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How the New UST Law Affects Owners and Operators

What State Regulators Told Us

by **Kenneth L. Green and Lance Stokes, Ph.D.**

The Underground Storage Tank Compliance Act of 2005 (USTCA) constitutes the most significant new requirements for owners and operators (O/O) of underground storage tanks (UST) since the federal corrosion and spill/overflow regulations took effect in 1998 and 1999. To find out what this means for O/O, the authors queried state regulators around the country.

USTCA has the potential to affect at least 672,000 regulated USTs that contain petroleum and other chemical substances posing risks to soil and groundwater. USTCA is comprehensive but user friendly, essentially picking up where the 1998/99 regulations left off. The regulated community has now for the most part been pre-exposed to detailed components of

USTCA. Provided O/O have complied with their existing requirements, they should not encounter radically new obligations. Nevertheless, as with any new legislation, implementation of USTCA will present challenges to regulators and the regulated community. Those challenges range across most, if not all, sections of USTCA.

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State agencies with delegated authority to administer the federal UST program will decide most of the specifics of USTCA implementation. Agencies that aggressively met the mandates of the 1998/99 regulations should experience minimal difficulty transitioning to USTCA and should be able to provide O/O with a clear roadmap of what they will need to do to be in compliance.

Background and Summary

Some 21 years ago, U.S. EPA faced the daunting task of regulating the nation's 2 million USTs, which stored petroleum and other hazardous substances. Thousands of these tanks

leaked their contents and contaminated community drinking water supplies across the country. At that time the Agency responded quickly and creatively by designing a UST program in 1984 to ensure that O/O were subject to federal and state regulations to prevent or remediate contamination to soil and groundwater. With its vigorous outreach and educational components and strong partnerships with states, tribes, industry, and others, the UST program was unlike any other regulatory program at the time.

As we enter the third decade of UST regulatory programs, the objective of environmental protection remains the same. However, we are faced with new challenges, including cleaning up the remaining known releases; encouraging reuse at the thousands of abandoned gas stations and brownfield sites; and, most importantly, improving operational compliance at every site to prevent new releases.

To address these challenges, on August 8, 2005, President Bush signed the Energy Policy Act of 2005. USTCA is comprised of Title XV, Subtitle B of the Act, and contains amendments to Subtitle I of the Resource Conservation and Recovery Act (RCRA). RCRA was the original legislation that created the federal UST program. USTCA allocates \$3 billion to conduct inspections and take enforcement actions against noncompliant UST systems. Ninety-five percent of the funding is expected to come from the Leaking UST Trust Fund.



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USTCA imposes provisions that are expected to have a significant impact on O/O, including:

- Requiring that states inspect all USTs at least every 3 years following a 2-year phase-in period,
- Requiring that EPA publish guidelines that specify training requirements for persons having primary daily on-site management responsibility for the operation and maintenance of USTs,
- Prohibiting delivery to, deposit into, or acceptance of a regulated substance into a UST at a facility that has been identified as ineligible for fuel delivery or deposit,
- Requiring that in each state receiving federal UST funding, UST facilities must have tank and piping secondary containment to protect groundwater from contamination and also exhibit evidence of manufacturer and installer financial responsibility,
- Requiring that states mandate secondary containment under all new fuel pump dispenser installs and/or replacements within 1,000 feet of any existing community water system or any existing potable drinking water well or require certification or licensure of fuel pump dispenser installers and evidence of financial responsibility for manufacturers of fuel pump dispensers.
- Prohibiting use of MTBE in motor vehicle fuel no later than December 31, 2014, except in states that permit it. (In effect, codifying the status quo), *and*
- Requiring establishment/maintenance and update of regulated UST records, which are made available to the public.

The Bottom Line

Simply stated, the impact on O/O will be an increase in compliance cost. However, because the extent of this impact will be a direct function of implementation, we contacted state UST regulators from representative regional states to determine the projected success level of implementation. Thanks are extended to those individuals who took the time to talk with us. Many agency staff voiced the concern that prior to implementation of USTCA their current financial resources are insufficient to enforce existing regulations.

UST O/O have been asking many complex questions about USTCA, including:

- Which personnel are required to be trained?
- What are the time requirements for training?
- How expensive is the training and who will pay for it?
- With a recent facility/tank upgrade, will the requirements for secondary containment still be mandated, requiring yet another upgrade?
- Are delivery lock-out provisions reversible?

These and other questions will probably be best answered by state and local inspectors *if* U.S. EPA provides regulators with answers.

At this writing, full implementation of USTCA has not occurred. However, California seems poised and confident about implementing the new UST mandates. But much like our inquisitive UST O/O, other state and local officials await further EPA guidance on specific issues. A brief overview of some of the paramount issues is presented here and may prove beneficial to both regulators and the regulated community.

Secondary Containment

As an additional measure to protect groundwater, USTCA requires each state, local authority, or Native American Tribal Land that is receiving federal UST funding under Subtitle B to require one of the following:

- Secondary containment of all new UST systems within 1,000 feet of any existing community water system, or any existing potable drinking water well, *and*
- Evidence of financial responsibility and certifications from both the UST manufacturer and the UST installer.

While secondary containment and financial responsibility are not new concepts to O/O, regulators are requesting guidance from EPA regarding definitions for community water systems, potable drinking water wells, and other key terms. Also, the financial requirements need to be clarified. Given the implementation deadline of February 2, 2007, regulators are asking, "*What must happen in the next 18 months?*"

Inspections

According to the Petroleum Marketers Association of America, a key challenge to the new law is that only a minimal number of states have regulatory programs in place to meet the inspection mandate. It is not surprising that most of these states report an extreme workload imbalance. They envision a triennial inspection requirement as an increase by as much as 25 percent to 50 percent over already strained inspection programs.

Specifically, the states indicate that an increase in the number of re-inspections is certain since the increased

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number of new inspections will reflect more noncompliance issues.

Strained agency resources notwithstanding, O/O should be aware that if a facility has existed under the inspection radar since December 22, 1998, one may expect an on-site compliance inspection before August 2007 and subsequently once every 3 years. There is, however, a caveat that will allow a 1-year extension or quadrennial inspections if a state determines that extenuating circumstances preclude triennial inspections.

Delivery Prohibitions

Delivery prohibition is one item on the re-inspection checklist that will certainly be implemented because the new provisions include a lock-out mechanism. Prohibition against delivery of a regulated substance into a UST can be a very effective enforcement tool.

It is also an easy choice for an agency inspector when inspection of a UST system indicates noncompliance and a potential threat of contamination to groundwater. However, regulatory agencies are requesting that EPA consult with states, UST O/O, and product delivery industries before issuing guidelines to implement delivery prohibitions. These guidelines should address at least the following processes and procedures:

- Criteria for determining that a facility is ineligible to receive delivery,
- Process for reclassifying ineligible facilities as eligible for delivery,
- Type of notice necessary to preclude a defense to violation,
- Determination as to whether and how to consider rural and remote UST facilities, *and*
- Identification of one or more processes for providing adequate notice to UST O/O and suppliers

that a UST has been determined ineligible for delivery.

The delivery prohibition could be the most significant and perhaps the most controversial item in USTCA. It is also the most critical as the legislation requires EPA to publish guidelines detailing processes and procedures by August 8, 2006, while states presumably need to implement these guidelines a mere 12 months later.

Operator Training

As the USTCA administrator, EPA must issue guidelines that specify training requirements for three distinct classes of operators responsible for operation and maintenance of regulated UST systems. EPA must publish these guidelines by February 8, 2007. States with an existing operator training program anticipate little difficulty in implementing this mandate.

On the other hand, agencies without existing operator training programs are requesting guidance for developing state-specific training requirements that are consistent with EPA's guidelines. One critical question for O/O is: *"What will be the format for public notice and will there be an opportunity for comment?"*

Don Bloom, a hazmat manager with the Michigan Department of Environmental Quality, stated that the operator training component may be the most important part of USTCA.

Bloom cited the necessity of obtaining as much knowledge as possible about a UST system as being the key to a consistent status of compliance. "When an O/O has limited knowledge of maintenance and operation of a UST system, the O/O is at risk of being taken advantage of by those UST contractors/installers who may be unscrupulous," said Bloom.

Prohibition of MTBE

Utilization/prohibition of MTBE varies from state to state. USTCA more or less indicates that states that want to use MTBE can, and those that do not do not have to. This makes one wonder why the issue is addressed in USTCA at all.

Public Records

Most states already maintain a database of this information and almost all have the information available on the Internet. This area imposes little to no problem to implementation and is very useful for O/O to determine compliance.

Conclusion

In collecting data and making inquiries for this article, the authors found that regulators agree that the greatest positive impact on O/O as a result of USTCA is the required training component. Improving compliance at each site through training diminishes the likelihood of new releases. An O/O should obtain as much knowledge as possible on the operation and maintenance of his/her UST system, be active in public forums, and recognize his/her role as a stakeholder.

USTCA is available at <http://www.blr.com/keyword>. Type in **em654ust** when prompted.

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