

UST Technical Assistance (TA) Inspection Program

Internal Management Directive on Procedures

Effective April 15, 2011

1. Introduction

Since the passage of the December 1998 upgrade, 3,794 significant operational compliance (SOC) inspections have been completed by DEQ and EPA. At this point, most facilities with active tanks will have been inspected at least twice since the 1998 upgrade deadline. Currently there are approximately 1780 UST facilities and the number is slowly declining over time.

The focus of the SOC inspections has been to verify the presence of all required pollution prevention and release detection equipment; the performance of all required daily, monthly, yearly or periodic corrosion protection or release detection monitoring and testing; the repair of failing equipment, the reporting and investigation of suspected releases and the cleanup of contamination.

Since the inception of an expedited enforcement program in February 2004 through December 2009, DEQ has cited 1,031 violations including 214 related to missing or faulty equipment, 649 for failure to perform release detection monitoring or equipment testing and 168 for other violations such as failure to notify, failing to have a trained operator, failing to document financial responsibility, etc. DEQ is expecting to see an overall decrease in the number of violations, most specifically reductions in equipment violations and release detection monitoring and equipment testing violations.

Both DEQ and EPA require facilities to designate Class A, B and C operators. Class A operators are often the tank owners and/or environmental managers. Class B operators are those persons that are running the facilities on a day-to-day basis, the permittees and operators. Class C operators are persons most commonly working at a facility and dispensing product. DEQ requires in-depth training of Class A and B operators. Class C operators must be trained before dispensing motor fuels or responding to emergencies involving motor fuels.

DEQ has noted that there is more than a 10 percent a year turnover of permittees and tank owners. Although required by rule to get training on the UST requirements, DEQ believes it is also important that these first-time permittees and tank owners have an opportunity to meet DEQ and establish a positive working relationship with DEQ's UST inspectors.

To foster an early working relationship, after April 15, 2011 DEQ is offering a technical assistance (TA) inspection program for first-time permittees and tank owners which will allow certain violations to be addressed by a Technical Assistance Inspection Warning Letter with Opportunity to Correction (WL). This IMD sets forth the procedures for this program. What violations can be addressed by use of a WL are set forth in *Appendix L – UST Violation Guidance*.

2. Purpose of IMD

This directive is solely intended to guide inspectors when documenting violations discovered during an UST inspection. This IMD document incorporates the *Appendix L – UST Violation Guidance* and *UST Facility Inspection and Compliance Guidance* which includes a table of UST compliance violations, describes inspection procedures, and lists UST violations, rule citations, field penalty amounts and actions necessary for permittees to correct violations. It also identifies when staff must refer to the Office of Compliance and Enforcement (OCE) for formal enforcement.

This directive does not create any rights, duties, obligations, or defenses, implied or otherwise, in third parties. It is not intended for use in pleading, at hearing, or at trial. It does not constitute rulemaking by the Environmental Quality Commission and may not be relied upon to create a right or benefit, substantive or procedural, enforceable by law or in equity, by any person. DEQ may take action which varies from this directive.

3. Eligibility Criteria

If the UST facility meets the following criteria, a TA inspection can be scheduled at the facility. Inspectors must refer to *Appendix L – UST Violation Guidance* to determine what the appropriate enforcement response is for a violation discovered during a TA inspection. Discovered violations may receive either a WL, a field citation or a formal enforcement action.

- a. Both the tank owner and permittee have not previously owned or operated an UST facility in Oregon. For simplicity in reading this IMD, the term “permittee” is understood to mean both permittee and tank owner. A first-time permittee owning or operating more than one facility can only request one TA inspection.
- b. The permittee must have submitted a timely and complete new installation application form (due 30 days before construction starts) or a change in permittee and tank owner permit modification application form (due within 60 days of a change in permittee and tank owner).
- c. The permittee must be in compliance with the financial responsibility requirements for USTs.
- d. The permittee must request a TA inspection by submitting the *First-Time Permittee or Tank Owner Request for an UST Technical Assistance (TA) Inspection* form to DEQ within 90 days of being issued its operating certificate.
- e. Prior to conducting the inspection, the permittee must have designated the facility’s Class A and B operators pursuant to OAR 340-150-0210 and the operators must have completed operator training pursuant to one of the training options listed in OAR 340-150-0210 (5). This technical assistance inspection program is not a substitute for operator training, rather it is intended to complement and reinforce what is learned during Class A and B operator training.
- f. The permittee has owned or operated the facility for less than 6 months at the time of the inspection.

g. Some violations are not eligible for a WL regardless of the permittee meeting the other eligibility requirements (see *Appendix L of the Enforcement Guidance*)

h. No more than one first-time permittee TA inspection will be conducted at any facility as long as the permittee and/or tank owner remain the same for the facility.

4. TA Inspection Process

UST HQ Staff Responsibilities

Verifying Eligibility

Whenever UST HQ staff receive either a new installation or modification application, HQ staff will determine if the permittee meets the eligibility criteria set forth in Section 3, paragraphs a, b and c. If the applicant meets the eligibility criteria, HQ staff will include, with the issued operating certificate, *Request for an UST Technical Assistance (TA) Inspection* form. The form is designed to outline the objectives of a TA inspection and the consequences of a TA inspection.

UST Inspectors Responsibilities

Verifying Eligibility and Scheduling the Inspection

Within 30 days of receiving a request for a TA inspection, the appropriate UST inspector will schedule the inspection for a time when the permittee and Class A or B operators can be available to participate in the inspection. In no case will an inspection be scheduled more than 6 months after the tank owner acquired ownership or the permittee became the permittee or more than 60 days after the receipt of a TA inspection request. If the UST inspector is unable to timely schedule the inspection, the UST inspector will send a letter to the permittee informing them they are no longer eligible for a TA inspection.

Prior to conducting the inspection, the UST inspector must receive verification that the Class A and B operators have completed the required training. If the training has not been completed, the UST inspector will send a letter to the permittee informing them they are not eligible for a TA inspection.

UST inspector must schedule a TA inspection for a date and time when the permittee, tank owner or Class A or B operators are available to participate in the inspection.

TA inspections will be confirmed by letter. The confirmation letter will also review the ground rules associated with a TA inspection. The letter will inform the permittee what records must be available to review. DEQ will also inform the permittee what access to UST system components will be expected. The UST inspector will provide an estimate of the time that it will take to complete a TA inspection.

Conducting the Inspection

TA inspections will take place at the UST facility. The permittee or the tank owner must be present for the TA inspection. It is DEQ's preference that the facility's Class A and/or B

operator also be present during the TA inspection. The permittee, tank owner and/or Class A and/or B operator must actively participate in the inspection. Should at anytime during the TA inspection the permittee, tank owner and/or Class A or B operator fail to participate, the UST inspector should conclude the inspection and record the data from the TA inspection into the UST compliance database as an incomplete inspection.

TA inspections will cover all the regulatory areas that a normal SOC compliance inspection would cover. UST inspectors must follow all the same procedures for conducting and recording a TA inspection as they would for an SOC inspection.

Following the inspection, the UST inspector will conduct a post-inspection briefing at the facility. The briefing will cover the importance of operating and maintaining the facility's pollution prevention and release detection equipment; will review future equipment calibration, testing and monitoring schedules; and will emphasize the importance of reporting suspected releases and initiating timely suspected release investigations and cleanups.

The UST inspector will also inform the permittee of any violations using the *WL* form. The UST inspector will set a corrective action schedule for each violation in accordance with the UST Field Citation Guidance document. The UST inspector will remind the permittee that if the violations cannot be corrected in the time provided, it is the permittee's responsibility to contact the UST inspector to discuss a revised corrective action schedule. The UST inspector will also inform the permittee that if the violations are not corrected, the facility will be subject to an enforcement action.

Copies of the *WL* must be distributed to permittee, Office of Compliance and Enforcement and UST Headquarters.

For facilities where no UST violations are noted during a TA inspection, UST inspectors will send a letter confirming that a TA inspection was completed and no violations were observed. (Use a letter similar to that used for facilities that pass an SOC inspection).

Follow-up for Compliance

Any TA inspection will be recorded in the UST compliance database as a TA inspection.

Inspectors will help permittees, as necessary, to correct violations. However, inspectors should also refer permittees to licensed service providers for assistance where appropriate.

UST inspectors must follow-up on any corrective action schedules established in a *WL*. Inspectors may grant one extension of the compliance due date (corrective action period) for good cause (e.g., equipment on order, but will not arrive within time period). A request for a second extension should generally be denied, but if appropriate, the extension must be approved by the regional manager. Inspectors will record any compliance date extensions in the UST Inspection database.

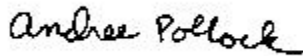
If the permittee fails to conduct the corrective action within the established schedule, the UST inspector must send a PEN informing the permittee that the file is now being referred to OCE for formal enforcement and complete a enforcement referral.

If corrective action is timely taken, the UST inspector will send a letter to the permittee noting that compliance has been achieved.

DEQ is committed to inspecting all active UST facilities every three years. If a first-time permittee requests a TA inspection, DEQ will not schedule an SOC compliance inspection until the TA inspection process is completed. At any other time, DEQ may schedule an SOC inspection.

5. Other Violations

Should UST inspectors observe and document other violations outside the scope of Appendix L, those violations must be addressed as separate actions pursuant to applicable enforcement guidance.

A handwritten signature in black ink that reads "Andree Pollock". The signature is written in a cursive, flowing style.

Andree Pollock, Manager
Underground Storage Tank Program
April 15, 2011