

U.S. EPA's 1998 Underground Storage Tank Upgrade Requirement: Time is Running Out

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When Congress amended the Resource Conservation and Recovery Act of 1976 (RCRA)² in 1984; it created the statutory authority for the federal regulation of underground storage tanks (USTs). These amendments, known as the Hazardous and Solid Waste Amendments of 1984 (HSWA), added an additional subtitle to RCRA specifically devoted to the federal regulation of USTs.³ Subtitle I provided the U.S. Environmental Protection Agency (U.S. EPA) with the authority to promulgate regulations governing the operation of USTs.⁴ The core regulations implementing the federal program were published on September 23, 1988.⁵

Since the inception of this program, the focus of the program has been to ensure that USTs do not endanger human health and the environment. A major program goal has been to protect the nation's groundwater from releases from USTs containing petroleum or designated hazardous substances. From the beginning, releases from USTs were viewed as a serious threat to the nation's drinking water supplies.⁶

Currently, it is estimated that about 900,000 active Federally regulated USTs exist at over 300,000 sites nationwide. The vast majority of these USTs contain petroleum. As of 1998, approximately 360,000 UST releases have been confirmed. Of these releases, approximately half have reached groundwater.⁷ Given the scope of the problem, it was felt that minimum standards were necessary to minimize the opportunity for releases to occur and to ensure they were quickly addressed once they did occur.

The federal UST program created minimum standards for the operation of USTs. The 1988 U.S. EPA regulations set minimum standards for new USTs (those installed on or after

December 22, 1988) and for existing USTs (those installed before December 22, 1988).⁸ When installed, new USTs were required to meet requirements concerning notification; installation; protection from spills, overfills, and corrosion; release detection monitoring; corrective action; record keeping; and financial responsibility.⁹ Owners and/or operators of existing USTs were given up to 5 years to meet release detection requirements for their USTs depending on the age of their tank and up to 10 years to meet upgrade requirements for those USTs which involve protections to eliminate spills, overfills, and corrosion (the December 22, 1998 deadline requirements).¹⁰

More specifically, owners/operators of USTs installed before December 22, 1988 must meet one of three standards by December 22, 1998: 1) they must replace the UST with a tank meeting the new tank performance standards; 2) they must upgrade the existing UST to meet the standards for protection from spills, overfills, and corrosion; or 3) they must properly close the UST according to federal requirements.¹¹

U.S. EPA has estimated that for an average 3-tank facility, the *minimum* cost to comply with the federal UST upgrade requirements is about: 1) \$75,000 for installing new USTs, 2) \$10,000 for upgrading existing USTs, and 3) \$10,000 for properly closing existing USTs. These estimates do not include any cleanup costs that may occur during these activities.¹² At the time of promulgation of the rules, U.S. EPA anticipated that the phase-in of the release detection and upgrade requirements would result in tanks being closed.¹³ In fact, U.S. EPA has estimated that since 1988, more than 1.1 million old USTs have been closed.

Since 1988, U.S. EPA has been working actively with States, local government associations, and industry associations in conducting outreach and compliance assistance activities in anticipation of the upgrade deadline. Millions of copies of compliance assistance materials have

been and are continuing to be distributed nation-wide via Web sites and traditional pathways concerning this requirement. During the last three years over 700,000 documents have been distributed, including over 200,000 in the 1998 federal fiscal year to date. Since 1996, the OUST Web site has provided virtually all compliance assistance documents online and in downloadable format.¹⁴

The passing of the deadline will have wide ranging repercussions. About half of the UST universe is owned by marketers (ranging from very large corporations to individually owned facilities). The balance of USTs belong to non-marketers (such as on-site fueling facilities for governmental and private sector fleet/ transportation operations). Many of the smaller marketers and non-marketers are likely to close rather than pursue upgrading their tanks.

As the deadline approaches, U.S. EPA has repeatedly indicated that the deadline will not be extended. Administrator Carol Browner issued a statement on May 14, 1997 indicating that the deadline would not be extended.¹⁵ This position was reaffirmed in the recently issued "Underground Storage Tank 1998 Deadline Enforcement Strategy" dated August 10, 1998. The main themes of the strategy are that: 1) U.S. EPA will hold firm to the deadline, 2) States and U.S. EPA are intent on enforcing the regulations, and 3) U.S. EPA will augment and assist State efforts at ensuring compliance with the upgrade requirement.¹⁶

States and industry associations are fully aware of and supportive of the 1998 deadline. In fact, they have urged U.S. EPA to maintain the deadline and to provide as much enforcement assistance as possible. On December 22, 1997, U.S. EPA, the State of Maryland, and several industry representatives held a press conference carried on CNN and C-SPAN in which the panel members expressed support for vigorous enforcement of the deadline. Recently, the Petroleum Marketers Association of America urged members of Congress to support the 1998 deadline.¹⁷

The ramifications of non-compliance can be severe. UST owners/operators who do not comply with the 1998 deadline can be cited and fined up to \$11,000 per violation/per tank/per day.¹⁸ RCRA provides U.S. EPA with the authority to pursue either administrative or judicial actions to enforce compliance with the UST requirements. Under RCRA, States are free to enact programs which are more stringent than the federal program.¹⁹ States' increasingly are developing programs involving the use of "red tag authority" to bar delivery of fuel to noncomplying USTs.²⁰

Conclusion

The UST upgrade requirement is rapidly approaching. Both the State and federal UST programs are intent on enforcing the upgrade requirements. Substantial segments of the regulated community are in support of the deadline and enforcement of that deadline.

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2. 42 U.S.C. § 6901 *et seq.*
3. 42 U.S.C. §§ 6991-6991h.
4. 42 U.S.C. § 6991b.
5. Originally published at 53 Federal Register 37082 (September 23, 1988). Since codified at 40 C.F.R. Part 280.
6. 53 Fed.Reg. 37088.
7. Further information may be obtained at U.S. EPA, Office of Underground Storage Tank's web page: WWW.EPA.GOV/OUST.
8. 40 C.F.R. Part 280, Subpart B.
9. 40 C.F.R. § 280.20.

10. 40 C.F.R. §§ 280.21 and 40.
11. 40 C.F.R. § 280.21.
12. WWW.EPA.GOV/OUST.
13. 53 Fed.Reg. 37131.
14. WWW.EPA.GOV/OUST.
15. WWW.EPA.GOV/OUST.
16. WWW.EPA.GOV/OUST.
17. WWW.PMAA.ORG/HTM.
18. 42 U.S.C. § 6991e.
19. 42 U.S.C. § 6991g. Under RCRA, States may also receive State Program Approval to operate their programs in lieu of the federal minimum UST standards. See, 42 U.S.C. § 6991c and 40 C.F.R. Part 281. To date, no State within Region 5 has received State Program Approval. Because of this, owners and operators of USTs are subject to both the federal and State UST requirements within Region 5.
20. Several States in this Region; including Illinois, Michigan, and Minnesota; have developed a variation of a red tag program.