is based on – “state-set, risk-based standards.” Inspection was discussed as shorthand for releases prevented and the challenge related to program assessment is to equate inspections to releases prevented.

Date quality was discussed next with an example that State and EPA generated data should be able to be defended and pass rulemaking standards according to data quality and administrative procedures legislation.

Next discussed was the compatibility of ethanol with fiberglass UST systems. It was reported that ethanol, with concentrations as low as E10 was affecting the hardness of the tanks and was in effect dissolving the material in the tanks. The members recalled that fiberglass tanks manufactured after 1992 were designed to be compatible with ethanol as high as E85. EPA officials present mentioned that questions on ethanol compatibility were recently sent from EPA-OUST to the States.

State and EPA officials next debated the inherent differences in interpretation and operation of among the 10 EPA regions. State Fund soundness and State Program Approval were cited as examples of the wide variety in the regional differences in approach to enforcement and implementation of existing and potentially the new guidelines now being developed for the Energy Act mandates.

### Energy Policy Act Implementation

The meeting next focused on implementation UST and LUST related mandates contained in the Energy Policy Act.

As background - Members of the ASTSWMO Tanks Subcommittee have remained active to develop consistent information flow between the State tanks program managers and EPA staff, serving on the implementation workgroups and the 50 State membership. Fourteen workgroups which will have an impact on the State UST, LUST and State Fund programs are now formed: Delivery Prohibition, FR & Installer

Certification, Inspections, LUST Allocation, LUST Guidance, Operator Training, Public Record, Secondary Containment, State Fund Diversion, State Fund Soundness, Tribal Strategy & Report to Congress, Federal UST Compliance Report, State UST Compliance Report and Cost Recovery.

There has been ongoing debate on an interpretation of the funding language in the UST Subtitle where, based on references in the new UST Subtitle language, any State that receives funding under the new subtitle would be required to accomplish ALL of the new and existing mandates in order to receive ANY federal funding for the UST/LUST programs. This has been called the “all or nothing scenario.”

During the 2006 National Tanks Conference, Energy Act Discussion parts I and II, EPA-OUST management reported that there may be potential for some flexibility in the interpretation by EPA-OGC on this matter. This potential flexibility would allow the Administrator to make discretionary judgments regarding a State’s compliance with the new provisions if work to implement them was underway, even if not completed by the mandated dates.

As a follow-up to the announcement at the National Tanks Conference it was stated by EPA-OUST officials present that, after analysis, the EPA-OGC has determined that the funding requirement in the Energy Act language may be implemented by utilizing the grant agreements between the individual States and each of the 10 EPA Regions. A grant violation for any mandate not accomplished by a State could potentially be addressed by a grant penalty, with the potential for some discretion contained in the grant agreement between the Region and the State.

### **Friday, April 21, 2006 - State/EPA Program Roundtable Discussion**

#### **Agenda**

8:30 – 12 noon      Tanks Program Roundtable Session –  
Co-moderated by Richard Swanson (GA), Chair, Tanks  
Subcommittee, and Sammy Ng, Deputy Director, EPA Office of  
Underground Storage Tanks

- Impact on State UST-LUST programs by UST Compliance Act mandates;
- Report of EPA-OUST efforts to resolve Energy Act issues that affect State Implementation;
- Status of 2006 and 2007 LUST Cleanup Goals for State programs.

#### **Meeting Summary**

The meeting continued at approximately 8:30 AM with an introduction and an announcement that the meeting would be closed to the press.

Susan Sullivan, NEIWPC, announced the planning for the 2007 National Tanks Conference and Expo and the potential for the usual State – EPA planning meeting to be held in October 2006. Sullivan continued by announcing the plans for the 2007 State Fund Administrators Conference to be held in St. Petersburg, Florida in June 2007.

There was also a discussion of the existence and need for an official vendor list. EPA-OUST officials present stated that they did not know of any official EPA vendor list.

Sullivan announced that NEIWPC would conduct a fuel additives survey of the 50 States supported by a grant from EPA-OUST.

The meeting focused again on implementation UST and LUST related mandates contained in the Energy Policy Act.

### Inspections

The status of the inspections workgroup was reported next by Mark Barolo, EPA-OUST and Russ Brauksieck, NY. (See Attachment - 2, February 2006 Inspections workgroup update below). The workgroup has agreed that any type of inspections that States conducted prior to August 8, 2005 would be counted as inspections and compliance monitoring activities and allowed by the EPA. There is debate on what types of inspections would be allowed post August 8, 2005.

Some of the inspections currently being debated are – Third party inspections; inspections contracted by State; and inspections contracted by an owner operator. There was discussion on the need to contain fraud and manage State oversight.

State officials present argued that for LUST site cleanups, the owner-operator typically hires a third party contractor to conduct the site cleanup. This arrangement is accepted by all States and EPA and seems to be working well.

It was agreed that follow-up compliance work was necessary to establish actual compliance of the facility.

Ron Gagnon, RI, asked EPA-OUST officials if the ERP self-certification program currently being utilized in Rhode Island would be an acceptable inspection program under the post Aug 8 criteria. The answer given by EPA-OUST officials present was that the ERP self-certification program does not fit the definition of an on-site inspection under the new language in the Energy Act and would not be an acceptable inspection under the new requirements.

States and OUST officials next discussed whether the existing State third party inspections programs was acceptable under the new criteria. Currently, Alaska, Maine, Montana and Pennsylvania have existing third party inspection programs, while Maryland is developing a new third party program. It was explained by OUST officials present that EPA-OECA was not in favor of a third party inspections being acceptable under the new criteria, but OECA would have to make its' case to EPA-OGC and OGC would make the final decision.

In a memo dated November 17, 2005 from EPA-OUST OUST (attached separately as a PDF file), States were encouraged to continue their existing on-site inspections and were told -

“For inspections conducted in the period from August 8, 2005 to the date of the publication of the guidance, we will consider any on-site inspection as meeting the new inspection requirement as long as the inspection is:

- conducted by a state, local (when contracted or delegated by a state), EPA, or certified third party inspector; and
- sufficient to determine compliance with federal UST requirements in Subtitle I or state requirements that are part of the state UST program EPA has approved under the state program approval (SPA) procedures.”

What is agreed is that for pre August 8, 2005, any existing State inspections will be counted. If there is a decision that makes a third party inspection not allowed under the new criteria, then EPA will try to honor the statement made in the November 17 memo.

The discussion next focused on the time period for the three-year cycle of period inspections. The general agreement was that States would be required to inspect each facility within three years from the date of the previous on-site inspection. The definition of on-site activity was discussed next.

The guidance produced by the Inspections workgroup will answer all or most of the questions raised and is due to be sent out as a draft in Spring 2006.

### Delivery Prohibition

The discussion focused on the delivery prohibition regulations next. (See Attachment - 3, February 2006 Delivery Prohibition workgroup update below).

State and OUST officials discussed a variety of issues being reviewed by the workgroup including when to prohibit delivery. Missing equipment such as leak detection or evidence of a release would appear to require a mandatory delivery prohibition within 14 days. It was suggested that when other violations are discovered delivery prohibition should be used as an enforcement tool.

Discussed next was “red tags” - as a signal to prohibit delivery to a facility that is not in compliance vs. “green tags” - as a signal allowing delivery to a facility that is in compliance, were debated next. It was agreed that since the intent of the Energy Act was to prohibit delivery to a facility using written notification to the owner, that has been identified as being out of compliance, a “green tag” program alone would not meet that requirement. States that currently have a “green tag” program could use that in addition to the delivery prohibition requirements.

Discussed next was how to notify the facility that the delivery prohibition had been ended. Methods suggested were – removing a “red tag” from a remote location, using email notification or a faxed letter or having a non-state personnel such as county or local police or fire personnel remove any device.

### Secondary Containment

The discussions focused on Secondary Containment requirements next. (See Attachment - 4, February 2006 Secondary Containment workgroup update below).

EPA-OUST officials present explained some of the decisions made in EPA recently:

Piping - For a public drinking water well and if a facility is undergoing a new installation, according to the EPA, Office of Water, a community water system includes all piping in addition to the tanks.

Definition of community water supply – According to the EPA, Office of Water and existing definitions in the Safe Drinking Water Act, a community water supply is defined as having 15 connections or serving 25 people. A potable water well is a hole driven until it reached existing source of ground water.

Repair versus replacement – For tanks and piping, replacement is 100% of the system, if any less then it is a repair. Within the sump, replacement equals 5 ft. of piping, if 5 ft. or more, then the State has discretion.

For notification, the state must have a system to ensure that the owner – operator and installer will receive notification from the State that they will require secondary containment.

#### Financial Responsibility/Installer Certification

The discussions focused on Financial Responsibility/Installer Certification requirements next. (See Attachment - 5, February 2006 Financial Responsibility/Installer Certification workgroup update below).

State and OUST officials discussed a variety of issues being reviewed by the workgroup including who would be required to maintain evidence of FR. It was generally agreed that since the system would naturally change over time by revisions and repairs, the owner and not any general contractor would be required to maintain and provide evidence of FR. It would be required that any warranty period would need to include problems that surface one year or more after installation. States would be required to have a system in place where the owner would be notified when any change to the system is made.

It was generally agreed that the owner of the UST system is still required to notify the State of any release, then pay for the cleanup or maintain financial responsibility to pay for a cleanup. The financial responsibility/installer certification section will define what happens after the cleanup and in court when responsible parties enter into litigation.

In addition, it was agreed that financial responsibility will most likely become the primary focus of the regulated community once definitions of piping and potable wells begin to include all facilities.

EPA-OUST officials suggested that State Funds may want to consider providing coverage of manufacturers and installers to meet the new requirements.

#### Operator Training

The discussions focused on Operator Training requirements next. (See Attachment - 6, February 2006 Operator Training workgroup update below).

## Public Record

The discussions focused on Public Record requirements next. (See Attachment - 7, February 2006 Public Record workgroup update below).

State and EPA officials discussed the requirement for site-specific information or cumulative data. Causes of release will not require site-specific data, only a summary. The data will be made available electronically.

## **Attachment 1**

From the EPA-OUST web site – <http://www.epa.gov/swrust1/>

### Lead Scavengers Team Mission Statement

Ethylene dibromide (EDB) and 1,2-dichloroethane (1,2-DCA) - referred to as “lead scavengers” - were additives of leaded gasoline until the late 1980s when leaded gasoline was phased out. Both EDB and 1,2-DCA have had other uses as well; EDB was widely used as an agricultural fumigant until it was banned in 1983 and 1,2-DCA is still used as an industrial solvent. Both of these lead scavengers have federal Maximum

Concentration Limits (MCLs) in drinking water; for EDB the MCL is 0.05 parts per billion (ppb), and for 1,2-DCA it is 5.0 ppb. Even though these compounds have not been used as gasoline additives for over a decade, a recent study has indicated the possibility that these compounds may persist in the environment and affect drinking water supplies. Since these compounds have had other uses, especially EDB as a soil fumigant, the source of lead scavengers in the environment is unclear. In order for EPA to determine what problems, if any, these lead scavengers pose to public health and the environment, we have formed a team with ASTSWMO to:

1. Develop an understanding of the potential problem as it exists today by:
  - a. Compiling existing background information: toxicological data; historical usage information and occurrence in drinking water supplies;
  - b. Evaluating selected state databases and case files for information on sampling, monitoring and remediation at LUST sites;
  - c. Conducting a study on the effectiveness and cost of treatment and remediation technology.
2. Assess whether or not there are any gaps in our current knowledge, based on the results of Phase 1. If so, develop and implement appropriate measures to fill the gaps.
3. Identify next steps by evaluating the results of Phases 1 and 2.

## **Attachment - 2**

### **Inspecting Underground Storage Tanks (Section 1523)**

#### **Requirements**

EPA or a state receiving funding, as appropriate, under Subtitle I shall conduct on-site inspections to determine compliance within two years for all tanks not inspected since December 22, 1998. After completion of these inspections EPA or a state receiving funding, as appropriate, under Subtitle I shall conduct on-site inspections at least once every three years. EPA may extend the first three-year inspection interval up to one additional year if a state demonstrates it has insufficient resources.

#### **Deadlines**

August 8, 2007 - Complete inspections of tanks not inspected since December 22, 1998

August 8, 2010 (or earlier) - Complete first three-year inspection cycle; (extend first three-year inspection cycle for one year, if necessary, in selected states)

#### **Purpose Of Work Group**

Develop grant guidelines that will apply to any state receiving federal UST money from EPA

#### **Timing**

Spring 2006 - EPA's goal is to have the draft guidelines available

## Key Issues

Developing a definition for pre-August 8, 2005 inspections

- Considering whether the definition of “inspection” in the pre-August 8, 2005 context allows for more flexibility of interpretation than does “on-site inspection” in the post-August 8, 2005 context
- Considering whether non-traditional forms of inspections, such as self-certifications and third-party inspections can be counted as inspections in the pre-August 8, 2005 context
- Considering different categories of inspectors, to determine whether their pre-August 8, 2005 inspections should be counted

Developing guidelines for post-August 8, 2005 inspections

- Considering what procedures need to be followed for EPA to count post-August 8, 2005 inspections
- Considering the nature of and extent of data on state-conducted inspections which EPA would require
- Considering whether follow up enforcement needs to be a part of state post-August 8, 2005 inspection plans

Determining need for and availability of financial and other support for states

- Determining which states will need outside assistance in meeting the two-year inspection cycle
- Determining types of inspection assistance which would be or could become available
- Developing criteria to determine where assistance should be targeted

Determining inspection data needs and state and EPA data systems’ capabilities

- Considering what inspection data is needed and how it should be collected
- Assessing the capabilities states currently possess for data collection and transmission
- Considering whether EPA’s Central Data Exchange Network (CDX) could be used as the primary vehicle for inspection information centralization

## For More Information

Contact Jerry Parker, workgroup leader, at [parker.jerry@epa.gov](mailto:parker.jerry@epa.gov) or 703-603-7167

Contact Steve Crimauco, Association of State and Territorial Solid Waste Management Officials (ASTSWMO) at [swmsbc@sso.org](mailto:swmsbc@sso.org) or 202-624-7883 for information about ASTSWMO’s participation in the workgroup

## Attachment - 3

### Fuel Delivery Prohibition (Section 1527)

#### Requirement

EPA Administrator, in consultation with states, underground storage tank owners, and product delivery industries, must issue guidelines to implement delivery prohibition. The guidelines must address these five processes and procedures:

- Criteria for determining ineligibility to receive delivery.

- Mechanisms for identifying ineligible facilities for delivery.
- Process for reclassifying ineligible facilities as eligible for delivery.
- One or more processes for providing adequate notice to UST owners and operators and suppliers that an UST has been determined ineligible for delivery.
- Process for determining the specific geographic areas subjected to the requirements. Rural and remote areas, as determined by EPA or a state, can be exempt from delivery prohibition if it would jeopardize the availability, or access to, fuel unless there is an urgent threat to human health (exemption only applies for 180 days following date of exemption determination).

Additionally, a person must be provided a notice of ineligibility to prohibit delivery, and any person making or accepting delivery at an ineligible facility is subject to the same civil penalty for each day of the violation.

## **Deadlines**

August 8, 2006 - EPA must publish guidelines detailing processes and procedures

August 8, 2007 - Unlawful to deliver to “identified” tanks

- States need to implement EPA’s guidelines (in order to receive funding)

## **Purpose Of Work Group**

Develop grant guidelines that will apply to any state receiving Leaking Underground Storage Tank Trust Fund money from EPA

## **Timing**

Spring 2006 - EPA's goal is to have draft guidelines available

## **Key Issues**

Developing criteria to determine which facilities are ineligible for delivery

- Considering whether to create different tiers, depending upon the severity of a facility’s noncompliance (e.g., immediate prohibition for severe violations, X days to return to compliance before delivery prohibition for less severe violations)

Developing processes/procedures to identify a facility as ineligible and return a facility to eligibility

- Exploring different state approaches (e.g., red tagging, permitting, web lists)
- Considering whether to allow states to use various approaches or to push for national consistency
- Considering appropriate methods and timeframes for returning a facility to compliance (i.e., how long after confirmation of compliance must a state return a facility to eligibility)
- Considering appropriate method for notifying delivery community of a facility’s ineligibility (e.g., direct mailing, web list, notice on red tag at facility)

Determining specific areas (such as rural and remote) that should be exempt from the requirements

- Considering requirements for facilities that should not be determined ineligible. For example:
  - Areas where delivery prohibition would jeopardize fuel availability to rural communities
  - Situations where continued operation is in the greater public interest (e.g., emergency generator tanks at hospitals)

Determining how to develop programs that comply with due process requirements

Identifying how to address hazardous substance (non-petroleum) tanks (i.e., should hazardous substance tanks be subject to the same policies and procedures)

## **For More Information**

Contact Mark Barolo, work group leader, at [barolo.mark@epa.gov](mailto:barolo.mark@epa.gov) or 703-603-7141

Contact Steve Crimauo, Association of State and Territorial Solid Waste Management Officials (ASTSWMO) at [swmsbc@sso.org](mailto:swmsbc@sso.org) or 202/624-7883 for information about ASTSWMO's participation in the work group

## **Attachment - 4**

### **Secondary Containment (Section 1530)**

#### **Requirement**

This is one of two options for each state that receives funding under Subtitle I. New or replaced tanks and piping within 1,000 feet of an existing community water system or existing potable drinking water well must be secondarily contained (includes interstitial monitoring). New dispenser systems within 1,000 feet of an existing community water system or existing potable drinking water well must have under-dispenser spill containment. This requirement does not apply to repairs meant to restore a tank, pipe, or dispenser to operating condition. EPA Administrator must issue regulations or guidelines implementing the requirements. Guidance must differentiate between repair and replace.

#### **Deadlines**

February 8, 2007 - States must implement secondary containment or financial responsibility requirements to receive funding

#### **Purpose Of Work Group**

Develop grant guidelines describing the secondary containment requirements that will apply to any state receiving federal UST money from EPA (and chooses not to implement the manufacturer/installer financial responsibility and installer certification option)

#### **Timing**

February 2006 - EPA's goal is to have draft guidelines available

Spring 2006 - Guidelines finalized and available to states; final guidelines would also be part of FY07 state grant

## **Key Issues**

Defining important terms

- Community water system
- Potable drinking water well
- Replace - when does a repair become a replace?
- Under-dispenser containment

Tank and piping secondary containment and interstitial monitoring

- What are the acceptable options for tank and piping secondary containment?
- What is not acceptable?

Ensuring secondary containment is maintained

- How can states ensure that secondary containment is maintained after installation?

Determining whether a new or replaced tank, pipe, or dispenser is within 1,000 feet of a community water system or potable drinking water well

- How is this determination made?
- Who can make it?

Tanks and piping excluded or deferred from regulation (but not by statute)

- Does the secondary containment requirement apply to these tanks and piping?

Notification of replacements and new installations

- How can states know that a replacement or new installation is occurring before construction begins so they can ensure the secondary containment requirements are being met?

## **For More Information**

Contact Paul Miller, work group leader, at [miller.paul@epa.gov](mailto:miller.paul@epa.gov) or 703-603-7165

Contact Steve Crimaudo, Association of State and Territorial Solid Waste Management Officials (ASTSWMO) at [swmsbc@sso.org](mailto:swmsbc@sso.org) or 202/624-7883 for information about ASTSWMO's participation in the work group

## **Attachment - 5**

### **Financial Responsibility/Installer Certification (Section 1530)**

#### **Requirements**

This section requires each state that receives funding under Subtitle I to require either: tank and piping secondary containment for new and replacement tank systems *or* evidence of financial responsibility (FR) and certification.

If states choose the financial responsibility option, they are required to implement regulations requiring that “a person that manufactures an underground storage tank (UST) or piping for an underground storage tank system or that installs an underground storage tank system is required to maintain evidence of financial responsibility ... in order to provide for the costs of corrective actions directly related to releases caused by improper manufacture or installation ... .” This provision did not alter or affect the liability of any owner or operator of any underground storage tank.

Additionally, this section requires that a person who installs an underground storage tank system be certified or licensed, or has his underground storage tank system installation certified, etc. This requirement (for new installations and repairs) already exists in the existing federal UST regulations.

## **Deadline**

February 8, 2007 - States must implement financial responsibility or secondary containment requirements to receive funding

## **Purpose Of Workgroup**

Develop grant guidelines describing the financial responsibility requirements that will apply to any state receiving federal UST money from EPA (and chooses not to implement the secondary containment option).

## **Timing**

Spring 2006 - Develop and publish guidelines states would follow to develop their own FR regulations, striving to publish these guidelines about the same time as those for secondary containment

## **Key Issues**

The current federal financial responsibility requirements on owners and operators require coverage of \$1 million per occurrence and \$1 or \$2 million aggregate

- Are these amounts appropriate?
- Is “per occurrence” coverage the appropriate type of coverage? For example, should it be “per tank manufactured” or “per tank installed”, etc.?

How long must the manufacturer or installer maintain coverage?

- For “eternity”?
- For the “operational life of the tank or tank installation”?
- For  $X$  years after installation?

What does it mean to “maintain evidence”, considering that a tank or piping may go through several hands between the manufacturer and the ultimate customer?

- How does the ultimate customer know about the FR coverage?
- How does the manufacturer know when it is no longer required to main FR coverage for the tank or piping in question?

If the manufacturer or installer changes its FR mechanism, how is this change communicated and to whom?

The current financial responsibility regulations allow a wide variety of mechanisms that can be used to demonstrate FR. Are all these mechanisms appropriate or should we allow just the ones that are appropriate for this particular requirement?

The Act requires that “installers of tank systems” maintain evidence of FR

- What is an appropriate definition of “installer of the tank system” given there may be several companies involved in the installation of the tank system (e.g., the firm that digs the trench; the firm that installs the tank in the ground; the firm that hooks up the electrical system for the automatic tank gauge system; etc.)?
- Should each of these firms be required to maintain FR or just the “general contractor”?

What is the definition of “installation”?

## **For More Information**

Contact Sammy Ng, work group leader, [ng.sammy@epa.gov](mailto:ng.sammy@epa.gov) or 703-603-7166

Contact Steve Crimauodo, Association of State and Territorial Solid Waste Management Officials (ASTSWMO) at [swmsbc@sso.org](mailto:swmsbc@sso.org) or 202/624-7883 for information about ASTSWMO’s participation in the work group

## **Attachment - 6**

### **Operator Training (Section 1524)**

#### **Requirement**

EPA Administrator, in consultation and cooperation with states and after public notice and opportunity for comment, must issue guidelines that specify training requirements for three distinct classes of operators responsible for operation and maintenance of federally regulated UST systems. The guidelines have to take into account:

- State training programs in effect when guidelines are finally published.
- Training programs used by owners and operators as of August 8, 2005.
- High turnover rate of tank operators and other personnel.
- Frequency of improvement in underground storage tank equipment technology.
- Nature of the businesses in which the tank operators are engaged.
- Substantial differences in the scope and length of training needed for the different classes of operators.
- Other factors determined necessary by EPA Administrator.

States receiving funding under Subtitle I shall develop state-specific training requirements consistent with EPA’s guidelines. The state-specific training requirements must:

- Be consistent with EPA’s guidance.
- Be developed in cooperation with tank owners and operators.

- Take into consideration training programs implemented by owners and operators.
- Be appropriately communicated to tank owners and operators.

## **Deadlines**

August 8, 2007 - EPA must publish operator training guidelines

August 8, 2007 - States need to follow EPA's guidelines and develop state-specific training requirements (in order to receive funding)

## **Purpose Of Work Group**

Develop grant guidelines that will apply to any state receiving federal UST money from EPA

## **Timing**

Summer 2006 - EPA's goal is to have the draft guidelines available

## **Key Issues**

Developing definitions for three operator classes outlined in the act

- Reviewing existing programs (state and owner/operator)
- Considering defining the classes by those responsibilities the operator would perform at the facility versus identifying a distinct individual

Identifying responsibilities and key knowledge for each operator class

- Scoping boundaries to be established between 40 CFR requirements versus beneficial best management practices
- Identifying responsibilities that might be assigned to each operator class
- Identifying key knowledge that might be required by each operator class to appropriately perform operation and maintenance activities
- Determining levels of knowledge that might need to be possessed by each operator class
- Identifying operator training requirements for gasoline service stations as well as other UST facilities

Notify public and provide opportunity for comment

- Determining best approach to communicate most effectively and efficiently with the public on this requirement

## **For More Information**

Contact Tim Smith, work group leader, at [smith.timr@epa.gov](mailto:smith.timr@epa.gov) or 703-603-7158

Contact Steve Crimauco, Association of State and Territorial Solid Waste Management Officials (ASTSWMO) at [swmsbc@sso.org](mailto:swmsbc@sso.org) or 202/624-7883 for information about ASTSWMO's participation in the work group.

## **Attachment - 7**

## **Public Record (Section 1526)**

### **Requirement**

States which receive federal funds to carry out Subtitle I must maintain, update at least annually, and make available to the public a record of USTs regulated under this subtitle. EPA Administrator must prescribe the manner and form for the information after consulting with states. The public record shall include (to the maximum extent practicable, for each year) the number, sources, and causes of UST releases; the record of compliance by USTs in the state with Subtitle I or approved state program; and data on equipment failures.

### **Deadlines**

Inferred - needs to be included in FY07 state grants

### **Purpose Of Work Group**

Develop grant guidelines describing the public record requirements that will apply to any state receiving federal UST money from EPA

### **Timing**

Spring 2006 - EPA's goal is to have draft guidelines available

Summer 2006 - guidelines finalized and ready for inclusion in state grants

### **Key Issues**

Deciding when states must make the initial public record available

- Need to consider time frames for developing and data-gathering

Determining how the public record must be made available

- Electronic, hardcopy, public room, etc.

Developing criteria and defining terms for minimum public record content

- Summary information versus site-specific information
- Sources and causes of releases
- Inspection and compliance information
- Samples of public record content

Ensuring data quality

### **For More Information**

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Contact Steve Crimauo, Association of State and Territorial Solid Waste Management Officials (ASTSWMO) at [swmsbc@sso.org](mailto:swmsbc@sso.org) or 202/624-7883 for information about ASTSWMO's participation in the work group









