DEMONSTRATION OF ADEQUATE ENFORCEMENT PROCEDURES

A. PROCEDURES FOR COMPLIANCE MONITORING

1. IDENTIFYING THE REGULATED COMMUNITY

The Department requires permitting of all regulated USTs and that all USTs actively dispensing regulated substances obtain an annual operating certificate by July 1 of each year. Any person intending to install and operate a new regulated tank in Oregon must submit a *General Permit Registration Form and 30-Day Notice* *to Install and Operate Regulated Underground Storage Tanks*. The general permit registration form captures permittee, tank owner and property owner contact information as well as all the other required tank and piping information on EPA’s *Notification for USTs* form (Form 7530-1).

After the USTs are installed, the tank owner and/or service provider must submit an *UST Installation Checklist* that certifies the UST system complies with all applicable technical requirements and that the facility is in compliance with financial responsibility. Upon evaluation of the information on the *UST Installation Checklist* and other relevant documentation, the Department issues an annual operating certificate for the facility. In order to renew the annual operating certificate, the permittee must pay the annual $135 per tank compliance fee, must have a current financial responsibility mechanism on file with the Department and must have paid any civil penalty assessments subject to a final default order.

The Department prohibits petroleum distributors from delivering fuel to USTs that do not have an annual operating certificate posted at the facility. For audit purposes, petroleum distributors are required to keep a list of all facilities to which they deliver fuel. The Department posts on its UST Program website lists of facilities with operating certificates (updated quarterly) and facilities without operating certificates (updated whenever there is a change to the list) for use by distributors. The Department sends an e-mail notice to distributers whenever an operating certificate is suspended or revoked. If a distributor comes across a facility without an annual operating certificate, the Department expects the distributor will advise the tank owner that they are unable to deliver fuel and to contact the Department to come into compliance with the UST rules.

Occasionally existing unregistered regulated tanks are discovered during property transactions. The tanks are currently not used and the prospective purchaser either requires the USTs to be removed before the purchase is final and/or intends to decommission the tanks after purchase. In this case the Department requires the current tank owner to submit a *General Permit Registration Form to Decommission Existing Unregistered Tanks*. This form captures current ownership information and as much of the EPA tank information asked for on EPA Form 7530-1 as is known by the current tank owner. These tanks are registered and entered into the UST database but are not permitted, nor is an operating certificate issued.

To capture changes in permittees or ownership, within 60 days of any such changes the Department requires that the new permittee, tank owner and/or property owner submit a *General Permit Registration Form* *to Modify Tank Owner, Permittee or Property Owner Information Only* form. The Department also learns of these ownership changes during the annual billing of the $135 per tank per year compliance fee. Some invoices are returned because the owner of record in the Department’s database is no longer the current owner of the facility. If a modified permit application was not submitted, the Department contacts the new owner and requests submittal of an application along with a copy of the financial responsibility mechanism.

The Department also monitors changes of ownership posted weekly on the Oregon Liquor Control Commission’s (OLCC) Website. Whenever ownership of convenience stores and retail markets selling liquor changes, they must apply for a new OLCC license to continue selling beer, wine and other hard liquor. The Department reviews the OLCC weekly posting for possible ownership changes for convenience stores and retail markets that also sell motor fuel from USTs regulated by the Department.

2. RECORD REVIEWS

Any person intending to install a new regulated tank in Oregon must submit a *General Permit Registration Form and 30-Day Notice* t*o Install and Operate Regulated Underground Storage Tanks*. The general permit registration form captures permittee, tank owner and property owner contact information as well as all the other required information on EPA’s *Notification for USTs* form (Form 7530-1). The 30-day notice of intent to install and a subsequently required 3-day notice of intent to start work allow the Department’s UST inspectors to schedule field inspections of new installations. The general permit registration data allows the Department to create an initial facility record to track all regulated USTs and facilities over their full life cycle through permanent decommissioning.

After the USTs are installed, the tank owner and/or service provider must submit an *UST Installation Checklist* that certifies the UST system complies with all applicable technical requirements and that the facility is in compliance with financial responsibility. Required attachments to the checklist include a list of major system components, third-party evaluations, manufacturer’s checklists, photographs, as-built drawings and if available, fire authority signoff or pressure test records. Upon evaluation of the information on the *UST Installation Checklist,* including attachments, and information collected during an installation inspection, the Department issues an annual operating certificate for the facility.

During the life of an UST system, equipment modifications may occur. Before commencing work on an UST modification, the Department requires submission of the *UST System Modification 30-Day Notice* form. The Department also requires a 3-day notice of intent to start work. After completion of the modifications, the Department requires the submission of the *Underground Storage Tank System Modification Report and Checklist*, including equipment receipts. Information on the modification report and checklist is used to update equipment information in the UST database.

Occasionally a tank owner may choose to temporarily stop using an UST and/or facility while selling a facility, deciding to affect a change in service or scheduling a permanent decommissioning. In this case, the Department requires the tank owner to submit a *Notification of Temporary Closure of Underground Storage Tanks*. The Department issues a one year Temporary Closure Certificate (TCC) and places the facility on the “Do Not Deliver Fuel” list. Before the TCC expires the tank owner needs to make a written request to obtain an operating certificate, submit a 30-day notice to affect a change-in-service or permanent decommissioning or submit a *Request for Extension – Temporary Closure of Underground Storage Tanks*.

On removal of USTs from regulated status by change-in-service or permanent decommissioning, the Department requires the submission of a *30-Day Notice of Intent to Decommission USTs or Complete a Change-In-Service* form. Following completion of the work to affect a change-in-service or permanent decommissioning the Department requires the submission of an *Underground Storage Tank Decommissioning Checklist and Site Assessment Report*. Receipt of the decommissioning checklist and site assessment report allows the Department to terminate active permits in the UST database.

Whenever a suspected or confirmed spill or release of a regulated substance from an underground storage tank occurs, the Department requires notification within 24 hours. To facilitate the reporting of confirmed petroleum spills or releases, the Department requires the submission of an *UST Petroleum Release Form*. Information from the release reporting forms is the basis for creating a contaminated site record in the Leaking Underground Storage Tank (LUST) database. To facilitate the timely reporting of confirmed petroleum spills and releases by service providers, the Department has established an On-Line Petroleum Release Reporting protocol (<http://www.deq.state.or.us/lq/tanks/report.htm>). Upon receiving a password to utilize the on-line reporting system from the Department, service providers submit the release reports electronically. When the on-line submittal is complete, the Department accepts the submission and creates a contaminated site record in the LUST database. An e-mail confirmation of receipt of the release report is automatically sent back to the service provider along with the contaminated site identification number. Receipt of an *UST Petroleum Release Report* is the basis for establishing a site in the LUST database.

40 C.F.R 281.40 requires this system comply with the Cross-Media Electronic Reporting Rule (CROMERR) in 40 CFR Part 3 for State Program Approval to occur. To address this issue, DEQ will continue to use the on-line reporting system for regulated releases until EPA grants State Program Approval. At such time, DEQ will discontinue its use unless the system has come into compliance with CROMERR.

Within 20 days of submitting a confirmed release report, the responsible party, or a service provider acting on their behalf, must submit an *Initial (Twenty Day) Report Form for UST Cleanup Projects*. The intent of the report is to provide enough information for the Department to prioritize the environmental significance of the site and to assign a Department LUST Project manager to high environmental priority sites (typically groundwater-contaminated sites, occasionally contaminated sites with vapor intrusion into buildings).

A responsible party for a LUST cleanup site may also choose to submit a LUST *Cost Recovery Agreement* [CR guidelines are in ORS 465.25 and 465.333 which comply with EPA requirements, no EPA approval exists]. By agreeing to pay the Department’s project management oversight costs, the Department is able to assign a LUST project manager in a timely manner. Upon completion of the required sampling and cleanup, if any, and submission of a final cleanup report, the Department can provide a No Further Action (NFA) letter.

LUST Project Managers will review reports detailing UST Cleanup work including initial site investigations, site assessments, groundwater compliance monitoring reports, corrective action plans and risk-based corrective action determinations. To assist Project Managers with report reviews and to assist service providers, geologists, hydrogeologists and other environmental consultants conducting the work, the Department has issued several technical guidance documents including an *UST Cleanup Manual* (2008) and *Risk-Based Decision Making for the Remediation of Petroleum-Contaminated Sites* (2003). Information gleaned from UST cleanup reports is used to update the LUST database.

3. COMPLIANCE INSPECTIONS/COMPLAINT INVESTIGATIONS/SUSPECTED RELEASE REPORTS/ UST CLEANUP INSPECTIONS

Consistent with the UST Compliance Act of 2005, Oregon inspects all facilities with tanks that have not been permanently closed or undergone a change-in-service at least once every three years. These inspections are scheduled in advance and confirmed by a letter that includes a copy of an inspection guidance document entitled *How to Prepare for an UST Compliance Inspection*. To promote statewide consistency, inspection results are recorded on an *UST Inspector Compliance Inspection Checklist*. Results of inspections are entered into the UST database, including updating any tank and piping information.

In addition to compliance inspections, UST inspectors inspect all new installations at least once, and time permitting, conduct change-in-service and permanent decommissioning inspections. To facilitate the scheduling these inspections, the Department requires 30-day written notices of intent to install, change-in-service or decommission USTs and 3-day verbal notices of the intended start of work dates. Results of UST installation, change-in-service and decommissioning inspections are entered into the UST database.

UST inspectors follow-up on any UST complaints and suspected release reports received for facilities and/or sites located in their geographic territory. Based on findings, UST inspectors issue an investigative report, identify required corrective actions and establish deadlines for any required work or compliance action.

LUST Project Managers may schedule one or more site inspections during initial site investigations, during site cleanups or during long-term compliance monitoring. Results of LUST site inspections are entered into the LUST database.

4. PUBLIC REPORTING

The Department uses three main tools for receiving information, concerns and/or complaints about the UST program in general, and specific UST and LUST facilities. These tools include letters, phone calls and the UST program website. To facilitate phone calls, the Department manages a toll-free UST Helpline (1-800-742-7878) for any long distance calls originating in Oregon. From the Portland area they can call the UST Permitting and Licensing Coordinator at 503-229-6652. To facilitate Internet communication, the Department established a tanks.info@deq.state.or.us e-mail address.

These communications resources are managed centrally in the UST Section. Inquiries of a general program nature are responded to by headquarters staff within 24 hours of receipt. Inquiries that are facility or site specific are forwarded to the regional UST inspectors for follow-up within 24 hours of the information reaching the inspectors.

5. DATA MAINTENANCE

The Department has developed three databases to manage information on the UST program – the UST database, the LUST database and the Service Provider Licensing database. The UST and LUST databases are linked by a computer generated UST Facility ID number.

In addition to these data bases, the Department stores formal enforcement information (i.e., all enforcement other than field citations – see 5B on page 6) for the UST and LUST programs in the Compliance and Enforcement database maintained by the Department’s Office of Compliance and Enforcement. Field citation violations are stored in an Excel database maintained by the Tanks Program and field citation penalty payments are stored in an Access database maintained by the Department’s Business Office.

All databases are stored on a central server with daily tape backup. Access to the databases is by desktop computers using a client /server software architecture.

The UST database stores permittee, tank owner and property owner contact information and tank and piping information from the *General Permit Registration Form to Install and Operate Regulated Underground Storage Tank* form, including information on financial responsibility. The database is used to issue annual operating certificates, generate annual compliance fee invoices and issue standard program reports, including EPA’s semi-annual activities report. This data is entered centrally by the UST Permitting and Licensing Coordinator. The UST database also stores information gathered during installation, modification, decommissioning and compliance inspections. This information is entered directly by UST Inspectors.

The LUST database stores responsible party contact information and contaminated site information from the *UST Petroleum Release Form*. The data is entered by regional support services staff. The LUST database also stores information on LUST inspections and LUST report reviews including initial site investigations, site assessments, groundwater monitoring reports, corrective action plans, etc. The database also contains information on final closure determinations including No Further Action Letters and any site or land use restrictions. The information is entered directly by LUST Project Managers as they conduct project oversight. Summary information from this database is available on-line using the LUST Lookup Database tool. The database is also used to provide LUST data for EPA reporting purposes.

The Service Provider Licensing database contains information on the companies and supervisors licensed to do installation, decommissioning, tank tightness testing, cathodic protection testing and soil matrix cleanup work at UST facilities and petroleum-contaminated cleanup sites. Information to license companies and supervisors is collected from the following four license application forms:

* *UST Service Provider License Application*
* *UST Supervisor License Application*
* *Soil Matrix Cleanup Service Provider License Application*
* *Soil Matrix Cleanup Supervisor License Application*

The licensing of UST service providers and supervisors is handled centrally by the UST Permitting and Licensing Coordinator as is all the data entry associated with the license application forms. The database is used to issue 2-year licenses to qualifying applicants.

B. PROCEDURES FOR ENFORCEMENT RESPONSE

The Department’s UST Program has a full range of administrative and criminal authorities to handle UST compliance, cleanup and service provider violations. For both administrative and criminal violations the maximum penalty is $10,000 per day of violation. Each day the violation continues may be cited as a separate offense. This maximum penalty applies on a per tank basis. For persons who receive UST operating certificates or service provider licenses, the Department also has certificate and license revocation authority. Failure to pay compliance fees or enforcement penalties may result in the debt being sent to the Oregon Department of Revenue or a private collection agency. The Department may also apply a lien against any personal or real property owned in Oregon.

On the administrative side, violations are handled with a warning letter, field citation, civil penalty assessment or revocation of an operating certificate or service provider/supervisor license. A warning letter or civil penalty assessment can be applied to any UST compliance, cleanup or service provider violation. A field citation can only be assessed against permittees and tank owners for UST compliance violations. The Oregon Attorney General’s Office and/or County District Attorneys would handle criminal actions with technical assistance from the Department.

The internal guidance publication entitled *Enforcement Guidance for Field Staff* (March 31, 2006) outlines the Department’s enforcement strategy for all UST and LUST staff. This document covers such topics as right of entry authority, evidence collection and documentation, chain of custody procedures, administrative versus criminal actions, calculation of a civil penalty assessment, negotiated settlements, and administrative hearings.

The UST field citation program guidance is outlined in two internal guidance documents entitled:

* *UST Field Citations – Guidance for Expedited Enforcement of UST Compliance Violations* – March 2008 (general guidance and internal coordination procedures).
* *UST Facility Inspection and Compliance Enforcement* – March 2008 (specific UST compliance violation penalty tables).

1. INSPECTION DOCUMENTATION

The *Enforcement Guidance for Field Staff* emphasizes the importance of planning ahead during inspections and collecting compliance information from the perspective that potential rule violations may be discovered. Prior to conducting an inspection it is important to become familiar with the kinds of information (evidence) that will be needed to prove all the elements of a violation in the event the violation is pursued through administrative or criminal proceedings. The guidance also discusses the strengths of various types of evidence such as samples, direct observation or eyewitness testimony, photos, inspection reports, diagrams and monitoring reports.

During the conduct of UST compliance and cleanup inspections, complaint investigations or suspected release investigations, UST Inspectors may collect regulated substance samples and contaminated soil, groundwater or air samples. To ensure an appropriate sample has been collected and proper chain of custody procedures have been followed, two internal guidance documents have been issued for use by UST Inspectors and LUST Project Managers. These documents are *the Department Laboratory Field Sampling Reference Guide* (1998) and UST *Quality Assurance Project Plan* (2002). The current versions of the *Department Laboratory Field Sampling Reference Guide* andUST *Quality Assurance Project Plan* have been submitted to EPA for review and approval.

2. WARNING LETTERS

A warning letter (WL) notifies a person of alleged violations for which issuance of a field citation or assessment of civil penalty is not anticipated. A WL describes the alleged violations, discusses needed corrective actions and may contain a corrective action schedule, if appropriate. A person receiving a WL may provide information to the Department to clarify the facts surrounding the alleged violations. A WL is not a formal enforcement action and does not afford a person the right to a contested case hearing. UST compliance, cleanup and service provider violations suitable for handling with a WL are described in Appendices L - Underground Storage Tank (UST) violation Guidance (OAR 340-012-0067) and M - Leaking Underground Storage Tank Cleanup (LUST) Violations guidance (OAR 340-012-0074) in *Enforcement Guidance for Field Staff .* Warning letters are issued by UST Inspectors and LUST Project Managers with review by UST Regional Managers, if appropriate. Failure to comply with a corrective action schedule in a warning letter may result in a formal enforcement action being initiated.

3. EXPEDITED ENFORCEMENT (FIELD CITATION)

UST Inspectors issue field citations for most alleged UST compliance violations. Class I violations may be assessed a field citation penalty of $150 to $500. Class II violations may be assessed a field citation penalty of $50 to $150. Repeated Class III violations may be assessed a field citation penalty of $50. The maximum field citation penalty associated with a single compliance inspection is $1,500. If the number and severity of violations documented during a single inspection would cause the field citation penalty to exceed $1,500, the UST Inspector must initiate a formal enforcement action rather than issuing a field citation.

Assuming that all the information necessary to complete a compliance inspection is available at the time of the inspection, the UST Inspector lists any alleged violations on a pre-numbered *Field Citation for UST Violations* form. The penalty amount for each violation is found in the tables in the *UST Facility Inspection and Compliance Enforcement* guidance document. A copy of the field citation is left with the facility representative at the end of the inspection. If information is not available to make a final compliance determination in the field, the information is requested by a specific date and then, if applicable, the field citation is mailed to the permittee or tank owner after the requested information is received and reviewed.

The permittee or tank owner has 30 days to respond to a field citation by taking one of two actions:

* By selecting Option 1 on the field citation, the permittee or tank owner acknowledges that the violations have occurred, agrees to pay the penalty amount, gives up all rights to any administrative or judicial reviews and agrees to make the corrections listed. When the violations have been corrected, the permittee or tank owner returns a copy of the violation page to the UST Inspector for compliance verification. At this point the violations are considered corrected.
* By selecting Option 2 on the field citation, the permittee and tank owner denies the alleged violations. In this case, the Department will take formal enforcement action, including the assessment of a civil penalty.

If the owner or permittee does not respond to the field citation by selecting either Option 1 or 2, the Department follows up with the permittee via telephone. If the permittee still does not respond, the Department rescinds the field citation and the UST Inspector will submit a formal enforcement referral to the Office of Compliance and Enforcement (OCE) for assessment of a civil penalty.

4. FORMAL ADMINISTRATIVE ENFORCEMENT.

Under Oregon Revised Statute (ORS) 466.706 to 466.835, 466.994 and 466.468.090 to 468.140 alleged UST compliance violations (OAR 340-012-0067) outside the scope of the field citation program, and for any alleged LUST (340-012-0074) or service provider violations (OAR 340-012-0067) listed as an “A” response in Appendices L and M of the *Enforcement Guidance for Field Staff,* the UST Inspector or LUST Project Manager sends a Pre-Enforcement Notice (PEN) to the permittee and tank owner. A PEN template is found in Appendix P of the *Enforcement Guidance for Field Staff* guidance document*.* Once the PEN is sent, a referral requesting a formal enforcement action is sent to OCE. An enforcement referral template is found in Appendix R of *Enforcement Guidance for Field Staff.*

**NOTE:** If the evidence gathered suggests that the violations were deliberate, deceitful or dishonest, the UST inspector or LUST Project Manager should call OCE to discuss a possible referral for criminal investigation. Although the Department could legally proceed with an administrative action and a criminal action concurrently, as a matter of policy the Department will pursue only one or the other in most cases. That being the policy, an early decision on a criminal proceeding should be made if the threshold criteria of deliberate, deceitful or dishonest violations are met. Criminal proceedings are discussed more fully below.

Upon receipt of an enforcement referral, OCE prepares the formal enforcement documents including a cover letter; a notice of assessment of a civil penalty; a compliance order, if appropriate; and the exhibits that show the calculation of the civil penalty amount. The civil penalty amount is a combination of a base penalty as set forth in OAR 340-012-0140 and the addition or subtraction of mitigating and aggravating factors, respectively, as set forth in OAR 340-012-0145.

A person assessed a civil penalty has 20 days to request a hearing, request an informal discussion and file an answer to the allegations. If an appeal is not filed, any order issued becomes final by operation of law. If the civil penalty assessment is not appealed, the Environmental Quality Commission is asked to issue a default order for collection of the penalty.

If a request for hearing is received, the first would be a meeting at which DEQ and the parties review the facts, provide new information, if any, discuss the applicable laws and rules and potentially narrow the issues to take to a formal hearing. If a settlement of the issues can be reached, the settlement offer is incorporated into a Mutual Agreement and Order to be signed by both parties. Mutual Agreement and Orders are more fully discussed in Section IX of the *Enforcement Guidance for Field Staff*. If a settlement agreement is not reached, the Department will schedule a formal hearing in front of an Administrative Law Judge (ALJ).

A contested case hearing is similar to a court trial, but less formal. Both parties may be represented by counsel and may call witnesses. The Department presents its case and then the respondent has an opportunity to present its case. Both sides are given the opportunity to cross-examine witnesses. The burden of proof in a contested case is preponderance of evidence. OAR 340-011-0545.The mental state is a factor in the penalty calculation and may affect the size of the penalty, but there is no threshold mental state required to enforce.Negligence, constructive knowledge, actual knowledge, recklessness or a flagrant act are aggravating factors that will support imposition of a higher penalty. But DEQ may proceed absent any information on which to base such a finding.

Following the hearing, the ALJ will issue a proposed final order. The respondent has 30 days to appeal the proposed final order. If there is no appeal, the proposed final order becomes a final order of the Environmental Quality Commission (EQC).

An appeal of a proposed final order is heard by the EQC. The respondent presents their case and answers questions from the EQC. Then the Department presents its case and answers questions. No new information can be presented by either party at this hearing. The EQC may adopt the ALJ’s findings, instruct a new hearing order be prepared that reflects the EQC’s decision or remand the case to the ALJ for further consideration.

Final orders may be appealed by the respondent to the Oregon Court of Appeals. The Oregon Attorney General’s Office represents the Department in these cases. The Department may not appeal an EQC final order since the Commission is acting on behalf of DEQ. Penalties are not collectable until the Department receives a final order from the EQC by default, by prevailing at hearing or by agreement with the respondent.

DEQ’s enforcement and civil penalty rules (OAR Chapter 340, Division 12) focus on securing a penalty that is appropriate to the violation. As noted above, the civil penalty is calculated by first establishing an appropriate base penalty based on the class and magnitude of the particular violation as set forth in OAR 340-012-0140. OAR 340-012-0045. The base penalty is further adjusted based on mitigating and aggravating factors and the economic benefit realized by the violator, as set forth in OAR 340-012-0145 and -0150. The penalty can be increased or, in very limited circumstances (voluntary disclosure), decreased as deemed necessary to ensure that the penalty is appropriate to the violation. OAR 340-012-0160. Pursuant to OAR 340-012-0170, the Department can also compromised or settled a penalty for an amount deemed appropriate taking into account the factors enumerated in that rule.

The Department uses the Oregon Department of Revenue or private collection agencies to collect its debts. The Department may place liens on all personal and real property owned in Oregon for the penalty amount plus interest at rate of 9% per year. The Department may agree to payment plans with a 9% annual interest rate. Lastly, the Department may seek the aid of the Oregon Attorney General’s office to pursue collections through judicial means.

5. OPERATING CERTIFICATE REVOCATION

Effective July 1, 2008, the Department began issuing annual operating certificates to UST facilities with active tanks under OAR 340-150-0110 (ORS 466.783 and 466.785). Conditions for issuance of the annual operating certificate include payment of annual compliance fees, documentation of compliance with financial responsibility and payment of any final civil penalty assessment. If the conditions to issue an operating certificate are not met, a notice of intent to revoke is issued. The permittee has 20 days to file an appeal, request a hearing and submit an answer to the allegations.

If no appeal is filed, the operating certificate is revoked by operation of law. The facility is placed on the Department’s “UST Facilities that cannot Receive Fuel List”. Whenever there is an addition and/or removal to the list, a copy of the list is e-mailed to all petroleum distributors and a copy is posted on the Department’s website (<http://www.deq.state.or.us/lq/tanks/ust/index.htm>). It is a violation of the UST rules for a distributor to deliver fuel to a facility without a valid operating certificate.

If a request for hearing is filed, a hearing before an ALJ is scheduled. The respondent and the Department present their case and the ALJ issues a final order. The respondent has 30 days to appeal the final order to the EQC. The EQC may affirm the ALJ’s final order, may issue its own final order or may remand the case back to the ALJ for further consideration. The respondent may appeal a final order of the EQC to the Oregon Court of Appeals.

6. SERVICE PROVIDER OR SUPERVISOR LICENSE SUSPENSION OR REVOCATION

The Department may suspend, revoke or refuse to issue a license under OAR 340-160-0035 (ORS 466.746 and 466.750) if the service provider:

* Fraudulently obtains a license;
* Fails to comply with licensing rules or UST and LUST rules;
* Fails to comply with any applicable state or federal standards relating to UST services performed under the license;
* Fails to employ a licensed supervisor to oversee UST or UST Soil Matrix work.

UST and UST Soil Matrix supervisor licenses may also be suspended or revoked for failure to comply with any state or federal rules or standards pertaining to USTs under OAR 340-162-0030 (ORS 466.750).

The licensee has 20 days to file an appeal, request a hearing and submit an answer to the allegations. If no appeal is filed, the license is suspended or revoked by operation of law.

If a request for hearing is filed, a hearing before an ALJ is scheduled. The licensee and the Department present their case and the ALJ issues a final order. The licensee has 30 days to appeal the final order to the EQC. The EQC may affirm the ALJ’s final order, may issue its own final order or may remand the case back to the ALJ for further consideration. The licensee may appeal a final order of the EQC to the Oregon Court of Appeals.

7. CRIMINAL ENFORCEMENT.

Oregon Revised Statutes (ORS) 466.995 (3) and (4) provide that any person who knowingly violates any provision of the UST laws and rules (ORS 466.702 to 466.882) or UST Cleanup laws and rules (ORS 465.200 to 466.545) shall, upon conviction, be subject to a criminal penalty not to exceed $10,000 or imprisonment for not more than one year, or both. Each day of violation shall be deemed a separate offense.

ORS 468.953 establishes the crime of supplying false information to any agency if the person:

* Makes any false material statement, representation or certification knowing it to be false in any document required by ORS 465.200 to 465.545 or ORS 466.702 to 466.882.
* Omits any material or required information, knowing it to be required, from any document required by ORS 465.200 to 465.545 or ORS 466.702 to 466.882.
* Alters, conceals or fails to file or maintain any document required by ORS 465.200 to 465.545 or ORS 466.702 to 466.882.

Supplying false information is a Class C felony.

As discussed in Section VIII of the *Enforcement Guidance for Field Staff*, the Department and prosecutors will only be interested in investigating the most significant and egregious violations as crimes – those that most closely resemble traditional crimes with which juries are most familiar. In the earliest stages of an inspection or investigation the UST Inspector or LUST Project Manager will look for several key characteristics that may warrant the violations be prosecuted as a crime:

* Does the Department have evidence that the violator’s conduct was deceitful, deliberate or dishonest?
* Does the Department have scientific evidence that the violator caused a serious threat to public health or the environment?
* Does the violator have a history of non-compliance?

If these characteristics are evident and documentable, UST Inspectors and LUST Project Managers will consult with OCE staff on the merits of pursuing a criminal investigation. If the decision is made to pursue a criminal investigation, a criminal investigator will be assigned to the case and will serve in the capacity of case coordinator. Prosecution of a criminal case is typically handled by the County District Attorney’s office in the county where the environmental crime occurred.