Assuring UST Compliance in Indian Country: Cooperation, Compliance Assistance and Enforcement

Tribal Lands & Environment Forum
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Overview

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

• Leaks = possible contamination of groundwater with potential threat to public health via drinking water, possible fire or explosion

• Leaks can also result in:
  • Costly investigation and cleanup
  • Liability to people injured by contamination
  • Penalties for regulatory violations

• A case study: faulty installation caused leak, threatening drinking water of small community
Snapshot of UST Compliance in Indian Country

• Universe:
  • About 2,600 USTs at 900 UST facilities
  • Tribal governments own/operate many USTs

• EPA inspects each UST at least every 3 years

• Roughly 28% of USTs in significant noncompliance with release prevention and/or detection requirements (FY17)
1984 EPA Indian Policy’s “Enforcement Principle”

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

• Non-tribally owned/operated
  • EPA responds to private parties like any other outside Indian country
A Possible New Approach to Noncompliance at Tribally Owned/Operated USTs

• Compliance assistance sometimes ineffective in achieving prompt compliance
• EPA rarely enforces at tribally owned/operated USTs, even if noncompliance is delayed
• Expedited enforcement intended to protect human health and environment by rapid return to compliance
A Possible New Approach to Noncompliance at Tribally Owned/Operated USTs

• EPA is considering piloting expedited tools
  • Field Citations
  • Expedited Settlement Agreements
  • Delivery Prohibition Actions

• EPA plans to consult with tribes on possible pilot
For over 25 years, EPA has used Field Citations (FCs) for most UST violations at non-tribally owned/operated USTs.

Owners/operators who get FCs usually:
- Accept and sign the FC
- Certify return to compliance within 30 days
- Pay a lower monetary penalty

FCs are used for:
- Easily corrected violations
- First-time violators
UST Field Citations at Tribally Owned/Operated UST

• EPA to notify tribal government and provide opportunity to consult

• Owner/operator submits the signed FC + penalty to EPA; EPA signs and it becomes effective

• If the owner/operator does not accept the FC, it may be assessed higher penalties under a more formal enforcement action (i.e., administrative or federal court case)
UST Expedited Settlement Agreements (ESAs)

- Offered for:
  - Repeat violation
  - More significant violations

- Owner/operator must:
  - Correct within 30 days
  - Certify compliance
  - Pay a penalty

- EPA to notify tribal government & offer to consult
- If the violator does not accept the ESA offer, it may be assessed higher penalties
EPA UST Delivery Prohibition (a.k.a. “Red Tagging”)

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

• Used infrequently
“Non-Immediate” Delivery Prohibition Actions

• Situations where “non-immediate” delivery prohibition may be warranted:
  • Violations present serious threat (e.g., tank has no corrosion protection, no functioning spill prevention equipment)
  • No financial responsibility
  • Recalcitrance in correcting violations

• Before fuel delivery would be halted:
  • EPA sends Notice of Intent to Prohibit Delivery (“Notice”) to tribal governments that delivery of fuel will stop if violations are not corrected within 30 days
  • Tribal leader to be provided the opportunity to meet and consult with EPA during 30-day correction period
Non-Immediate Delivery Prohibition (continued)

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

• Delivery prohibition tool:
  • Used only once for violations at a tribally o/o UST
  • Tribe came into compliance 1 day after receiving the Notice so delivery was not stopped
Closing Remarks

• Goals:
  • Improve compliance
  • Shorten the time between inspection and return to compliance

• For tribally owned/operated USTs:
  • EPA’s 1st response is usually to work cooperatively to achieve compliance, and advise tribal government of possible enforcement
  • If no timely return to compliance, EPA may escalate to enforcement after providing tribal government with an opportunity to consult

• Consultation planned to get input from tribal leaders on piloting UST expedited enforcement tools
For More Information....

• For compliance assistance resources, see EPA’s USTs Program in Indian Country website

• For general information, see EPA’s Environmental Protection in Indian Country Portal
For More Information….

• For compliance-related background, policies, and more see EPA’s Compliance & Enforcement in Indian County website

• For compliance assistance, monitoring and enforcement questions, contact the following in U.S. EPA’s Office of Enforcement & Compliance Assurance:
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