

UNDERGROUND STORAGE TANK (UST) ENFORCEMENT COMPENDIUM

Updated May 2009, Issued in October 2007

This Compendium was prepared by OECA's Federal Facilities Enforcement Office, in consultation with OECA's Office of Civil Enforcement, the Office of General Counsel, and the UST Attorney Workgroup. The Compendium consists of two main parts. The first part is a narrative summary of the UST compliance monitoring and enforcement process, highlighting new requirements resulting from the Energy Policy Act, as well as the key decision points and issues that may arise at various steps of the process. The second part is a listing of key enforcement-related documents that are referenced in the first document or provide greater detail than the summary document.

The compendium is organized to help EPA enforcement personnel, state UST personnel and the regulated community understand the UST enforcement process, including how EPA identifies violations, drafts complaints and other enforcement documents, negotiates settlements, and writes settlement documents. It also provides important links to 40 C.F.R. Part 22, which governs EPA's administrative litigation process.

More specifically, the compendium identifies documents that explain the relevant statutory and regulatory requirements, summarizes the enforceable violations, identifies situations that are appropriate for EPA administrative enforcement actions, offers strategies for preparing the case, and provides guidelines for calculating penalties and settling cases. This document will also be presented in electronic format on EPA's internet site, and that site will be updated periodically as new documents or decisions are issued.

Note: Some of the policies and guidance listed herein are several years old. You should confirm that they have not been superseded by more recent documents or in practice before deciding the appropriate enforcement response.

Summary of EPA's Underground Storage Tank Enforcement Process

Purpose of Document

This document describes the issues and strategies that are typically encountered in EPA's Underground Storage Tank (UST) compliance monitoring and enforcement processes. The opening section summarizes the issues related to compliance monitoring through the inspection report stage. The second section addresses some of the key issues in determining the appropriate response to the inspection report. The third section explains the UST enforcement process, focusing on three typical enforcement pathways. The fourth section discusses the key issues in calculating the penalty amount and settling a case. The last part summarizes the Agency's self-disclosure policies and how penalties may be mitigated by such self-disclosures. Finally, the attachment to this document provides a listing of additional resources where you can find much greater detail associated with many of the areas summarized here.

This document is not intended to create new guidance or policy, nor does it provide new interpretations of existing laws or statutes. Rather it simply summarizes existing EPA enforcement-related regulations, policies and strategies for federal and private UST facilities. Please be aware that some of the policies and guidances listed herein are several years old. Please ensure that they are still accurate before deciding the appropriate enforcement response. This document and attached compendium will be periodically updated as necessary. While its focus is on generic UST enforcement, numerous references are made to federal facilities and USTs located on tribal lands. This document does not address UST corrective action.

A. UST Compliance Monitoring and Potential Enforcement Response in the Field.

1. States Provide Primary Administration of the UST Compliance Monitoring and Enforcement Program

Because the UST program is largely administered by the states, the states conduct the bulk of the inspections. As of 2007, 36 states have received state program approval (SPA) to implement the UST program in lieu of the federal program. See www.epa.gov/oust/fsstates.htm. Even for states without SPA, EPA enters into grant/cooperative agreements with the state programs to coordinate UST enforcement actions, and in nearly all cases the state program is designated as the primary implementing agency. EPA may take the lead if requested to do so by a state, and EPA inspectors are also the primary inspectors in Indian Country.

2. Mandatory Inspection Cycle Dictated by Statute/New Reporting Requirements

A major change to the UST program resulting from the Energy Policy Act is that § 9005(c)(1) required that EPA and States that receive funding under RCRA Subtitle I inspect all regulated USTs that have not been inspected since December 22, 1998, by August of 2007. Thereafter, all covered tanks are to be inspected once every three years. The Energy Policy Act also created two new reporting requirements. Federal agencies were required to report on the compliance status of underground storage tanks owned or operated by Federal agencies or located on land managed by Federal agencies. The agencies had to submit these reports to Congress and EPA's Administrator by August 8, 2006. Copies of the Federal reports can be found at <http://www.epa.gov/oust/fedlaws/sfreport.htm> States also were required to report to EPA no later than August 8, 2007, on the compliance status of federal, state, and local government-owned and government-operated USTs. EPA will subsequently make available to the public the states' reports. Additional information on the State Compliance Reports can be found at http://www.epa.gov/swerust1/fedlaws/final_sr.htm.

3. Enforcement Response in the Field (Field Citations)

One of the unique features of the UST enforcement program is the availability of an immediate enforcement response during or at the close of an inspection. If an EPA inspection uncovers violations, the region may issue a field citation at the close of the on-site inspection. The field citation may also be issued shortly after the inspection or even after preparation of the inspection report. A field citation is designed to address clear and easily correctible violations, and is generally only appropriate for first-time violators. See Section C.2.a for a more detailed discussion of the appropriate use of field citations.

B. Key Steps In Deciding Whether Violations Warrant an Enforcement Response

1. Review of the Inspection Report and Determinations Whether Additional Information is Necessary

The inspection report may be prepared by the state or EPA. An initial determination must be made as to whether the inspection report supports an enforcement response. Review the report with the following questions in mind:

- Has the facility provided all requested and necessary documentation?
- Does the report provide an adequate description of the violations?
- Does the report also document requests for records?
- Are the violations properly documented?
- Is more information necessary?
- If so, can the information be obtained through informal channels?

RCRA Section 9005 provides EPA with broad information-gathering authorities, including sending formal information request letters. Region 3, in its record-setting *In the Matter of Euclid of Virginia* case, issued multiple information request letters and inspected Euclid's UST facilities several times to prepare its case. A thorough inspection report, coupled with the proper use of information request letters, provide the basis for making an informed decision on the appropriate next steps.

2. Enforcement Response Relative to Severity of Violations

Once additional information, if needed, is received, EPA must determine whether the violations merit an enforcement response. . As noted above, field citations are an available option even after the inspection is completed. In some instances, a complaint and/or order may be the most appropriate action. In general, the enforcement response should be commensurate with the severity of the violations.

Guidelines for determining whether an enforcement action is appropriate can be found in EPA's Enforcement Procedures Guidance Manual of 1990, at www.epa.gov/oust/directiv/od961011.htm, provides guidance on deciding whether to bring a federal enforcement action. This manual should be read in conjunction with EPA's Penalty Guidance for Violations of UST Regulations of 1990, at www.epa.gov/oust/directiv/od961012.htm, which provides guidance for EPA enforcement staff on calculating administrative penalties to be assessed against violators of the UST regulations.

The enforcement staff should also examine various issues before proceeding with an enforcement action. These include (1) the seriousness of the violation, (2) the circumstances of the violation, (3) information about the owner/operator, and 4) any history of noncompliance. In addition, enforcement personnel should take into account the likelihood that a response may establish a good or bad precedent.

3. EPA has Full Enforcement Authority and a Complete Range of Administrative Tools to Use against Federal Facilities

It is important to note that UST violations found at federal facilities should be treated the same as those found at private facilities. The potential violations are essentially the same, and EPA has the same administrative order and penalty authority against federal agencies as the private sector. Nevertheless, EPA has developed several policy and guidance documents that specifically address environmental enforcement at federal facilities. They can be found in "The Yellow Book: Guide to Environmental Enforcement and Compliance at Federal Facilities, February, 1999." The "Yellow Book" can help determine the appropriate response action for UST violations at federal facilities. See <http://www.epa.gov/Compliance/resources/publications/civil/federal/yellowbk.pdf>

While EPA has broad administrative enforcement authority, it does not have civil judicial authority to address UST violations by a federal facility. This limitation stems from the

Department of Justice's (DOJ) interpretation of the Unitary Executive Theory, which prohibits one federal agency from suing another in federal court. In contrast, State and tribal regulators, as well as citizen groups, are not limited by the Unitary Executive Theory. Pursuant to RCRA § 7002, they may bring civil judicial enforcement cases against federal facilities.

Further, federal facilities at times use government contractors (or subcontractors) to operate USTs. Where these third parties fit the statutory or regulatory definition of an operator, EPA may use its enforcement discretion to pursue enforcement against the federal agency, the contractor-operator, or both. For more information, see, http://www.epa.gov/fedfac/pdf/goco_facilities.pdf

4. EPA UST Enforcement in Indian Country includes a Full Enforcement Authority and a Complete Range of Administrative Tools

UST compliance and enforcement activities in Indian country are undertaken by EPA because RCRA precludes EPA from authorizing tribal UST programs. Accordingly, EPA has the lead in inspection and enforcement matters. EPA's civil enforcement authority in Indian country is guided by applicable statutory provisions and program guidance documents. Relevant guidance includes the 1984 Indian Policy (<http://www.epa.gov/tribalportal/basicinfo/epa-policies.htm>), the "Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy" (Enforcement Guidance, January 17, 2001, <http://www.epa.gov/compliance/resources/policies/state/84indianpolicy.pdf>, and the recently issued "Questions and Answers on the Tribal Enforcement Process" <http://www.epa.gov/compliance/resources/policies/civil/rcra/q&atribalenfprocess-041707.pdf>

If a facility is owned, managed, or operated by a tribal government, or a tribal government has a substantial interest in, or exercises control over, the facility, then the facility is a "tribal facility" and EPA should review the process set forth in the Indian Policy Enforcement Guidance in proceeding with compliance assistance and enforcement. Tribal facilities can include facilities located within or outside Indian country. This Guidance discusses conditions generally necessary for enforcement actions and the coordination procedures within EPA.

In addition to the documents noted above, also see, EPA's "UST Tribal Strategy", http://www.epa.gov/oust/fedlaws/Tribal%20Strategy_080706r.pdf, "EPA's Report to Congress on Implementing and Enforcing the Underground Storage tank Program in Indian Country" http://www.epa.gov/oust/fedlaws/rtc_finalblnkpgs.pdf, and the "Interim Final National Policy Statement for Underground Storage Tank Program Implementation in Indian Country" (OSWER Directive 9610.15A) <http://www.epa.gov/oust/directiv/d961015a.htm>.

C. The UST Enforcement Process

1. Deciding Whether the State or EPA Should File the Case

As noted above, the UST program in large part is administered by the states and the states perform the bulk of the inspections. Where a state performs the inspection, the state generally pursues appropriate enforcement and where EPA performs the inspection, EPA generally has the lead for enforcement. Nevertheless, sometimes states refer cases to EPA for enforcement.

2. Three Pathways of an Administrative UST Enforcement Case¹

Once a decision is made that the violations merit an EPA enforcement response, an enforcement action may proceed along one of three different pathways: a) issuance of a field citation with a pre-determined penalty, b) negotiation of a settlement prior to or after issuance of a complaint, or c) issuance of an administrative complaint and proposed final order.²

a. Field Citations – Appropriate Use and Limitations

Many regions use UST field citations to achieve rapid and resource efficient compliance. Field citations may be issued at the close of an inspection. They may also be issued subsequent to the inspection report from the regional office.

In March 2009, OECA issued model field citation for language. Please contact OECA's Waste and Chemical Enforcement Division for a copy.

The national guidance for using field citations and a complete description of the program are found in OSWER Directive 9610.16 ("Guidance for Federal Field Citation Enforcement", October 6, 1993). See www.epa.gov/oust/directiv/od961016.htm. This guidance document is essential reading to understand the limited and appropriate circumstances for using field citations. In addition, OECA's "Use of Field Citations for Failure to Comply with 40 C.F.R. § 280.21 Upgrade, Replacement or Closure Requirements at UST Facilities," identifies the limited circumstances in which it may be appropriate to issue field citations for violations of 1998 requirements. One such instance is for operation and maintenance violations related to the actual installation of the 1998 upgrade requirements. By contrast, it is inappropriate to use field citations for a facility's failure to take any steps toward compliance with the 1998 upgrade requirements. However, field citations may be appropriate in limited circumstances for 1998 upgrade violations involving small facilities (those who own or operate four or fewer USTs). See intranet.epa.gov/ustdoweb/enforce/field1.pdf. See also "Settlement Strategies for Enforcement Actions Involving Violation of 40 CFR 280.21 Upgrade Replacement or

¹ If the UST facility presents an imminent and substantial endangerment to the public's health or the environment, enforcement personnel should consider action under § 7003.

² Enforcement actions resulting from self-disclosures will be addressed later in this document

Closure Requirements at UST Facilities” (March 16, 1999), and intranet.epa.gov/oeca/ore/rcra/cmp/031699.pdf. (available only to EPA personnel)

Generally, field citations are appropriate for violations that are clear-cut and easily verifiable, easily correctable, and for first time violators. Experience suggests that field citations can result in the resolution of UST violations in a manner that is effective and resource efficient for both the government and the owners and operators of underground storage tanks. Generally, the inspector issues the field citation and conducts necessary follow up to ensure that the facility has returned to compliance and paid the assessed penalty amount.

If violations are not corrected and the penalty is not paid within a specific number of days of the date the field citation was issued, the citation is normally withdrawn, unless a request for an extension has been submitted and granted. The next appropriate step is to consider whether or not to take a more formal enforcement action or another course of action. Any more formal enforcement action should include higher penalties than the field citation settlement terms in order to achieve compliance and ensure the integrity of the Field Citation Program.

b. Pre-Complaint Negotiated Settlements

In this stage, the inspector prepares an inspection report, a case developer is assigned, and the Regional Program Manager requests assignment of an attorney to the matter. The case developer should meet with the attorney and the two of them may consider sending an information request under RCRA § 9005, if additional information is needed prior to filing a complaint. The attorney and case developer may also decide to send a “Show Cause” letter to the facility owner/operator. The Show Cause letter would describe the alleged violations. The Show Cause letter would invite the facility owner/operator to engage in pre-filing negotiations in an attempt to settle the matter. If the owner/operator does not respond to that invitation, or if negotiations fail to result in a settlement, the attorney should proceed to the filing of the Complaint.

c. Issuance of an Administrative Complaint and Final Order

Based on the inspection report and other information, a formal enforcement action may be the most appropriate enforcement action.

Formal enforcement actions, either as described in section b., above, or traditional complaints, are most appropriate for situations that include:

- Violations of 1998 upgrade installations (e.g. no corrosion protection, no leak detection, or no spill/overfill protection)
- Non-reporting of releases
- No release detection equipment on both tanks and piping
- Willful negligence

- Leaking tanks with recalcitrant owners
- Repeat violators (same violation)
- Any violations for which a field citation cannot be issued

Under § 9006(a) of RCRA, EPA is authorized to issue administrative orders to compel compliance with any requirements of Subtitle I, including the regulations (at 40 CFR Part 280) promulgated pursuant to Section 9003. A typical compliance order will require that the owner/operator come into compliance immediately or within a reasonable, specified time period. In addition, under RCRA Section 9006(d), and 40 CFR Part 280, the order may also include a civil penalty not to exceed: (1) \$16,000 per tank per day for each violation of a requirement or standard at 40 CFR Part 280 or any approved State program; and (2) \$16,000 per tank for failure to comply with the notification requirements.³ RCRA § 9006(c) states that when determining penalties “the seriousness of the violation and any good faith efforts to comply with the applicable requirements” should be accounted for in the assessment. Furthermore, the order should also indicate to the owner/operator that continued noncompliance will result in further legal action, including the assessment of additional penalties of up to \$37,500 for each day of noncompliance with the compliance order.⁴ (See <http://cfpub.epa.gov/compliance/resources/policies/civil/penalty> for copy of the Final Rule. See also Granta Nakayama’s memorandum, Amendments to Penalty Policies to Implement Penalty Inflation Rule, that provides guidance on how to plead penalties and determine the new maximum penalty amounts that may be sought in administrative enforcement actions. <http://cfpub.epa.gov/compliance/resources/policies/civil/penalty>

The procedures for issuing § 9006 administrative penalty orders are governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (the "CROP," see 40 CFR Part 22 at (<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=b86b55873b1700d01fdc29795408b465;rgn=div5;view=text;node=40%3A1.0.1.1.21;idno=40;cc=ecfr>)).

(Note: If administrative compliance orders are not complied with or if compliance is needed immediately (i.e., in the case of an emergency), enforcement personnel should initiate a civil judicial action under § 9006(a), except for federal facilities. RCRA § 7003 authority may also be available for imminent and substantial endangerment situations.

i. Calculating the Proposed Penalty

³ The UST Penalty Policy recommends that some violations be assessed on a per facility basis and others be assessed on a per tank basis. The enforcement team should review the attachments to the penalty policy and determine the proper course of action for each violation at issue.

⁴ On December 11, 2008, EPA issued the final Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996 (DCIA)), which increased statutory penalties in order to account for inflation. The increased amounts are for violations that occur after January 12, 2009..

The “UST Penalty Policy,” formally known as “The Penalty Guidance for Violations of UST Regulations,” OSWER Directive 9610.12, November 14, 1990, still guides penalty calculations today. See www.epa.gov/oust/directiv/od961012.htm. Similar to other EPA penalty policies, it includes gravity-based and economic benefit components, which are the major drivers for calculating the initial penalty amount. These amounts may be adjusted upward or downward depending on other factors. Part of the UST Penalty Policy’s explanation for calculating the economic benefit component, however, has become outdated. Exhibit 3 listing the marginal tax rate based on federal corporate tax rates is outdated. As indicated in the UST Penalty Policy, the “rule of thumb” approach for calculating a violator’s economic benefit may be used when the initial estimate of the economic benefit is less than \$10,000. For all other cases or when the violator rejects the rule of thumb estimation, the BEN model should be used to calculate the economic benefit component. The BEN model calculates the economic savings that a company gains by avoiding or delaying payment necessary for compliance with environmental regulations or permits. The primary purpose of the BEN model is to calculate the economic benefit of noncompliance with EPA regulations. The BEN model also provides the appropriate equity discount rate to be used in the rule of thumb estimation.

Generally, federal agencies are subject to unique federal fiscal laws which preclude them from investing appropriated funds or borrowing additional funds. Nevertheless, they may still enjoy an economic benefit by delaying and/or avoiding pollution control expenditures. Accordingly, the EAB has ruled that federal agencies are subject to penalties that include an economic benefit component. See <http://www.epa.gov/oalj/orders/ftwain.pdf>. To assist in this calculation, OECA has issued guidance on how to calculate the economic benefit component for violations involving federal facilities. See “Guidance on Calculating the Economic Benefit of Noncompliance by Federal Agencies” (1999) at <http://www.epa.gov/Compliance/resources/policies/federalfacilities/enforcement/cleanup/econben20.pdf> and “Guidance on Calculating the Economic Benefit of Noncompliance by Federal Agencies” (2006) at <http://www.epa.gov/Compliance/resources/policies/federalfacilities/enforcement/cleanup/guid-econ-ben-noncomp-2-13-06.pdf>.

ii. Overview of Part 22, Typical Steps to a Generic UST Case

Under the procedures set forth in the CROP, the major steps in the process of issuing a § 9006(a) proposed complaint and order are:⁵

- **Complaint preparation and filing stage.** In this stage, the Agency prepares and files a formal complaint with the Regional Hearing Clerk (or the Hearing Clerk for cases initiated at EPA Headquarters) and serves a copy on the owner/operator. The purpose of the complaint is to establish the allegations, propose a penalty (if applicable), and notify the owner/operator of his or her right to a hearing.

⁵ This is a summary of the core stages to the Part 22 process. Regions may differ on how they implement each stage.

- **Pre-hearing stage.** During this stage, the owner/operator should answer the complaint (i.e., admit or deny the allegations, and request a hearing). Once the complaint is served, any pre-hearing motions may be made, default orders may be issued (if the owner/operator does not respond), and settlement or pre-hearing conferences may occur. The Chief Administrative Law Judge also offers the parties the opportunity to participate in mediation or alternative dispute resolution at this stage.
- **Settlement.** Settlement of the case may occur at any stage. However, the Agency's preference is that settlement negotiations take place before the hearing is held.
- **Hearing stage.** During the hearing, an EPA Administrative Law Judge (ALJ) will hear the case, examine evidence, and issue an initial decision.
- **Post-hearing stage.** After the initial decision is issued, the parties may appeal the Administrative Law Judges decision to the Environmental Appeals Board (EAB). The EAB will then issue a final order. EPA cannot seek judicial review of an EAB final order. A final order may only be appealed by the respondent.

For more detailed information and guidance on each of these steps, see www.epa.gov/oust/directiv/od961011.htm. For model pleadings, see “Settlement Strategies for Enforcement Actions Involving Violation of 40 CFR 280.21 Upgrade Replacement or Closure Requirements at UST Facilities” (March 16, 1999) intranet.epa.gov/oeca/ore/rcra/cmp/031699.pdf. EPA personnel may also see briefs, motions, pleadings and other information contained in the Administrative Litigation Resource Network at <http://epaqpx.rtp.epa.gov/administrativelitigationresourcenetwork> (EPA password required).

iii. Roles of Regional Personnel in the Part 22 Administrative Process

Section 22.4 of the CROP presents various authorities and duties of key Agency officials in the administrative litigation process. Some of the roles and responsibilities of the Regional Administrator, the Regional Judicial Officer, and the Presiding Officer as they apply to UST enforcement cases include:

- **Regional Administrator (RA)** - The RA shall exercise all powers and duties prescribed and delegated under Subtitle I and the CROP. In addition, the RA has been delegated the authority to issue § 9006 administrative complaints, evaluate the appropriateness of civil penalties, and negotiate and sign consent agreements. (In some regions the RA has further delegated these authorities).
- **Regional Judicial Officer (RJO)** - Under section 22.4(b) of the CROP, the RA must delegate to one or more RJO authority to act as Presiding Officer until the respondent files an answer in proceedings under the CROP. Under this provision, the RA may also delegate to the RJO the authority to approve settlements. However, these delegations do not prevent the RJO from referring any case or motion back to the RA, when appropriate.

- Presiding Officer - The role of the Presiding Officer is to conduct a fair and impartial proceeding, ensure that the facts are fully elicited, adjudicate all issues, and avoid delay. Under CROP section 22.4(c), the Presiding Officer's authorities include but are not limited to, conducting administrative hearings under the CROP, ruling upon motions, issuing necessary orders, examining witnesses, and issuing subpoenas.

d. Successful Pre- or Post-Filing Settlement Negotiations that Result in a 40 C.F.R. Part 22 Settlement Agreement

As discussed above, circumstances may warrant that EPA and the respondent conduct settlement negotiations prior to the issuance of a complaint. If these negotiations are successful, EPA would file a consent agreement and final order that simultaneously commences and concludes the Part 22 proceedings. For detailed information about the content of such settlements, see 22.13(b), 22.14(a)(1)-(3) and 22.18(b)(2)(3)d (<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=b86b55873b1700d01fdc29795408b465;rgn=div5;view=text;node=40%3A1.0.1.1.21;idno=40;cc=ecfr>). Settlements may also be reached after the issuance of a complaint. If the complaint seeks a penalty only, then respondent may also resolve the case by paying the specific penalty proposed in the complaint or in EPA's pre-hearing exchange (See 22.18(a)).

D. Special Issues for Settlement Discussions

1. UST Upgrade-Related Violations

Recently conducted tank inspections continue to reveal violations of the 1998 upgrade installation requirements. These substandard tanks pose a serious threat to the environment and public health. Further, the violations are egregious since the regulatory deadline for upgrades was more than 10 years ago. Any settlement negotiations should focus on achieving compliance quickly. The facilities must temporarily close the substandard USTs until the upgrades are installed and compliance has been achieved, or else permanently close the substandard USTs and replace them with USTs that meet new performance standards. (See, "Settlement Strategies for Enforcement Actions Involving Violations of 40 CFR 280.21 Upgrade Replacement or Closure Requirements at UST Facilities" (March 16, 1999), intranet.epa.gov/oeca/ore/rcra/cmp/031699.pdf, (Available only to EPA personnel) for more information on settlements involving substandard tanks. Finally, as a reminder, failure to install 1998 upgrades is subject to a penalty on a per tank basis, as opposed to a facility basis.

For violations of the operation and maintenance requirements related to the upgrade violations, the use of field citations may be appropriate. However, the regions are also free to use more formal enforcement actions as described in this section. Model settlement documents for various UST violations can also be found in the document referenced above.

2. Supplemental Environmental Projects

In settling enforcement actions, EPA requires violators to promptly cease the violations and seeks substantial monetary penalties in order to deter noncompliance. Penalties encourage compliance and also ensure that violators do not receive an economic advantage over their competitors by not expending monies to comply. As discussed in the Penalty Policy section above, EPA assesses an appropriate penalty for UST violations in accordance with the UST Penalty Policy and BEN model. In certain instances, however, Supplemental Environmental Projects (SEPs) may be part of a settlement. SEPs can provide environmental and public health improvements that may not otherwise be part of a settlement. According to EPA's Final Supplemental Environmental Projects (SEP) Policy of 1998, (www.epa.gov/compliance/resources/policies/civil/seps/fnl-sup-hermn-mem.pdf), SEPs are “defined as **environmentally beneficial projects** which a defendant/respondent agrees to undertake **in settlement of an enforcement action**, but which the defendant/respondent is **not otherwise legally required to perform.**” (Emphasis original). See above document for further explanation of the three bolded parts of this definition.

Even though EPA has broad discretion in settling cases, a proposed SEP must pass statutory and constitutional muster, and be consistent with EPA's authorities. There are seven specifically identified categories of projects that may qualify as SEPs. An acceptable SEP must satisfy the requirements of at least one category, in addition to the other requirements of the SEP Policy. These seven categories are: public health, pollution prevention, environmental restoration and protection, assessments and audits, environmental compliance promotion, and emergency planning and preparedness. Further, OECA has issued several SEP related memos over the past five years. For more details, see Compendium section V.E—Supplemental Environmental Projects.

E. Audits and Penalty Mitigation

1. Overview

Given that the regulated community is keenly aware that the States and EPA are stepping up their inspection and associated enforcement activity, they may be inclined to take advantage of the Audit Policy. The “Audit Policy,” formally titled, “Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations,” provides several major incentives for regulated entities to voluntarily come into compliance with UST requirements. It also sets forth the conditions that must be satisfied for penalty mitigation. The Audit Policy, with guidance, is available at <http://www.epa.gov/compliance/incentives/auditing/auditpolicy.html>.

The Audit Policy encourages voluntary and prompt disclosure of violations or possible violations. When such disclosures are made, and specific Audit Policy criteria are met, EPA may consider a reduction or even a complete mitigation of the gravity component of the penalty. Determinations will be considered on a case-by-case basis. Further, the self-disclosure must be voluntary and not required by statute or regulations. For example,

The Energy Policy Act required federal facilities to provide compliance information based on the UST's last regulatory inspection. Violations identified by these past regulatory inspections do not qualify for Audit Policy mitigation. In addition, several states have audit/self-disclosure policies that may apply to the regulated community. EPA has also developed an environmental audit protocol evaluating RCRA regulated tanks including USTs regulated under RCRA Subtitle I. The audit protocol can be found at <http://www.epa.gov/compliance/resources/policies/incentives/auditing/apcol-rcratanks.pdf>.

In sum, the regulated community may look to invoke the Audit Policy as quickly as possible to identify any violations, or potential violations, and voluntarily correct and report them prior to any future state or federal inspection. However, if violations are discovered during any such regulatory inspection prior to self-disclosure, any penalty reductions that might otherwise have occurred under the Audit Policy would not be possible.

2. How to Respond to a Self-Disclosure, or an Inquiry About How to Self-Disclose

For general inquiries about how to disclose violations, an overview of self-disclosures, or a contact list, refer to the Audit Policy Self-Disclosure & Regional Contacts website, at www.epa.gov/compliance/incentives/auditing/auditdisclose.html. Self-disclosures should identify the means of discovery, type of violation, and facility location. Note: If the self-disclosure is for multiple facilities in multiple regions, the regions should consider contacting the appropriate person at headquarters. Contact information can be found at the Audit Policy Self-Disclosure & Regional Contacts website above.

The next step involves sending out an EPA Follow-up Letter, found at www.epa.gov/compliance/resources/policies/incentives/auditing/sampleltr.pdf. This letter also includes a Self-Disclosure Questionnaire that must accompany the letter. The Questionnaire is very important because the responses will provide the kind of information needed to evaluate the nine criteria that may lead to penalty mitigation.

3. Nine Criteria for Penalty Mitigation

The Audit Policy contains nine criteria that affect the extent of penalty mitigation. If all nine criteria (D(1)-D(9)) including "Systematic Discovery" are met, the gravity-based penalties can be eliminated. The Agency, however, reserves the right to collect any economic benefit that may have been realized as a result of noncompliance. If "Systematic Discovery" is not satisfied, but the other eight criteria (D(2)-D(9)) are satisfied, then a 75% reduction of "gravity-based penalties" can occur.

Generally, the nine criteria seek to confirm how the party discovered the violations, whether the self-disclosure was voluntary, how the violations were corrected, and what actions/programs the party has taken to ensure against future violations. For greater

details on the nine criteria, see

<http://www.epa.gov/compliance/incentives/auditing/auditpolicy.html>

F. Contact Information

For additional information on the UST Compendium or the FFEO UST Integrated Strategy please contact **Dan Drazan**, Legal and Enforcement, Drazan.Dan@epa.gov, 202-564-2328, or **Melanie Garvey**, Team Leader, Garvey.Melanie@epa.gov, 202-564-2579.

UNDERGROUND STORAGE TANK (UST) ENFORCEMENT COMPENDIUM

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I. STATUTORY AND REGULATORY REQUIREMENTS

A. STATUTE: Resource Conservation and Recovery Act (RCRA), Subtitle I: Regulation of Underground Storage Tanks.

This version of RCRA subtitle I reflects changes incurred from the UST Compliance Act of 2005.

See: <http://uscode.house.gov/download/pls/42C82.txt>

B. REGULATIONS: 40 CFR Part 280-282.

Part 280: Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (UST).

Part 281: Approval of State Underground Storage Tank Programs.

Part 282: Approved Underground Storage Tank Programs.

See: [http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?sid=2408231b6f198d2620da5678ff0f9acb&c=ecfr&tpl=/ecfrbrowse/Title40/40cfrv26_02.t](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?sid=2408231b6f198d2620da5678ff0f9acb&c=ecfr&tpl=/ecfrbrowse/Title40/40cfrv26_02.tpl)
[pl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?sid=2408231b6f198d2620da5678ff0f9acb&c=ecfr&tpl=/ecfrbrowse/Title40/40cfrv26_02.t)

C. AMENDMENTS TO STATUTE: Underground Storage Tank Compliance Act of 2005.

The Energy Policy Act of 2005 (Act) included substantial revisions to Subtitle I of RCRA, the Underground Storage Tank (UST) statute. In addition to requiring EPA to develop a series of new UST guidelines, among other things, it imposes new reporting and compliance requirements on federal agencies with USTs, clarifies that states have authority to assess penalties against federal agencies for UST violations, and requires EPA and states to inspect all USTs within a certain schedule.

Additional requirements and guidelines include: Delivery Prohibition, Secondary Containment/Financial Responsibility, Inspections, Operator Training, Public Records Requirements, and Compliance Report for Government Owned Tanks, Cost Recovery, Civil Penalty Considerations, Waiver of Sovereign Immunity, and Tanks on Tribal Lands.

See 119 Stat. 1092: http://www.epa.gov/oust/fedlaws/publ_109-058.pdf

II. GENERAL ENFORCEMENT OVERVIEW

A. Summary of key element of the enforcement program, prepared by OECA.

Enforcement topics include:

- UST General Information
- UST Regulations
- UST Enforcement; cases, settlements, and decisions
- Other UST Information Sources
- State UST Laws and Regulations

See the RCRA Enforcement Home Page: www.epa.gov/compliance/civil/rcra/rcraustenf.html

B. Questions and Answers Regarding USTs.

OECA prepared a series of questions and answers that address the basic elements of the UST enforcement program.

See: www.epa.gov/compliance/resources/faqs/cleanup/tanks/

1. What Is An Underground Storage Tank (UST) System?
2. Who Can Answer Questions About UST Systems?
3. How Can You Tell If A Release Has Occurred?
4. How Do You Report A Release From An UST System?
5. What Are The Responsibilities Of An UST Owner Or Operator?
6. What Are Your Reporting Responsibilities?
7. Are Heating Oil Tanks Regulated?
8. Why Are UST Systems Regulated?
9. Who Regulates UST Systems?

C. Information Chart on the 1998 UST Regulations.

Informational chart giving UST leak detection, corrosion protection, and spill and overflow protection requirements under the 1998 regulations. The PDF identifies the leak detection requirements for: new tanks; existing tanks; new and existing pressurized piping and; new and existing suction piping. Also, spill and overflow protection for all piping and corrosion protection for both new and existing tanks and piping. December 22, 1998

See: www.epa.gov/compliance/resources/publications/civil/programs/ustreq.pdf

D. EPA UST Publications.

EPA's UST publications include (but are not limited to):

- MUSTs for USTs: A Summary of the Federal Regulations for Underground Storage Tanks (Parts have been superseded by other documents, but it still provides good background information). July 1995.
- Doing Inventory Control Right for Underground Storage Tanks. Nov. 1993.
- Closing Underground Storage Tanks: Brief Facts. July 1996.

- Straight Talk on Tanks: Leak Detection Methods for Petroleum Underground Storage Tanks and Piping. Sept. 2005.
- Financial Responsibility for Underground Storage Tanks: A Reference Manual. Jan. 2000.
- Introduction to Statistical Inventory Reconciliation for Underground Storage Tanks. Sept. 1995.
- Operating and Maintaining Underground Storage Tank Systems: Practical Help and Checklists. September 2005.

See: www.epa.gov/oust/pubs/index.htm

E. UST Issues in Indian Country

The "EPA Policy for the Administration of Environmental Programs on Indian Reservations" (1984 EPA Indian Policy) describes the Agency's approach toward supporting principal of Indian "self-government" and working directly with tribal governments on a "government-to-governments." It is a broad in scope and not UST-specific.

See, <http://www.epa.gov/tribalportal/basicinfo/epa-policies.htm>

OECA-prepared guidance that address enforcement issues related to the 1984 Indian Policy, dated January 17, 2001.

See Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy, (<http://www.epa.gov/compliance/resources/policies/state/84indianpolicy.pdf>)

OECA-prepared questions and answers on the Tribal enforcement process, 2007

See, <http://www.epa.gov/compliance/resources/policies/civil/rcra/q&atribalenfprocess-041707.pdf>

Interim Final National Policy Statement for Underground Storage Tank Program Implementation in Indian Country, October 1995

See: <http://www.epa.gov/swerust1/directiv/d961015a.htm>

The Energy Policy Act gives EPA new tools that may provide greater opportunities for tribal involvement in the underground storage tank program and the Agency and tribal representatives collaborated extensively to develop and implement an UST program strategy in Indian country. The UST Tribal strategy identifies key issues and actions to strengthen the relationships between EPA and tribes; improve information sharing; enhance tribal capacity; and further the cleanup and compliance of USTs in Indian country.

See: http://www.epa.gov/oust/fedlaws/final_ts.htm

III. INSPECTIONS

A. EPA Authorized State/Tribal Inspectors and Issuance of Federal Credentials

The following memorandum provides the final “Guidance for Issuing Federal EPA Inspector Credentials to Authorize Employees of State/Tribal Governments to Conduct Inspections on Behalf of EPA” (September 30, 2004). It addresses the criteria and process for Regions to authorize state/tribal inspectors to use inspector credentials to conduct civil inspection on EPA’s behalf under the authority of a specific environmental statute and subject to the conditions in the Guidance.

See:

www.epa.gov/compliance/resources/policies/monitoring/inspection/statetribalcredentials.pdf

B. What is an “Inspection” for the Purposes of the August 2007 Inspection Deadline?

This memorandum explains that compliance monitoring activities may constitute an “inspection” for the purpose of fulfilling the 9005(c)(1) August 8, 2007 inspection deadline for states that receive funding under RCRA Subtitle I. These include any activities that these states, or an entity on behalf of the state, were 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.

See: www.epa.gov/oust/fedlaws/Pre-8-8-05_Inspections_6-8-06.pdf

C. What is an “Inspection” Subsequent to the August 2007 Inspection Deadline?

The “Grants Guidelines to States for Implementing the Inspection Provisions of the Energy Policy Act of 2005” (June 8, 2006) provides that an onsite inspection of an UST conducted by states that receive funding under RCRA Subtitle I that an onsite inspection of an UST from August 2007 forward must include an actual physical inspection. Desk audits, self certifications, information request letters, and any other such activities are not sufficient by themselves to fulfill the onsite inspection requirements.

See: <http://www.epa.gov/oust/fedlaws/Inspection%20Final%20GL%204-24-07.pdf>

IV. AUDITS

A. Audit Policy.

“The Audit Policy,” formally titled “Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations,” provides several major incentives for regulated entities to voluntarily come into compliance with federal environmental laws and regulations.

This document includes links to the policy in the federal register, and conditions for penalty mitigation.

See: www.epa.gov/compliance/incentives/auditing/auditpolicy.html

B. The “Protocol for Conducting Environmental Compliance Audits of Storage Tanks Under the Resource Conservation and Recovery Act (RCRA)” (March 2000).

This document includes UST Checklists for auditing.

Section I: Introduction

Who Should Use These Protocols?

US EPA’s Public Policies that Support Environmental Auditing

How to Use the Protocols

The Relationship of Auditing to Environmental Management Systems

Section II: Audit Protocol

Applicability

Review of Federal Legislation

State and Local Regulations

Key Compliance Requirements for USTs

Key Compliance Requirements for Hazardous Waste Tanks

Key Terms and Definitions: UST

Key Terms and Definitions: Hazardous Waste and Used Oil Tanks

Typical Records to Review

Typical Physical Features to Inspect

List of Acronyms and Abbreviations

Index for Checklist Users

Checklists

See: www.epa.gov/compliance/resources/policies/incentives/auditing/apcol-rcratanks.pdf

C. Self-Disclosure of 40 CFR 280.21 Violations.

The document: “Handling Self-Disclosure of 280.21 Violations in the Underground Storage Tank Program” (February 12, 1999), provides a four-part strategy for handling self disclosures of potential UST violations from UST facilities.

See: <http://www.epa.gov/compliance/resources/policies/civil/rcra/sdustank-mem.pdf>

D. Self-Disclosure and Regional Contacts.

The document—“Audit Policy Self-Disclosure & Regional Contacts”—outlines the steps that are to be taken once a violation has been discovered and includes a list of the people that should be contacted and a sample follow-up letter.

See: www.epa.gov/compliance/incentives/auditing/auditdisclose.html

E. Self-Disclosure Follow-Up Letter.

The sample follow-up letter lays out the format and information that needs to be included in the follow-up letter. The letter is not a completed form and needs to be filled out and customized to the specific violator. There is also a Self-Disclosure Questionnaire at the end of the letter marked as Attachment A.

See: www.epa.gov/compliance/resources/policies/incentives/auditing/sampleltr.pdf

V. ENFORCEMENT POLICIES

A. Field Citations.

1. 40 CFR 280.21 Settlement Strategies.

The document—“Settlement Strategies for Enforcement Actions Involving Violations of 40 CFR 280.21 Upgrade Replacement or Closure Requirements at UST Facilities” (March 16, 1999)—discusses the streamlined settlement procedure for administrative actions involving § 280.21 and § 280.45 violations. The Regions should work with the States and, as necessary, augment State efforts by taking federal action, as articulated in “EPA’s Strategy for Enforcement of Regulatory Requirements Applicable to Underground Storage Tank Facilities” (August 10, 1998), and “EPA’s Inspection and Compliance Assistance Priorities For Underground Storage Tank Systems Not Meeting the 1998 Deadline” (December 9, 1998), guidance documents.

See: <http://intranet.epa.gov/oeca/ore/rcra/cmp/031699.pdf> (available only to EPA personnel)

See also V.B.1: Enforcement Policies—Upgrade Violations—Settlement Strategies for 40 CFR 280.21 Violations and VI.A: Settlement Related Documents—40 CFR 280.21 Violations Settlement Strategies.

2. “Guidance for Federal Field Citation Enforcement”.

a. OSWER Directive 9610.14 (April 9, 1992).

This document was replaced by OSWER Directive 9610.16—“Guidance on Federal Field Citation Enforcement” (October 6, 1993). [See the following section for more information on the replacement guidance document].

See” www.epa.gov/oust/directiv/od961014.htm

b. OSWER Directive 9610.16 (October 6, 1993).

This document expanded the appropriate use of field citations. The revisions were based on the lessons learned from the additional regions that began using field citations.

REVISIONS TO GUIDANCE FOR FEDERAL FIELD CITATION
ENFORCEMENT GUIDANCE FOR FEDERAL FIELD
CITATION ENFORCEMENT

- Federal Enforcement
- Regional Program Elements
- Selecting Appropriate Violations
- Guidance for When to Use Citations
- Guidance for Penalty Amounts
- Form of the Citation
- Procedures for Issuance of Citations, Follow-up, and Extensions
- Regional Standard Operating Procedures
- Issuance of Field Citations at Hazardous Substance Tanks
- Issuance of Field Citations on Indian Lands
- Hearing Requirements
- Outreach
- Developing State Field Citation Programs
- Purposes and Use of This Guidance

SELECTED VIOLATIONS OF FEDERAL UNDERGROUND STORAGE
TANK REGULATIONS

See: www.epa.gov/oust/directiv/od961016.htm

In March 2009, OECA issued model field citation for language. Please contact OECA's Waste and Chemical Enforcement Division for a copy.

B. Upgrade Violations.

1. Settlement Strategies for 40 CFR 280.21 Violations.

Document: "Settlement Strategies for Enforcement Actions Involving Violation of 40 CFR 280.21 Upgrade Replacement or Closure Requirements at UST or Facilities" (March 6, 1999). Section II, page 4, of the memorandum discusses a revision to the UST Field Citation Guidance document that raises the penalty amount for violations of 40 CFR 280.21(a) from \$300 to \$900, and limits the use of Field Citations for violations of 1998 until December 22, 1999.

See: intranet.epa.gov/oeca/ore/rcra/cmp/031699.pdf (available only to EPA personnel)

See also V.A.1: Enforcement Policies—Field Citations—40 CFR 280.21 Settlement Strategies and VI.A: Settlement Related Documents—40 CFR 280.21 Violations Settlement Strategies.

2. Use of Field Citations for 40 CFR 280.21 Violations.

Document: “Use of Field Citations for Failure to Comply with 40 CFR 280.21 Upgrade, Replacement or Closure Requirements at UST Facilities” (March 3, 2000).

Field citations may be used for § 280.21 violations by private owners/operators who own or operate two or fewer small UST facilities. Small facilities are defined as those with four or fewer USTs at each facility. Field citations may also be used for § 280.21 violations by state, local or tribal UST facilities. Field citations will still be appropriate for minor upgrade violations, such as when a facility has upgraded the UST but failed to comply with the § 280.21(b)–(d) requirements. A list of inappropriate field citations is given. It increases the penalty amount for the § 280.21(a) “catch-all” violation to \$1,300 per UST, with two limited exceptions.

See: intranet.epa.gov/ustdoweb/enforce/field1.pdf (available only to EPA personnel)

See: intranet.epa.gov/oeca/ore/rcra/cmp/031699.pdf (available only to EPA personnel)

C. Federal Facilities.

1. Penalty Guidance.

Document: “Penalty Guidance for Violations of UST Regulations” (OSWER Directive 9610.12 (November 14, 1990)).

Topics:

1. Introduction to UST Penalty Guidance
2. Determining the Economic Benefit Component
3. Determining the Gravity-Based Component
4. Settlement Adjustments
5. Use of Field Citations

See: www.epa.gov/oust/directiv/od961012.htm

See also VI.B: Penalty Guidance.

2. Procedures for Civil Judicial and Administrative Enforcement Case Redlegation.

Document: “OECA/Regional Procedures for Civil Judicial and Administrative Enforcement Case Redlegation,” Robert Van Heuvelen (November 9, 1994).

See: <http://www.epa.gov/Compliance/resources/policies/civil/rcra/civjudadmcase-mem.pdf>

3. Executive Order 12088: Federal Agency Compliance.

E.O. 12088 was established to ensure Federal Agency compliance with federal, state, and local pollution control requirements. E.O. 12088 also provides an alternative resolution procedure

whereby EPA may request that the Office of Management and Budget (OMB) help resolve interagency disputes concerning a “violation of an applicable pollution control standard.”

See: <http://www.archives.gov/federal-register/codification/executive-order/12088.html>

4. Executive Order 12146: Interagency Alternative Dispute Resolutions.

E.O. 12146 provides alternative dispute resolution procedures for “legal” disputes between two executive agencies. The process involves seeking resolution from DOJ’s Office of Legal Counsel (OLC).

See: <http://www.epa.gov/fedfac/documents/12146.htm>

a. DOJ-OLC Decision to Uphold EPA’s Penalty Authority against Federal Agencies for UST Violations.

The Department of Justice’s (DOJ) Office of Legal Counsel (OLC) affirmed EPA’s authority to require federal agencies to pay penalties for violations of UST requirements of the Resource Conservation and Recovery Act (RCRA). The opinion was issued by the OLC on June 14, 2000, in accordance with E.O. 12146 which governs resolution of legal disputes between Executive Branch agencies. Document: “EPA Assessment of Penalties against Federal Agencies for Violation of the Underground Storage Tank Requirements of the Resource Conservation and Recovery Act”.

See: www.epa.gov/compliance/resources/policies/civil/federal/ffustpenalty.pdf

5. Calculating the Economic Benefit of Non-Compliance.

Document: “Guidance of Calculating the Economic Benefit of Non-Compliance by Federal Agencies” (1999).

See:

<http://www.epa.gov/Compliance/resources/policies/federalfacilities/enforcement/cleanup/econben20.pdf>

Document: “EPA Guidance on Calculating the Economic Benefit of Non-Compliance by Federal Agencies” (2004).

See:

<http://www.epa.gov/Compliance/resources/policies/federalfacilities/enforcement/cleanup/guid-econ-ben-noncomp-2-13-06.pdf>

a. Affirmation of the Economic Benefit Component.

The EAB Fort Wainwright Clean Air Act decision affirmed that proposed penalties against federal agencies may include an economic benefit component.

See: <http://www.epa.gov/oalj/orders/ftwain.pdf>

D. General UST Enforcement Response Policies.

1. UST Enforceable Requirements.

This site is a diagram representing the regulatory framework of Subtitle I, USTs of RCRA as viewed from an enforcement perspective. A brief description of the UST requirements is further down the webpage.

See: www.epa.gov/compliance/civil/rcra/rcraustfreq.html

2. UST/LUST Enforcement Procedures Guidance Manual (OSWER Directive 9610.11 (May 1990)).

Chapter 1: Overview of UST/LUST Enforcement Program
Chapter 2: Situations Appropriate to Regional Enforcement Actions
Chapter 3: Enforcement Case Development
Chapter 4: Procedures for Section 9006 Compliance Orders
Chapter 5: Procedures for Section 9003(H) Corrective Action Orders
Chapter 6: Procedures for Judicial Enforcement

See: www.epa.gov/oust/directiv/od961011.htm

3. UST Compliance and Enforcement Strategy (OSWER Directive 9610.8 (January 5, 1989)).

OSWER Directive 9610.8, "FY 1989-FY 1990 Compliance and Enforcement Strategy for the Underground Storage Tank Program", puts forth the framework for the UST program's compliance and enforcement strategy for FY89-FY90. The document includes the goals of the strategy, state and federal activities to promote compliance, and situations appropriate for federal enforcement actions.

See: www.epa.gov/oust/directiv/od961008.htm

Note: The federal facility enforcement policy described in section V.E.3, "Federal Enforcement Situations," does not reflect more recent enforcement policies and guidance found in: "The Yellow Book: Guide to Environmental Enforcement and Compliance at Federal Facilities, February, 1999, Section V.

See: <http://www.epa.gov/Compliance/resources/publications/civil/federal/yellowbk.pdf>

4. “Underground Storage Tank 1998 Deadline Enforcement Strategy” (August 10, 1998).

This document describes the strategy for enforcing the regulatory requirements applicable to underground storage tanks (USTs) as of December 1998.

See: www.epa.gov/compliance/resources/policies/civil/rcra/storagetank-mem.pdf

E. Supplemental Environmental Projects (SEP).

The “EPA Supplemental Environmental Projects (SEP) Policy) (May 1, 1998), is the final issuance of the SEP policy, replacing the 1995 interim policy. Most changes made to the policy are clarifications to the existing language. There are no radical changes and the basic structure and operation of the SEP policy remain the same. Major changes occurred in the following categories: Community Input, Categories of Acceptable Projects, Use of SEPs to Mitigate Stipulated Penalties, Penalty Calculation Methodology, and Legal Guidelines.

See: www.epa.gov/compliance/resources/policies/civil/seps/fnl-sup-hermn-mem.pdf

1. SEP Home Page.

See: <http://www.epa.gov/compliance/civil/seps/index.html>

2. OECA Guidance Documents and Memos.

1. “Importance of Nexus Requirement in the Supplemental Environmental Projects Policy”
Memo from Walker B. Smith to Regional Counsel (October 31, 2002)

See: <http://r1-gis-web.r1.epa.gov:9876/oes/NutsandBolts/Attachment%20S-7.pdf>

2. “Expanding the Use of Supplemental Environmental Projects”

Memo from John Peter Suarez (June 11, 2003)

See: <http://r1-gis-web.r1.epa.gov:9876/oes/NutsandBolts/Attachment%20S-9.pdf>

3. “Guidance on Use of Environmental Management Systems in Enforcement Settlements as Injunctive Relief and Supplemental Environmental Projects”

Memo from John Peter Suarez to Regional Administrators and Counsel (June 12, 2003)

See: <http://r1-gis-web.r1.epa.gov:9876/oes/NutsandBolts/Attachment%20S-10.pdf>

4. “Clarification and Expansion of Environmental Compliance Audits Under the Supplemental Environmental Projects Policy”

Memo from Phyllis P. Harris to Regional Administrators and Counsel (January 10, 2003)

See: <http://r1-gis-web.r1.epa.gov:9876/oes/NutsandBolts/Attachment%20S-8.pdf>

5. “Guidance Concerning the Use of Third Parties in the Performance of Supplemental Environmental Projects (SEPs) and the Aggregation of SEP Funds”
Memo from John Peter Suarez (December 15, 2003)
See: http://r1-gis-web.r1.epa.gov:9876/oes/data/SEP_Library/SEP_Guidance_06.pdf
6. “Guidance on Determining Whether a Project is Profitable, When to Accept Profitable Projects as Supplemental Projects and How to Value Such Projects”
Memo from John Peter Suarez (December 5, 2003)
See: <http://r1-gis-web.r1.epa.gov:9876/oes/NutsandBolts/Attachment%20S-11.pdf>
7. “Recommended Ideas for Supplemental Environmental Projects”
Memo from John Peter Suarez (January 5, 2004)
See: http://r1-gis-web.r1.epa.gov:9876/oes/data/SEP_Library/SEP_Guidance_05.pdf

VI. SETTLEMENT-RELATED DOCUMENTS

A. 40 CFR 280.21 Violations Settlement Strategies.

The “Settlement Strategies for Enforcement Actions Involving Violation of 40 CFR 280.21 Upgrade Replacement or Closure Requirements at UST Facilities” (March 16, 1999) memorandum, discusses developed streamlined settlement procedures for administrative actions involving § 280.21 and § 280.45 violations. The Regions should work with the states and, as necessary, augment State efforts by taking federal action, as articulated in “EPA’s Strategy for Enforcement of Regulatory Requirements Applicable to Underground Storage Tank Facilities” (August 10, 1998) and “EPA’s Inspection and Compliance Assistance Priorities For Underground Storage Tank Systems Not Meeting the 1998 Deadline” (December 9, 1998) guidance documents.

See: intranet.epa.gov/oeca/ore/rcra/cmp/031699.pdf

See also V.A.1: Enforcement Policies—Field Citations—40 CFR 280.21 Settlement Strategies; and V.B.1: Enforcement Policies—Upgrade Violations—Settlement Strategies for 40 CFR 280.21 Violations.

B. Penalty Guidance (OSWER Directive 9610.12).

Document: “Penalty Guidance for Violations of UST Regulations” (November 14, 1990).

See: www.epa.gov/oust/directiv/od961012.htm

See also V.C.1: Enforcement Policies—Federal Facilities—Penalty Guidance; and V.A.2.b: Enforcement Policies—Field Citations—“Guidance for Federal Field Citation Enforcement”—OSWER Directive 9610.16 (October 6, 1993).

VII. ADMINISTRATIVE PROCEDURES FOR ASSESSING A PENALTY AND CONCLUDING AN ENFORCEMENT CASE

A. 40 CFR Part 22—Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits.

See: <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=bd95232888d25e7b1aa43527887b8526;rgn=div5;view=text;node=40%3A1.0.1.1.21;idno=40;cc=ecfr>

1. Pre-Complaint Consent Agreement Negotiation/Final Order: [22.13\(b\)](#).

Except as provided under 22.13(a), where the parties agree to settle one or more causes of action before filing a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a consent agreement and a final order pursuant to [22.18\(b\)\(2\)-\(3\)](#).

2. Consent Agreement and Final Order (22.18(b)(2) and (3)).

22.18(b)(2) specifies the elements of the consent decree, including the provisions found in 22.14(a)(1)-(3).

22.18(3) discusses the issuance of a final order.

3. Elements of a Complaint: [22.14\(a\)\(1\)-\(3\)](#).

Elements to be included a complaint.

B. Statutory Penalties.

This 12/11/08 Final Rule increases all existing civil statutory penalties for violations that occur after January 12, 2009. The primary purpose of this increase is to preserve the deterrent effect of civil statutory penalties by adjusting them for inflation.

See: <http://cfpub.epa.gov/compliance/resources/policies/civil/penalty>. See also the associated memorandum that provides guidance on how to plead penalties and determine the new maximum penalty amounts that may be sought in administrative enforcement actions.

C. Office of Administrative Law Judges.

See: <http://www.epa.gov/aljhomep/index.htm>

D. Environmental Appeals Board.

See: <http://www.epa.gov/eab>

VIII. ADDITIONAL ENFORCEMENT RESOURCES/KEY CONTACTS

A. RCRA Home Page for UST Enforcement.

Topics:

- UST General Information
- UST Regulations
- UST Enforcement; cases, settlements, and decisions
- Other UST Information Sources
- State UST Laws and Regulations

See: www.epa.gov/compliance/civil/rcra/rcraustenf.html

B. EPA's UST Program Office.

See: www.epa.gov/oust

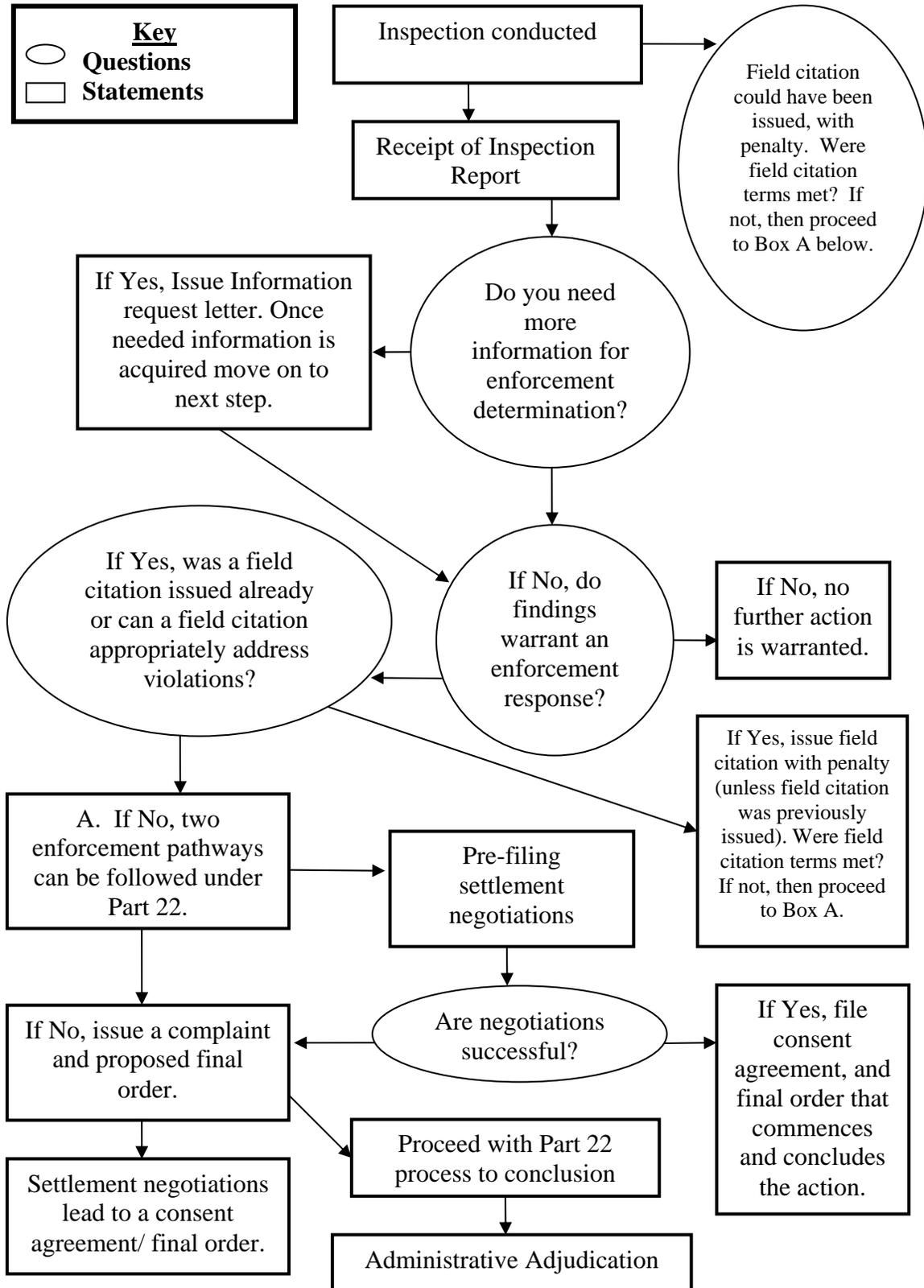
C. UST Related Resources for Federal Facilities.

See: www.fedcenter.gov

D. UST Program Directory of Washington, Regional EPA Contacts, and State UST/LUST Program Contacts.

See: www.epa.gov/oust/pubs/reglist.htm

IX. FLOW CHART OF THREE PATHWAYS OF AN ADMINISTRATIVE UST ENFORCEMENT CASE



X. PRESS RELEASES OF ENFORCEMENT ACTIONS, SETTLEMENTS, AND DECISIONS –

<http://yosemite.epa.gov/opa/admpress.nsf/Press%20Releases%20By%20Date?SearchView&Query=UST&SearchMax=0&SearchWV=TRUE>

XI. ADMINISTRATIVE DECISIONS

A. Office of Administrative Law Judges Decisions.

See: <http://www.epa.gov/oalj/orders.htm>

B. Environmental Appeals Board Decisions.

See: <http://www.epa.gov/eab>

C. UST Administrative Decisions.

1. Norman C. Mayes, 12 EAD (March 3, 2005).
See: <http://www.epa.gov/eab/disk11/mayes.pdf>
2. Carroll Oil Company, 10 EAD 635 (July 31, 2002).
See: <http://www.epa.gov/eab/disk11/carroll.pdf>
3. V-1 Oil Company, 8 EAD 729 (February 25, 2000).
See: <http://www.epa.gov/eab/disk11/v-1oil.pdf>
4. B & R Oil Company, Inc. 8 EAD 39 (November 18, 1998).
See: <http://www.epa.gov/eab/disk11/b&r.pdf>
5. Goodman Oil Company
See: <http://www.epa.gov/aljhome/orders/goodman-id.pdf>
6. Euclid of Virginia, Inc. (Initial Decision)
See: <http://www.epa.gov/oalj/orders/euclidof-va-id-110906.pdf>

Note: EAB are decisions by the Environmental Appeals Board.