cleaning products such as detergents, cleaners, airplane deicers and fire-fighting foams. Safer surfactants are those that break down quickly to non-polluting compounds.

Under SDSI, businesses that have fully transitioned to safer surfactants, or (for non-profits, academic institutions, etc.) can document outstanding efforts to encourage the use of safer surfactants, are granted Champion status. At this level, the participant is invited to the SDSI Awards ceremony, listed on the EPA SDSI website as a champion, and may use a special logo in their literature to help explain their participation in the program. Businesses that commit to a full and timely transition to safer surfactants, or (for non-profits, academic institutions, etc.) can document outstanding efforts to encourage the use of safer surfactants, are granted Partner status. This category provides recognition of significant accomplishments towards the use of safer surfactants. Partners will be listed on the EPA SDSI website and may be granted recognition as a Champion in the future if appropriate.

This information collection addresses reporting activities that support the administration of the SDSI program.

Responses to this collection of information are voluntary. Respondents may claim all or part of a response confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 10 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 375.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 3,750 hours.

Estimated total annual costs: $182,625. This includes an estimated burden cost of $182,625 and an estimated cost of $0 for capital investment or maintenance and operational costs.

IV. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: April 30, 2007.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E7–8944 Filed 5–8–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8310–3]

Inspection Grant Guidelines for States; Solid Waste Disposal Act, Subtitle I, as Amended by Title XV, Subtitle B of the Energy Policy Act of 2005

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: By this notice, the Environmental Protection Agency (EPA), Office of Underground Storage Tanks (OUST) is advising the public that on April 24, 2007 EPA issued the inspection grant guidelines and subsequently made the guidelines available on EPA's Web site. In this notice, EPA is publishing the inspection grant guidelines in their entirety. EPA developed the inspection grant guidelines as required by Sections 9005(c)(1) and 9005(c)(2) of Subtitle I of the Solid Waste Disposal Act, as amended by Section 1523 of the Energy Policy Act of 2005.

DATES: On April 24, 2007, EPA issued and subsequently posted the inspection grant guidelines on EPA's Web site. EPA is notifying the public via this notice that the inspection grant guidelines are available as of May 9,2007.

ADDRESSES: EPA posted the inspection grant guidelines on our Web site at: *http://www.epa.gov/oust/fedlaws/epact_05.htm#Final* . You may also obtain paper copies from the National Service Center for Environmental Publications (NSCEP), EPA's publications distribution warehouse. You may request copies from NSCEP by calling 1–800–490–9198; writing to U.S. EPA/NSCEP, Box 42419, Cincinnati, OH 45242–0419; or faxing your request to NSCEP at 301–604–3408. Ask for: *Grant Guidelines To States For Implementing The Inspection Provisions Of The Energy Policy Act Of 2005* (EPA 510–R–07–004, April 2007).

FOR FURTHER INFORMATION CONTACT: Tim R. Smith, EPA's Office of Underground Storage Tanks, at *smith.timr@epa.gov* or 703–603–7158.

SUPPLEMENTARY INFORMATION: On August 8, 2005, President Bush signed the Energy Policy Act of 2005. Title XV, Subtitle B of this act, titled the Underground Storage Tank Compliance Act of 2005, contains amendments to Subtitle I of the Solid Waste Disposal Act. This is the first federal legislative change for the underground storage tank (UST) program since its inception over 20 years ago. The UST provisions of the law significantly affect federal and state UST programs, require major changes to the programs, and are aimed at further reducing UST releases to our environment. Among other things, the UST provisions of the Energy Policy Act require that states receiving funding under Subtitle I comply with certain requirements contained in the law. OUST worked, and is continuing to work, with its partners to develop grant guidelines that EPA regional tank programs will incorporate into states' grant agreements. The guidelines will provide states that receive UST funds with specific requirements, based on the UST provisions of the Energy Policy Act, for their state UST programs.

Sections 9005(c)(1) and 9005(c)(2) of Subtitle I of the Solid Waste Disposal Act, as amended by Section 1523 of the Energy Policy Act, require states that receive Subtitle I funding to ensure that USTs not inspected since December 22, 1998 have an on-site inspection before August 8, 2007 and subsequently

undergo an on-site inspection at least once every three years thereafter. As a result of that requirement, EPA worked with states and other stakeholders to develop inspection grant guidelines. In November 2006, EPA released a draft of the inspection grant guidelines. EPA considered comments and, subsequently on April 24, 2007, issued the inspection grant guidelines. EPA will incorporate these guidelines into grant agreements between EPA and states. States receiving funds from EPA for their UST programs must comply with the UST provisions of the Energy Policy Act and will be subject to action by EPA under 40 CFR 31.43 if they fail to comply with the guidelines.

Statutory and Executive Order Reviews: Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to OMB review. Because this grant action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. Section 601 et seq.) or Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments. Although this action does create new binding legal requirements, such requirements do not substantially and directly affect tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). Although this grant action does not have significant federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999), EPA consulted with states in the development of these grant guidelines. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. Section 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Section 3501 et seq.). The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Since this final action will contain legally binding requirements, it is subject to the Congressional Review Act, and EPA will submit a report to Congress containing this final action prior to the publication of this action in the **Federal Register**.

Grant Guidelines to States for Implementing the Inspection Provisions of the Energy Policy Act of 2005

U.S. Environmental Protection Agency; Office of Underground Storage Tanks; April 2007

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Appendix B—Inspection Requirements of the Energy Policy Act: Determining Which Underground Storage Tanks Have Undergone an Inspection Since December 22, 1998 (June 8, 2006 Memorandum)

Overview of the Inspection Grant Guidelines

Why Is EPA Issuing These Guidelines?

The U.S. Environmental Protection Agency (EPA), in consultation with states, developed these grant guidelines to implement the inspection provisions in Sections 9005(c)(1) and 9005(c)(2) of the Solid Waste Disposal Act (SWDA), enacted by the Underground Storage Tank Compliance Act, part of the Energy Policy Act of 2005 signed by President Bush on August 8, 2005.

Section 1523 of the Energy Policy Act amends Section 9005 in Subtitle I of the Solid Waste Disposal Act to add requirements for underground storage tank (UST) system inspections for states receiving Subtitle I funding as follows:

1. Uninspected underground storage tanks—Section 9005(c)(1) requires that underground storage tanks that have not been inspected since December 22, 1998 must have an on-site inspection conducted not later than August 8, 2007 to determine compliance with Subtitle I and 40 CFR 280 requirements or requirements or standards of a state program developed under Section 9004.

2. Periodic inspections—Section 9005(c)(2) requires that, after all underground storage tanks required by Section 9005(c)(1) have been inspected, on-site inspections of each underground storage tank identified in these guidelines must be conducted at least once every three years to determine compliance with Subtitle I and 40 CFR 280 requirements or requirements or standards of a state program developed under Section 9004.

EPA's Office of Underground Storage Tanks (OUST) is issuing these grant guidelines to establish the minimum requirements states receiving Subtitle I funding must meet in order to comply with the inspection provisions of Subtitle I enacted by the Energy Policy Act.

What Is in These Guidelines?

These guidelines describe the minimum requirements a state's on-site inspection program must contain under Section 9005(c) of Subtitle I in order for a state to comply with statutory requirements for Subtitle I funding. These guidelines include: Identification of which underground storage tanks require an on-site inspection; requirements for the on-site inspection; who can perform the on-site inspection; and what information needs to be reported to EPA.

When Do These Guidelines Take Effect?

These guidelines are effective August 8, 2007. Until August 8, 2007, states may continue to follow the interim guidance on inspections issued in OUST's November 17, 2005 and June 8, 2006 memorandums. See Appendices A and B for copies.

Requirements for On-Site Inspections

A state receiving Subtitle I funding must conduct on-site inspections of each underground storage tank in accordance with these guidelines.

Which Underground Storage Tanks Require an On-Site Inspection?

For purposes of these guidelines, the term ''underground storage tank'' means those tanks that satisfy the definition of underground storage tank in 40 CFR

280.12, except for those tanks identified in 40 CFR 280.10(b) and 280.10(c) as excluded or deferred tanks. These guidelines apply to underground storage tanks that have not been permanently closed or undergone a change in service in accordance with 40 CFR 280.71 or requirements or standards of a state program approved under Section 9004. An on-site inspection is not required for underground storage tanks that have been determined by the state to be abandoned.

When Must Underground Storage Tanks Be Inspected?

States must by August 8, 2007 conduct an on-site inspection for each underground storage tank that has not been inspected since December 22, 1998.[1] After completion of those inspections, each underground storage tank must be inspected by August 8, 2010 (EPA has the authority to extend this date until August 8, 2011 if a state demonstrates insufficient resources to conduct inspections) and at least once every three years thereafter.

What Are the Requirements for the On-Site Inspection?

The purpose of the on-site inspection is to determine compliance with Subtitle I and 40 CFR 280 requirements or in the case of a state with a program approved under Section 9004 of Subtitle I, compliance with the requirements of that program.

For purposes of these guidelines, an on-site inspection includes an inspection conducted at the site of each underground storage tank, inspection of associated equipment, and the review of applicable records. Review of applicable records and other activities that can be accomplished off-site may be combined with activities conducted at the site of the underground storage tank to fulfill the on-site inspection requirement. Desk audits, self-certifications, information request letters, and any other such activities are not sufficient by themselves to fulfill the on-site inspection requirements. However, information obtained from such activities may be used in conjunction with the on-site inspection to satisfy the on-site inspection requirement. At a minimum, an on-site inspection must assess compliance with the following:

- Notification (failure to notify)
- Corrosion protection
  - —Tanks and piping have appropriate corrosion protection
  - —Documentation available including testing, inspections, and other records
- Overfill prevention in place and operational
- Spill prevention in place and operational
- Tank and piping release detection
  - —Appropriate method and appropriate equipment or procedures in place
  - —Documentation of proper monitoring and testing
- Reporting suspected releases
- Records of tank and piping repairs
- Secondary containment where required
- Financial responsibility
- Temporary closure

A state does not need to make a compliance determination at the time of the inspection in order for the inspection to qualify as an on-site inspection under these grant guidelines. However, the individual performing the inspection or the state underground storage tank implementing agency must request from the owner or operator all information needed to make a compliance determination. EPA encourages states to make a compliance determination in a timely manner. States should generally continue to conduct enforcement activities as appropriate to address any noncompliance with applicable underground storage tank program requirements; however, these guidelines do not address the nature or scope of such enforcement activities.

Who May Perform the On-Site Inspection?

An on-site inspection of an underground storage tank must be conducted by one of the following:

- EPA inspector.
- A state underground storage tank implementing agency inspector.
- Other state or local agency inspector the state underground storage tank implementing agency has duly designated, in accordance with state procedures, to conduct underground storage tank inspections.
- A contractor EPA or a state underground storage tank implementing agency has duly designated to conduct underground storage tank inspections.
- A private underground storage tank inspector[2] (private inspector) operating under a third-party inspection program as described below.

Solely for the purposes of these grant guidelines, a third-party inspection program is a state program in which a state-authorized private inspector is paid by the owner or operator of an underground storage tank to perform an on-site inspection. At a minimum, states choosing to implement a third-party inspection program must meet the following requirements:

- Private inspectors must be certified, licensed, or registered by the state to perform on-site inspections. At a minimum, private inspectors must meet the following requirements:
  - —Be trained in the state-specific inspection protocols and procedures, and perform inspections pursuant to such protocols and procedures.
  - —Successfully complete the state's required training program. The training program for private inspectors must be comparable to the training program for state inspectors.
- Third-party inspection programs must require private inspectors to meet conflict of interest requirements developed by the state. At a minimum, private inspectors must not be: The owner or operator of the underground storage tank; an employee of the owner or operator of the underground storage tank; or a person having daily on-site responsibility for the operation and maintenance of the underground storage tank.
- Third-party inspection programs must use an inspection report form developed by the state that covers the requirements identified in the *What Are The Requirements For The On-Site Inspection?* section of these guidelines. As previously indicated, not all required activities have to be conducted at the site. Review of applicable records and other activities that can be accomplished off-site may be combined with activities conducted at the site to fulfill the on-site inspection requirement.
- Private inspectors must complete and submit the inspection report to the state underground storage tank-implementing agency in the manner and time frame established by the state. States must either require that private

[1] On June 8, 2006, OUST issued a memorandum in order to identify which underground storage tanks need to have an on-site inspection before August 8, 2007. See Appendix B for a copy of the memorandum—Inspection Requirements Of The Energy Policy Act: Determining Which Underground Storage Tanks Have Undergone An Inspection Since December 22, 1998.

[2] In light of certain practical considerations relating to the underground storage tank regulated universe and specific features of Subtitle I grant funding, EPA believes that it is appropriate, solely for the purpose of these grant guidelines, to allow states the option of using a third-party inspection program to meet the on-site inspection requirement. In particular, Subtitle I requires states, as a condition of funding, or EPA as appropriate, to inspect all underground storage tanks every three years. EPA recognizes that a flexible approach is necessary in order to assist states in meeting the three-year inspection requirement given the large number of underground storage tanks, the varied distribution of such underground storage tanks from state to state, and because fulfilling the inspection requirement is a condition of a state's Subtitle I funding.

inspectors retain inspection related documentation in a comparable manner to state inspectors or submit the documentation to the state. The state must review each inspection report and make a compliance determination for each site.

• Third-party inspection programs must contain an audit program, developed by the state, to monitor private inspectors on a routine basis. The audit program must include a sufficient number of on-site inspections to effectively assess inspector performance.

• States must retain the capability to conduct: Audits of inspections conducted by private inspectors; for-cause inspections (e.g., inspections conducted as a result of a complaint); and inspections of other underground storage tank sites that the state determines warrant an on-site inspection. The state underground storage tank agency or another duly designated state or local agency must perform a sufficient number of these inspections so the state retains the capacity to perform on-site inspections and maintains the integrity of the third-party inspection program.

• If a private inspector fails to demonstrate to the state adequate competence and proficiency to perform underground storage tank inspections, or the state otherwise determines it is not appropriate for the private inspector to conduct on-site inspections as part of a third-party inspection program, the state must take appropriate action against the private inspector. Appropriate action should generally be defined by the state in its third-party inspection program and may include enforcement mechanisms such as: Temporary suspension or permanent revocation of the private inspector's certification, license, or registration; fines, penalties, retraining, and examination; or any other action the state deems appropriate to include as an enforcement mechanism against the private inspector.

States implementing a third-party inspection program as of the published date of these guidelines in the **Federal Register** have until August 8, 2010 to meet the third-party inspection program requirements described above. States that implement a third-party inspection program after the published date of these guidelines in the **Federal Register** must meet the requirements at the time the program is implemented.

What Are the Reporting Requirements to EPA?

Each state that receives Subtitle I funding must report to EPA the number of on-site inspections conducted during the reporting period as part of its quarterly or semi-annual performance report.

How Will States Demonstrate Compliance With These Guidelines?

After August 8, 2007, and before receiving future grant funding, states must provide one of the following to EPA:

• For a state that has met the inspection requirements, the state must submit a certification indicating that the state meets the requirements in these guidelines.

• For a state that has not yet met the requirements for inspections, the state must provide a document that describes the state's efforts to meet the requirements. This document must include:

—A description of the state's activities to date to meet the requirements in these guidelines;

—A description of the state's planned activities to meet the requirements; and

—The date by which the state expects to meet the requirements.

EPA may verify state certifications of compliance through site visits, record reviews, or audits as authorized by 40 CFR Part 31.

How Will EPA Enforce States' Compliance With the Requirements in These Guidelines?

As a matter of law, each state that receives funding under Subtitle I, which would include a Leaking Underground Storage Tank (LUST) Cooperative Agreement, must comply with certain underground storage tank requirements of Subtitle I. EPA anticipates State and Tribal Assistance Grants (STAG) funds will be available for inspection and other underground storage tank compliance activities. EPA will also condition STAG grants with compliance with these guidelines. Absent a compelling reason to the contrary, EPA expects to address noncompliance with these STAG grant conditions by utilizing EPA's grant enforcement authorities under 40 CFR Part 31.43, as necessary and appropriate.

For More Information About the Inspection Grant Guidelines

Visit the EPA Office of Underground Storage Tank's Web site at *www.epa.gov/oust* or call 703–603–9900.

Background About the Energy Policy Act of 2005

On August 8, 2005, President Bush signed the Energy Policy Act of 2005. Title XV, Subtitle B of this act (titled the Underground Storage Tank Compliance Act) contains amendments to Subtitle I of the Solid Waste Disposal Act '' the original legislation that created the underground storage tank (UST) program. These amendments significantly affect federal and state underground storage tank programs, will require major changes to the programs, and are aimed at reducing underground storage tank releases to our environment.

The amendments focus on preventing releases. Among other things, they expand eligible uses of the Leaking Underground Storage Tank (LUST) Trust Fund and include provisions regarding inspections, operator training, delivery prohibition, secondary containment and financial responsibility, and cleanup of releases that contain oxygenated fuel additives.

Some of these provisions require implementation by August 2006; others will require implementation in subsequent years. To implement the new law, EPA and states will work closely with tribes, other federal agencies, tank owners and operators, and other stakeholders to bring about the mandated changes affecting underground storage tank facilities.

To see the full text of this new legislation and for more information about EPA's work to implement the underground storage tank provisions of the law, see: *http://www.epa.gov/oust/fedlaws/nrg05_01.htm*

BILLING CODE 6560–50–P

Appendix A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 17 2005

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MEMORANDUM

SUBJECT: Short-Term Recommendation About Inspections To Meet The Energy Policy Act Of 2005 Requirements

FROM: Cliff Rothenstein, Director
Office of Underground Storage Tanks

TO: State UST Managers
EPA UST Regional Division Directors

I am writing to update you about implementing the Energy Policy Act of 2005, provide a short-term recommendation about site inspections, and give a brief overview of the Act's underground storage tank (UST) provisions which significantly affect federal and state programs. EPA is currently working to develop guidance on implementing the various UST provisions in the Act, and we expect to complete the guidance on inspections by April 2006. In the meantime, I encourage state UST programs to continue conducting on-site inspections as discussed below.

Brief Overview Of The Energy Policy Act

As you know, President Bush on August 8, 2005 signed Public Law 109-58, the Energy Policy Act of 2005. Title XV, Subtitle B of this Act (entitled the Underground Storage Tank Compliance Act of 2005) contains amendments to Subtitle I of the Resource Conservation Recovery Act – the original legislation that created the federal UST program. This new law significantly affects state and federal underground storage tank programs and will require major changes in them. Additionally, gas station owners and operators, as well as non-marketers who own or operate USTs, will be impacted by the changes states and EPA make in their tank programs.

The Underground Storage Tank Compliance Act focuses on preventing releases. Among other things, the Act expands eligible uses of the Leaking Underground Storage Tank (LUST) Trust Fund, extends the LUST Trust Fund tax through 2011, and includes provisions regarding inspections, operator training, delivery prohibition, secondary containment and financial responsibility, and cleanup of releases that contain oxygenated fuel additives.

Some of these provisions require implementation by August 2006; others will require implementation in subsequent years. EPA is working closely with states, tribes, other federal agencies, tank owners and operators, and other stakeholders to implement these mandated changes affecting underground storage tank facilities.

To view the full text of this new legislation, see: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ058.109.pdf (scroll to Title XV – Ethanol And Motor Fuels, Subtitle B – Underground Storage Tank Compliance, on pages 500-513).

Specifics About Continuing Inspections

Under Section 1523 of the Energy Policy Act of 2005, EPA or states which receive Subtitle I funding shall conduct on-site inspections by August 8, 2007 of all tanks which have not undergone inspection since December 22, 1998. Following the completion of this task, EPA or states that receive Subtitle I funding shall conduct on-site inspections of all regulated tanks at least once every three years.

We have established an inspections workgroup, composed of EPA and state members, to help develop guidance covering inspections. While we work on the guidance, I urge you to continue performing on-site inspections at UST facilities. I encourage you to focus your inspections on facilities with USTs in place on or before December 22, 1998 and which have not been inspected since December 22, 1998. For inspections conducted in the period from August 8, 2005 to the date of the publication of our guidance, we will consider any on-site inspection as meeting the new inspection requirements 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 a state UST program EPA has approved under the state program approval (SPA) procedures.

Next Steps

EPA expects to publish final guidance on inspections by April. I will continue to share with you important information about the inspection requirements, as well as other requirements in the Underground Storage Tank Compliance Act, as we move forward with implementation.

My staff and I look forward to working with you to implement this important provision of the Underground Storage Tank Compliance Act. If you have questions about the inspection requirements, contact Jerry Parker at parker.jerry@epa.gov or 703-603-7167. For more information about EPA's efforts to implement the law, contact Mark Barolo at barolo.mark@epa.gov or 703-603-7141.

cc: EPA UST Regional Branch Chiefs
EPA UST Regional Program Managers
OUST Managers
OUST Regional Liaisons

Appendix B

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN - 8 2006

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Inspection Requirements Of The Energy Policy Act: Determining Which Underground Storage Tanks Have Undergone An Inspection Since December 22, 1998

FROM: Cliff Rothenstein, Director
Office of Underground Storage Tanks

TO: EPA Regional UST Division Directors
State UST Program Managers

I am writing to share with you the Agency's determination on how to interpret a key provision of the Energy Policy Act, that is, the requirement to inspect all underground storage tanks (USTs) that have not undergone an inspection since December 22, 1998. To implement this provision, states that receive Solid Waste Disposal Act (SWDA) Subtitle I funding must determine which USTs have undergone an inspection in the relevant time frame. As described more fully below, USTs that have undergone a compliance monitoring activity since December 22, 1998, do not need to have an on-site inspection by August 8, 2007.

This document applies to USTs regulated under Subtitle I in operation on or before December 22, 1998. As used in this document, USTs means those tanks that satisfy the definition of "UST" in 40 C.F.R. § 280.12, except for those tanks identified in 40 C.F.R. §§ 280.10(b) and 280.10(c) as excluded or deferred USTs. This document does not apply to USTs installed after December 22, 1998, because such USTs are not subject to the two-year inspection requirement.

Energy Policy Act Inspection Requirements

The UST provisions in the Energy Policy Act of 2005 contain amendments to Subtitle I of SWDA. Section 1523 of the Energy Policy Act amends section 9005 of SWDA by requiring periodic on-site inspections for USTs. In particular, under section 9005(c)(1), USTs that have not been inspected since December 22, 1998 must have an on-site inspection by August 8, 2007.

Determining Which Underground Storage Tanks Have Undergone An Inspection Since December 22, 1998

In section 9005(c)(1), Congress uses the term "inspection" in connection with determining whether an UST had already undergone an inspection between December 22, 1998 and August 8, 2005. In contrast, however, further in section 9005(c)(1) and then in section 9005(c)(2), Congress uses the term "*on-site* inspection" (emphasis added) in connection with subsequent inspections that EPA or states must conduct within, respectively, a 2-year or 3-year timetable. When enacting section 9005(c)(1), Congress was aware that the states and EPA were using a variety of compliance monitoring activities to determine an owner/operator's compliance with Subtitle I and its implementing regulations or a requirement or standard of a state program developed under Subtitle I.[1] The use of the term "inspection" without the modifier "on-site" in section 9005(c)(1) reflects Congress' understanding of the variety of state and federal activities that had been used prior to the enactment of the Energy Policy Act to determine an owner/operator's compliance with the applicable UST regulations and is limited to the context of this provision in this legislation. By enacting section 9005(c)(2), Congress made a deliberate choice to alter both the frequency of inspections, as well as the variety of existing activities used to determine an owner/operator's compliance, by legislating that EPA or a state conduct on-site inspections of all USTs every three years.

Therefore, solely for purposes of implementing the requirements of section 9005(c)(1), USTs that have not undergone a compliance monitoring activity since December 22, 1998, have not undergone an inspection under section 9005(c)(1) and thus must have an on-site inspection by August 8, 2007. For the limited purpose of determining which USTs have undergone a compliance monitoring activity since December 22, 1998, the state agency responsible for implementing the UST regulatory program may count any of the activities that the state, or an entity on behalf of the state, was using from December 22, 1998, through August 8, 2005, to reasonably monitor, evaluate, or determine an owner/operator's compliance with the federal UST regulations or the regulations of a state approved under section 9004.[2] Any UST that had undergone such a state or federal activity from December 22, 1998, through August 8, 2005, is not required to have an on-site inspection by August 8, 2007, under section 9005(c)(1).

Next Steps

This summer OUST expects to publish draft inspection grant guidelines to implement section 9005(c) of SWDA Subtitle I as amended by the Energy Policy Act of 2005. These guidelines will incorporate the determination made in this memorandum, and detail what states must do to meet the on-site inspection requirements in 9005(c). If you have questions or comments about this memorandum or the inspection requirements contained in the Energy Policy Act, please contact Tim Smith of my office at smith.timr@epa.gov or 703-603-7158.

cc: EPA Regional UST Branch Chiefs
EPA Regional UST Program Managers
OUST Managers
OUST Regional Liaisons

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[1] For instance, the Government Accountability Office (GAO) issued a Report to Congress in May 2001 describing the breadth of UST inspection programs which included the use of tank owners' self-certification that their tanks were in compliance as one activity used to determine UST compliance. The Report also included inspections. EPA considers an inspection to be a visit to a facility or site for the purpose of gathering information, including direct observations, to determine compliance with a statutory requirement, regulation, or other legal obligation.

[2] While not all such state activities meet EPA's definition of an inspection, based upon information before Congress prior to enacting section 9005(c)(1), see n.1, above, such activities were described to Congress as ways in which some states determine an owner/operator's compliance with the applicable UST regulations.

Dated: May 2, 2007.

Susan Parker Bodine,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 07–2266 Filed 5–8–07; 8:45 am]

BILLING CODE 6560–50–C

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8310–4]

Grant Guidelines for States Regarding State Compliance Reports on Government Underground Storage Tanks; Solid Waste Disposal Act, Subtitle I, as Amended by Title XV, Subtitle B of the Energy Policy Act of 2005

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: By this notice, the Environmental Protection Agency (EPA), Office of Underground Storage Tanks (OUST) is advising the public that on April 24, 2007 EPA issued the grant guidelines for state compliance reports on government underground storage tanks (USTs) and subsequently made the guidelines available on EPA's Web site. In this notice, EPA is publishing the grant guidelines for state compliance reports on government USTs in their entirety. EPA developed the grant guidelines for state compliance reports on government USTs as required by Section 9003(j) of Subtitle I of the Solid Waste Disposal Act, as amended by Section 1526 of the Energy Policy Act of 2005.

DATES: On April 24, 2007, EPA issued and subsequently posted on EPA's Web site the grant guidelines for state compliance reports on government USTs. EPA is notifying the public via this notice that the grant guidelines for state compliance reports on government USTs are available as of May 9, 2007.

ADDRESSES: EPA posted the grant guidelines for state compliance reports on a government USTs on our Web site at: *http://www.epa.gov/oust/fedlaws/epact_05.htm#Final.* You may also obtain paper copies from the National Service Center for Environmental Publications (NSCEP), EPA's publications distribution warehouse. You may requests copies from NSCEP by calling 1–800–490–9198; writing to U.S. EPA/NSCEP, Box 42419, Cincinnati, OH 45242–0419; or faxing your request to NSCEP at 301–604–3408. Ask for: *Grant Guidelines To States For Implementing The Provision Of The Energy Policy Act Of 2005 Requiring States To Report On The Compliance Of Government Underground Storage Tanks* (EPA 510–R–07–003, April 2007).

FOR FURTHER INFORMATION CONTACT: Steven McNeely, EPA's Office of Underground Storage Tanks, at *mcneely.steven@epa.gov* or 703–603–7164.

SUPPLEMENTARY INFORMATION: On August 8, 2005, President Bush signed the Energy Policy Act of 2005. Title XV, Subtitle B of this act, titled the Underground Storage Tank Compliance Act of 2005, contains amendments to Subtitle I of the Solid Waste Disposal Act. This is the first federal legislative change for the underground storage tank (UST) program since its inception over 20 years ago. The UST provisions of the law significantly affect federal and state UST programs, require major changes to the programs, and are aimed at further reducing UST releases to our environment. Among other things, the UST provisions of the Energy Policy Act require that states receiving funding under Subtitle I comply with certain requirements contained in the law. OUST worked, and is continuing to work, with its partners to develop grant guidelines that EPA regional tank programs will incorporate into states' grant agreements. The guidenlines will provide states that receive UST funds with specific requirements, based on the UST provisions of the Energy Policy Act, for their state UST programs.

Section 9003(j) of Subtitle I of the Solid Waste Disposal Act, as amended by Section 1526 of the Energy Policy Act, requires states that receive Subtitle I funding must report to EPA no later than August 8, 2007 on the compliance status of government-owned and government-operated USTs. As a result of that requirement, EPA worked with states and other stakeholders to develop grant guidelines for state compliance reports on government USTs. States receiving funds from EPA for their UST programs must comply with the UST provisions of the Energy Policy Act and will be subject to action by EPA under 40 CFR 31.43 if they fail to comply with the guidelines.

Statutory and Executive Order Reviews: Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to OMB review. Because this grant action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. Section 601 et.) or Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments. Although this action does create new binding legal requirements, such requirements do not substantially and directly affect tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). Although this grant action does not have significant federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999), EPA consulted with states in the development of these grant guidelines. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. Section 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Section 3501 et seq.). The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each house of the Congress and to the Comptroller General of the United States. Since this final action will contain legally binding requirements, it is subject to the Congressional Review Act, and EPA will submit a report to Congress containing this final action prior to the publication of this action in the **Federal Register.**

Grant Guidelines to States for Implementing the Provision of the Energy Policy Act of 2005 Requiring States to Report on the Compliance of Government Underground Storage Tanks

U.S. Environmental Protection Agency; Office of Underground Storage Tanks; April 2007.

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