Significant Operational Compliance Determinations
For Updated UST Performance Measures
September 2003

EPA's Office of Underground Storage Tanks (OUST), in cooperation with the Association of State and Territorial Solid Waste Management Officials, is revising its approach for measuring significant aspects of operational compliance. The revised approach will be used to evaluate the underground storage tank (UST) program's success in promoting environmentally safe operation of underground storage tanks. This document discusses the background of the significant operation compliance effort; reporting requirements; criteria for determining significant operational compliance; matrices; and related matters. Attached to this document are two matrices and an addendum to each matrix.

Background

While the frequency and severity of releases have been greatly reduced, EPA and its state partners have observed that releases from USTs are still occurring and improvement in preventing releases and detecting them quickly when they do occur is still needed. This suggests that some underground tank systems are faulty and many are not properly operated and maintained. In an effort to get more accurate and nationally consistent data regarding compliance with these UST regulations that are designed to prevent and quickly detect releases, EPA and its state partners have been working to develop a uniform method for measuring certain aspects of operational compliance that are significant to the implementation of the regulatory program.

On June 26 and 27, 2002, representatives from 10 states (one from each region), five EPA regions, and EPA headquarters met to consider and revise the approach EPA will use to measure significant aspects of underground storage tanks' operational compliance. Over the ensuing year, the work group met regularly via conference calls to produce this packet of significant operational compliance (SOC) documents. The work group focused on producing measures which reflect significant operational compliance measurement for release prevention and release detection that would be easy for inspectors and others to understand and implement. The purpose of using a uniform method is to measure specific elements of operational compliance (as described in this document as "significant") and not "comprehensive" operational compliance. At the outset, the work group agreed there was not enough time to consider other issues which also impact consistency of results, such as targeting of inspections, frequency of inspections, inspection protocols, and inspector training. EPA and states will evaluate these issues separately in the future.

States field-tested these documents twice, first in winter 2002 with inspectors from 16 states and then in spring 2003 with inspectors from five states. The field testing of the two significant operational compliance performance measures matrices – release prevention and release detection – plus a new measure combining the two indicate that the revised and new measures should lead to improved consistency among state reporting results.

Reporting Requirements

Currently, states report UST statistics to regions; regions report them semi-annually to EPA OUST. Using those statistics, OUST publishes a report entitled "United States Environmental Protection Agency Office of Underground Storage Tanks, Semi-Annual Activity Report". Two performance measures included in the report relate to measuring significant aspects of operational compliance. They are:

- **Percentage of UST facilities in significant operational compliance with the UST release detection requirements.**

- **Percentage of UST facilities in significant operational compliance with the UST release prevention (spill, overfill, and corrosion protection) requirements.**

Each performance measure is a percentage based on the initial inspections at facilities during the respective reporting period. (File reviews performed by states in-house may supplement data obtained during the facility inspection.) The measures apply either to the release prevention (spill, overfill, and corrosion protection) requirements that were phased in through December 22, 1998 or to the release detection requirements that were phased in through 1993. (Note: These requirements are found in 40 CFR Part 280, Subparts B, C, and D. Requirements found in Subparts E, F, G, and H are not included.) States are to report compliance on a facility basis rather than on an UST system basis. If there is any element of the matrix in non-compliance at a facility, that facility would not be in significant operational compliance for that aspect of the UST program being measured. States are to base compliance assessment on the initial inspection of a facility during the reporting period and the condition of the facility at the time the inspector begins the inspection. These measures are intended to reflect compliance with select release detection and release prevention requirements of the federal UST regulations. States may choose to report based on analogous but more stringent state requirements. These measures are based on determinations made during the actual reporting period; they are not cumulative.

Below is the new combined performance measure. The above information applies to it as well.

- **Percentage of UST facilities in significant operational compliance with release detection and release prevention (spill, overfill, and corrosion protection) requirements.**

Please note that, except for the addition of the new combined measure, the reporting measures remain as stated in the most recent guidance of December 18, 2000 States will report a percentage of significant operational compliance with the release prevention requirements and a percentage of significant operational compliance with the release detection requirements. However, EPA encourages states to conduct full inspections, keep track of compliance with all individual violations, and take appropriate follow up enforcement action. While states do not currently need to report this information to EPA, it is useful for states to have the information so they can determine the issues and problems the regulated public encounters and identify issues to focus on during outreach efforts. EPA will explore with states in the future ways to make this data accessible to others.

Criteria for Determining Significant Operational Compliance

At the June 2002 meeting, EPA and its state partners developed criteria that were applied while evaluating the various regulatory requirements. EPA and states recognized that the goal of having accurate and consistent data would be enhanced by having unambiguous definitions. The group, therefore, emphasized that the criteria selected should be expressed with clarity in the matrices so that each element can be measured easily and results interpreted consistently. Those criteria included:

Proper equipment – essential to preventing and detecting releases.

Functions properly – equipment not operated and maintained properly will not prevent and detect releases.

Imminent threat of release – emphasis should be placed on those regulatory requirements that contribute substantially to detecting and preventing releases.

Significant Operational Compliance (SOC)

The attached matrices contain the *most significant* aspects of operational compliance; EPA and states have agreed to measure requirements associated with the UST spill, overfill, and corrosion protection regulations and release detection requirements. The fact that other aspects of the UST program (i.e., other statutory and regulatory requirements) are not listed in the matrices is not intended, nor should it be interpreted, to mean that those other aspects of the UST program are not important. The regulatory requirements not listed on the SOC matrices are still enforceable regulatory requirements; owners and operators of USTs must comply with **all** UST regulations. This exercise to develop an efficient means of gathering consistent data for the purpose of evaluating national compliance rates requires selection of regulatory requirements that are the most significant for measurement purposes.

Determination and Reporting

An inspector conducting the SOC measurements portion of an inspection may determine at the conclusion of the inspection whether the facility has met every compliance measure of the SOC matrices. Proof of compliance may be received after the inspection, but the proof must demonstrate the facility was actually in compliance at the time of the initial inspection. For example, the facility is not able to provide records to verify overfill prevention was installed at the time of the initial inspection; however, records are submitted following the inspection that verify overfill protection was in place at the time of the inspection. The facility would be considered in compliance and would be reported as such for SOC purposes. On the other hand, if records indicated the overfill protection was installed subsequent to the date of the inspection, the facility would be found to be not in significant operational compliance at the time of the inspection and would be reported as such in the next Semi-Annual Activity Report. In the event a violation is repaired while the inspector is conducting an initial inspection, the inspector would find the facility to not be in significant operational compliance because it was in violation when the inspector began the inspection. For example, if at the time of the initial inspection, an inspector discovered some release detection equipment to be non-operational, yet the equipment is repaired or replaced during the inspection, the facility is not in significant operational compliance for the purposes of SOC reporting.

A facility would be in significant operational compliance with UST release prevention requirements only if it is in compliance with each compliance measure of the release prevention matrix. The same is true with regard to the release detection matrix. A facility that does not comply with a significant operational compliance measure on one matrix, but is in full compliance on the other matrix will only be counted as being in significant operational compliance with the matrix in which that facility has met every compliance measure of the significant operational compliance measures matrix. For the "combined performance measure," if the facility does not meet every element on both the release detection and release prevention matrices, the facility would not be counted as being in compliance.

Matrices

Capturing the most significant aspects of compliance was a formidable task. Two teams comprised of work group members worked diligently to capture those "significant" elements believed to provide the best measurement for when an UST facility would be considered in operational compliance with release prevention and release detection requirements.

In the addendum to each matrix are helpful suggestions to further guide and clarify each "Regulatory Subject Area" component for the inspector. In addition, federal UST regulatory citations are provided as focal points. Please note that a SOC measure that is described in the matrices may not, in every instance, be as comprehensive as the

associated regulatory citation that appears next to it. As stated previously, this is because the purpose of the matrices is to measure specific elements of operational compliance (as described in this document as "significant") and not "comprehensive" operational compliance. Inspector compliance assessment associated with the attached matrices is assumed to be by the traditional and routine practices and protocol of the implementing agency. However, when possible, at the discretion of the state agency, EPA encourages inspectors to check functionality through mechanical operation. An attempt has been made to reduce inspector discretion to a minimum through the use of uniform matrices. However, site management and conditions will impact the inspector's judgment in determining how compliance is measured.

Related Matters

Record Keeping Violations

With a few exceptions, the matrices do not include record keeping elements for SOC measurement. However, this is not intended to indicate any change in how inspectors conduct inspections. While the absence of records may be a regulatory violation or may indicate noncompliance with a regulatory requirement that state inspectors may pursue through an enforcement action, the workgroup determined the matrices should not focus on record keeping requirements.

Operational Issues Versus One Time Issues

The matrices include some elements that pertain to compliance actions that occur only once or very infrequently. In applying the SOC matrices, states and regions doing direct implementation are encouraged to develop methods to promote inspecting for compliance on such matters only once, at the time of initial inspection. If compliance has been achieved, future inspections for measurement purposes should not inquire into such matters. For example, failure to ensure that the tank is structurally sound prior to adding cathodic protection is a significant compliance violation. This is a one-time compliance measure. However, in the event that a facility added cathodic protection without assessing the tank for structural integrity, it will be a recurring compliance deficiency, even if the facility subsequently had the tank tested for structural integrity and the tank appropriately received cathodic protection. In such a case, the facility will never be in SOC if the implementing agency does not recognize a means for the facility to after-the-fact meet the objective of the rule.

Impact On Inspections

EPA recommends that all state and federal inspectors fill out a checklist that at a minimum includes all the compliance measures listed on the SOC matrices. It would be helpful if inspectors retained explanatory language accompanying the matrices as well – to help guide inspectors in the field. States are encouraged to confirm compliance with these SOC measures in conjunction with that state's full regulatory inspection protocol.

It is important that non-compliance with elements of the SOC matrices is appropriately pursued through comprehensive inspection and any necessary enforcement action. Pursuit of enforcement actions following discovery of UST regulatory violations is a matter of enforcement discretion to be exercised by the state or federal government. The implementing agency will determine the appropriate response.

SIR: Time Period For Detecting Release

While there is general consensus release detection requirements are intended to achieve the detection of a release within 30 days, EPA has approved some state programs that allow additional detection time to account for statistical analysis performed by a statistical inventory reconciliation (SIR) vendor. For this reason, the release detection matrix includes an element that accounts for the receipt of SIR results within a "time frame established by the implementing agency" to reflect differing state deadlines. One option that would achieve greater specificity would be to define the outside limits of what is reasonable in a manner consistent with what EPA has approved in the past or what has been adopted by any state. While the work group generally was not enthusiastic about allowing SIR to be the sole method of release detection that does not detect potential releases on a monthly basis, the work group elected not to challenge SIR's consistency with the regulatory regime but rather to develop a more consistent method of evaluating compliance.