



Enforcement Alert

Volume 10, Number 1

Office of Civil Enforcement

December 2008

Don't Let Those Tanks Leak

EPA Enforces Underground Storage Tank Requirements

EPA's enforcement of underground storage tank requirements protects this country's groundwater from contamination. There are approximately 625,000 active, federally-regulated underground storage tanks (USTs) in the United States, located at gas stations, marinas, government facilities, small businesses and large industrial sites. They contain millions of gallons of gasoline, diesel fuel, oil, toxic chemicals and a variety of other hazardous substances. Leaks, spills, and overflows from these tanks are a major source of soil and groundwater pollution.

It is critical for groundwater protection to prevent and control releases from USTs. Over half the population of the United States relies on groundwater as its source of drinking water. Many municipal drinking water systems and private wells have been shut down due to groundwater contamination caused by USTs. Since 1988, approximately 474,000 releases have been confirmed across the country, including 7,570 new releases in 2007 alone.

Nationally, one of the most common causes of groundwater pollution is gasoline or diesel fuel leaks from service station USTs. They are also among the more difficult and expensive to clean up. In urban areas, harmful vapors from UST releases can pose health problems by migrating into basements or subway systems located above contaminated groundwater. Leaking USTs may also present the risk of fire or explosion.

Federal and state regulations are designed to reduce the risk of UST leaks, spills and overflows by establishing equipment standards for tanks and pipes and by requiring owners and operators of USTs to take action to prevent and detect releases. The UST program is primarily implemented by states, as approved by EPA; however, EPA maintains a significant national enforcement presence.

RECENT ENFORCEMENT ACTIONS

EPA has taken many successful enforcement actions to ensure compliance with UST regulations. Actions against owners and operators of multiple facilities with USTs have been particularly effective in increasing the number of facilities and tanks brought into compliance. For example, by taking just 15 enforcement actions against certain large petroleum

marketers and municipalities that own multiple facilities with USTs in the Mid-Atlantic region, EPA brought over 430 facilities into compliance. The violations alleged in these cases included the failure to maintain and monitor tanks and piping for releases and the failure to maintain financial resources to cover the cost of cleaning up any release from their tanks.

Corporate-wide settlement agreements are also proving to be beneficial for companies. Typically, these agreements help companies achieve compliance by resolving known violations and ensuring their commitment to audit and correct additional violations.

Asti Holding Corp., et al.

Under a July 23, 2008, federal judicial settlement agreement, Asti Holding Corporation, 23 additional defendants and at least three other affiliated entities must pay a penalty of \$650,000 and ensure that 155 tanks at 23 gas stations in the New York City metropolitan area are in compliance with UST regulations.

Euclid of Virginia, Inc.

The largest penalty ever issued by an EPA administrative law judge for violations of any federal environmental law was against Euclid of Virginia, Inc. for UST violations at 23 gas stations in the District of Columbia, Maryland, and Virginia. Subsequently, in March 2008, EPA's Administrative Appeals Board increased the penalty to \$3,164,555.



Excavated Leaking Underground Storage Tank

Enforcement Alert

The penalty reflects the number of facilities with long-standing violations and Euclid's high degree of negligence in allowing wide-spread violations of tank release detection requirements. Euclid was also found to have failed to meet requirements for adequate financial resources to cover possible cleanup costs.

The Euclid case exemplifies the need to take action to protect human health and the environment from the release of hazardous substances and petroleum from USTs. Euclid's 23 facilities had a total of 72 tanks, with an average capacity of 32,000 gallons of gasoline and diesel fuel. The tanks either were not properly fitted with release detection equipment or release detection monitoring was not performed on tanks and piping. The potential for human exposure to contaminated groundwater and drinking water was evident. Euclid's facilities are in densely populated areas where the groundwater is in active use and vulnerable to contamination from USTs.

City of New York

Federal, state, and local governments typically store gasoline and other hazardous substances in USTs and must comply with UST regulations. In 2006, EPA and New York City entered into a landmark judicial settlement that provides for city-wide compliance with UST regulations, affecting approximately 1,600 USTs at 400 facilities owned or operated by the City.

The settlement addresses the potential for significant harm from the City's tanks. The settlement, which includes the police department, fire department, Department of Transportation and other City agencies, requires these agencies to upgrade or close their non-compliant USTs, provide proper methods to detect releases and maintain leak detection equipment. New York City must also undertake a multi-year project to centrally monitor tanks from the three largest agencies for releases and suspected releases. The City paid a \$1.3 million dollar penalty for its violations.

Sheetz, Inc.

Sheetz owns a chain of convenience stores and gas stations in Pennsylvania, Maryland, Virginia, and West Virginia. EPA inspections at two Sheetz locations revealed that Sheetz had failed to investigate and report suspected releases from its gasoline and diesel fuel tanks and also failed to conduct leak detection monitoring.

Disclaimer: This document attempts to clarify in plain language some EPA provisions. Nothing in this Enforcement Alert revises or replaces any regulatory provision in the cited part, or any other part of the Code of Federal Regulations, the Federal Register or the Resource Conservation and Recovery Act. For more information go to: www.epa.gov/compliance

Under a 2005 settlement, Sheetz must 1) resolve the violations at the two inspected locations, 2) audit all 275 of its facilities to ensure compliance with federal UST requirements, 3) report to EPA any violations uncovered as result of the audit, 4) promptly correct those violations, and 5) pay penalties stemming from those violations.

Violations were uncovered at 111 facilities and Sheetz has paid over \$83,000 in penalties (including \$26,000 for the first two violations) and committed \$875,000 to supplemental environmental projects. Sheetz is also undertaking supplemental projects related to upgrading its underground storage tank systems that exceed the regulatory requirements.

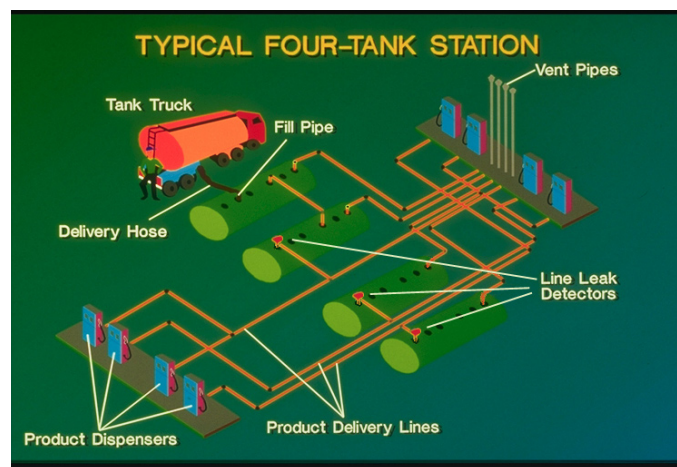


Diagram of a Typical Four-Tank Gas Station

Carroll Independent Fuel Co.

Carroll Independent Fuel Co. entered into a 2006 consent agreement with EPA for failure to detect and prevent releases from its underground storage tanks at eight facilities. The settlement requires third-party compliance audits at approximately 70 gas stations and for Carroll to make quarterly submittals to EPA of violations discovered and corrected. In accordance with the consent decree, Carroll has paid over \$500,000 in penalties to EPA for its failure to detect and prevent releases from its tanks.

UST Enforcement at Federally-Owned Facilities

Nationwide, federal facilities ranging from large military bases to prisons and post offices own approximately 8,000 USTs. EPA is specifically focused on improving federal facility compliance with UST requirements. In coordination with its state counterparts, EPA has been inspecting and taking enforcement actions against federal facilities for their UST violations.

Camp Santiago

EPA issued an eleven-count administrative complaint on March 31, 2008, to both the Puerto Rico Army National Guard (PRANG) and the Army and Air Force Exchange Service (AAFES) for multiple UST violations at Camp Santiago, in Salinas Puerto Rico. The complaint seeks a total civil penalty of \$209,264.

EPA alleged that PRANG failed to: (1) operate and maintain corrosion protection, (2) conduct required inspections of the cathodic protection system, (3) install overfill prevention equipment, (4) provide release detection monitoring and (5) annually test the automatic line leak detector equipment.

With respect to AAFES, EPA alleged that it failed to conduct release detection for pressurized piping, failed to annually test the automatic line leak detector for this piping and failed to respond appropriately to indications of release from its two UST systems.

McGuire Air Force Base

The U.S. Air Force, New Jersey National Guard and AAFES entered into a November 2006 settlement with EPA resolving violations of UST requirements at the McGuire Air Force Base, in New Hanover Township, New Jersey. The agreement required payment of \$115,000 in penalties and the installation of proper corrosion protection, overfill protection and leak detection equipment. It also requires improved annual testing and record-keeping at the 20 UST systems used to store fuels for vehicles at the base.

UST OWNERS MUST SHOW FINANCIAL RESPONSIBILITY

Owners and operators of USTs must maintain financial resources for all tanks sufficient to: (1) clean up a site if a release occurs, (2) correct environmental damage caused, and (3) compensate third parties for injury to their property or themselves. Failure to do so is a major violation. The amount of coverage required depends on the type and size of the business. The only exception is if a tank has been permanently closed and the implementing agency, state, or EPA has released the owner or operator from the obligation to maintain financial responsibility.

Owners and operators may meet the financial responsibility requirements by liability insurance, letters of credit, surety bonds, trust funds and other mechanisms (see 40 CFR § 280.90 – 280.16). Many states provide access to a state financial assurance fund for owners and operators.

EPA's Office of Enforcement and Compliance Assurance has named compliance with the financial responsibility requirements as one of its national priorities. See <http://www.epa.gov/compliance/data/planning/priorities/index.html>

FEDERAL RELEASE DETECTION REQUIREMENTS

At the heart of the federal UST program are release detection requirements, aimed at preventing UST releases. The release detection system must identify a leak from any portion of the UST system and be properly installed, calibrated, maintained and monitored. Federal regulations allow for the following release detection methods:

- Secondary containment and interstitial monitoring;
- Automatic tank gauging systems;
- Vapor monitoring;
- Groundwater monitoring;
- Manual tank gauging; and
- Other methods meeting the criteria in 40 C.F.R. § 280.43(h).

Tanks and pipes must be regularly tested for leaks and leak detection records must be kept by the owner or operator and made readily available during an inspection.

NEW UST REQUIREMENTS: THE ENERGY POLICY ACT OF 2005

The Energy Policy Act of 2005 contains additional requirements for preventing release from USTs and anticipates that its provisions will be implemented at both federal and state levels.

Inspections – In response to numerous concerns raised by the communities about the risk of releases from USTs, the Act requires greater inspection frequency and more stringent tank requirements. As of August 8, 2007, all tanks must be inspected every three years.

Training – Operator training is required. This provision was added largely in response to a 2001 Government Accounting Office report and testimony before Congress asserting that a primary cause of releases from USTs was poor operation of the tank system by owners and operators.

Delivery Prohibition – As of August 8, 2007, it is unlawful to deliver, deposit into or accept a regulated substance into a UST at a facility that is ineligible to receive the substance. Many states already employ this prohibition, finding it to be a remarkably effective enforcement tool in motivating UST owners and operators to resolve outstanding compliance problems in their systems.

Secondary Containment Or Financial Responsibility And Installer Certification – To protect groundwater and drinking water supplies, states may require that tanks within 1,000 feet of a community water system or a potable water well must have secondary containment or that installers or manufacturers of tank systems maintain financial responsibility for releases

Enforcement Alert

caused by improper manufacture or installation. Many states already require secondary containment.

TO LEARN MORE

EPA's Office of Underground Storage Tanks home page: <http://www.epa.gov/oust>

EPA Underground Storage Tank Regulations, 40 CFR Subparts A-I: <http://www.epa.gov/swrust1/fedlaws/40cfr280.pdf>

In the Matter of Euclid of Virginia, Inc., U.S. Environmental Protection Agency, Docket No. RCRA-3-2002-0303, Initial Decision, issued November 9, 2006 at: <http://www.epa.gov/oalj/orders/euclidof-va-id-110906.pdf>

Underground Storage Tank Act of 2005: http://www.epa.gov/oust/fedlaws/epact_05.htm

EPA publications, many about managing USTs properly and conducting cleanups efficiently: <http://www.epa.gov/oust/pubs/index.htm>

See, 40 CFR 280, Subpart H for Financial Responsibility requirements. In addition, EPA's Office of Underground Storage Tanks has a 16-page booklet titled, Dollars and Sense, that explains these requirements: <http://www.epa.gov/OUST/pubs/dol&sens.pdf>

For information on federal facilities' compliance with environmental laws, see www.fedcenter.gov, a comprehensive interagency environmental stewardship and compliance assistance center for federal agencies.

EPA Enforcement and Compliance Resources

Office of Civil Enforcement, Waste and Chemical Enforcement Division

Tom Charlton, 202-564-6960, charlton.tom@epa.gov

Diana Saenz (financial responsibility issues), 202-564-4209, saenz.diana@epa.gov

Office of Underground Storage Tanks

Tim Smith, 703-603-7158, smith.timr@epa.gov

Federal Facilities Enforcement Office

Melanie Garvey, 202-564-2579, garvey.melanie@epa.gov



United States
Environmental Protection Agency
Office of Civil Enforcement
(2241A)
Washington, D.C. 20460

Official Business
Penalty for Private Use \$300

Enforcement Alert

Enforcement Alerts are published periodically by EPA's Office of Enforcement and Compliance Assurance, Office of Civil Enforcement, to inform the public and the regulated community about environmental enforcement issues, trends and significant enforcement actions.

This information should help the regulated community avoid violations of federal environmental law. Please reproduce and share this publication.

To receive this newsletter electronically, see www.epa.gov/compliance/resources/newsletters/civil/enfalert/index.html.

Acting Director,
Office of Civil Enforcement:
Randolph L. Hill

Editor, Office of Civil Enforcement:
Melissa Page Marshall

Please send all address and name changes or subscription requests to: ncepiwo@one.net

Document Number: EPA 325-F-08-003



Report a Violation!

Protecting the environment is everyone's responsibility. Help EPA fight pollution by reporting potential environmental violations.

www.epa.gov/compliance