

Protocols for the Tribal Underground Storage Tank Compliance Pilot

The purpose of this document is to provide regions with additional guidance on implementing the “Pilot to Improve Underground Storage Tank Compliance at Tribal Facilities” (Tribal UST Compliance Pilot or Pilot). The Office of Enforcement and Compliance Assurance (OECA) of the U.S. Environmental Protection Agency (EPA) is piloting a program to improve compliance with requirements of the Resource Conservation and Recovery Act (RCRA) Underground Storage Tank (UST) program, which includes leaking underground storage tanks (LUST), at “tribal facilities.”¹ The Pilot involves good communication with the tribal leadership and tribal environmental departments throughout the compliance monitoring and enforcement process.²

As part of that Pilot, the Assistant Administrator for OECA (OECA AA) has granted advance concurrence for the use of certain expedited enforcement tools to address noncompliance with the UST program at tribal facilities conditioned on the regions following the process outlined in these Protocols for the Tribal UST Compliance Pilot (Pilot Protocols). The advance concurrence also extends to a region pursuing administrative enforcement against a tribal facility that rejects a Field Citation or Expedited Settlement Agreement (ESA). The OECA AA has not provided advance concurrence on the use of UST expedited enforcement tools at a tribal facility in a manner that is inconsistent with these Pilot Protocols. As such, case-by-case concurrence is still required for any penalty action or unilateral order issued in a manner that deviates from these Pilot Protocols.³

Note that these Pilot Protocols do not address every aspect of the existing UST [Field Citation](#),⁴ [Expedited Settlement Agreement](#),⁵ or [Delivery Prohibition](#)⁶ programs. Rather, the Pilot Protocols provide additional process that is required to utilize these tools under the Pilot. Regions should review and follow the applicable guidance documents, except to the extent the Pilot Protocols require additional process (e.g., issuance of a notice about potential violations prior to proffering a Field Citation).⁷

¹ The term “tribal UST facilities” refers to facilities with USTs that meet the definition of “tribal facility” in the *Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy* (January 17, 2001) ([Tribal Enforcement Guidance](#)). That guidance defines the term “Tribal facilities” to mean (1) facilities owned or managed by Tribal Governments, and (2) non-Tribally-owned or managed facilities in which a Tribal Government has a substantial proprietary interest or over which a Tribal Government has control. *Tribal Enforcement Guidance* at 3.

² More information on the Pilot is available at <https://www.epa.gov/enforcement/tribal-underground-storage-tank-compliance-pilot>.

³ In addition, this Pilot does not cover referrals to the U.S. Department of Justice.

⁴ <https://www.epa.gov/sites/production/files/2014-02/documents/d9610.16.pdf> and

<https://www.epa.gov/sites/production/files/2018-10/documents/final-interim-consolidated-ust-penalty-policy.pdf>

⁵ <https://www.epa.gov/sites/production/files/2018-10/documents/final-interim-consolidated-ust-penalty-policy.pdf>

⁶ https://www.epa.gov/sites/production/files/2014-01/documents/ust_delv_proh_guid_6-25-12.pdf

⁷ This document identifies internal Agency policies and procedures for EPA employees in coordinating Agency enforcement activities. This document does not change or substitute for any law, regulation, or any other legally binding requirement and is not legally enforceable. It does not create any judicially enforceable rights or obligations substantive or procedural in any person, and may not be relied upon to create a right or a benefit, substantive or procedural, enforceable at law or in equity, by any person. EPA may decide to follow the procedures and policies provided in this document, or to act at variance with them based on its analysis of the specific facts presented.

I. Overview

A fundamental tenet of the *EPA Indian Policy*,⁸ as expressed in the *Tribal Enforcement Guidance*,⁹ is that EPA will establish and maintain cooperative government-to-government relationships with tribal governments. These Pilot Protocols set forth the framework for consultation and coordination with tribal governments on UST enforcement issues during the Pilot and are consistent with the *Tribal Consultation Policy*.¹⁰ They are intended to help “tribal UST facilities” understand what actions are necessary to achieve compliance, and to ensure that tribal governments are advised about the range of possible formal enforcement actions EPA may take to address any UST violations at tribal facilities.¹¹ EPA is hopeful that these Pilot Protocols will ensure that tribal governments will have the information they need to address violations more quickly, thereby reducing the duration of violations, preventing future violations and, ultimately, reducing the number and severity of UST releases.

Because an UST facility can be a tribal facility even when it is not owned or operated by the tribal government,¹² there may be instances when the Pilot Protocols call for a region to share information with the tribal government even though the tribal government is not a party to the enforcement investigation and any enforcement action. In such cases, EPA’s communications with the tribe regarding enforcement at facilities that are not tribally owned/operated should be consistent with OECA’s guidance, *Restrictions on Communicating with Outside Parties Regarding Enforcement Actions* (Mar. 8, 2006) (*Guidance on Communications with Outside Parties*).¹³ Thus, where a tribe is not a party to the enforcement action, EPA should not disclose privileged or enforcement sensitive information to the tribe.

The following Pilot Protocols address pre-inspection notification and an opportunity to consult, and post-inspection notification and enforcement response options.

II. Pre-Inspection Notice and an Opportunity to Consult Regarding Plans for Civil Inspections at UST Facilities

As provided in the *Tribal Enforcement Guidance*, a region should advise tribal governments¹⁴ in writing before they conduct announced civil inspection at any facility on that tribe’s reservation,¹⁵ regardless of whether the facility is tribally owned/operated or is otherwise a tribal facility. Regions should also copy tribal environmental departments as they are key players in EPA’s efforts to protect human health and

⁸ *EPA Policy for the Administration of Environmental Programs on Indian Reservations* (Nov. 11, 1984) (*1984 Indian Policy*) available at <https://www.epa.gov/sites/production/files/2015-04/documents/indian-policy-84.pdf>

⁹ *Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy* (Jan. 17, 2001) (*Tribal Enforcement Guidance*) available at <https://www.epa.gov/sites/production/files/documents/finaltribalguidance011701.pdf>.

¹⁰ The *Tribal Enforcement Guidance* also implements the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011) (*Consultation Policy*). See Consultation Policy footnote 4 available at

https://www.epa.gov/tribal/forms/consultation-and-coordination-tribes#policy_consultation_coordination.

¹¹ See definition in footnote 1.

¹² The tribe may have control over the facility, or a substantial proprietary or non-proprietary interest in the facility. See *Tribal Enforcement Guidance* at 3.

¹³ <https://www.epa.gov/enforcement/restrictions-communicating-outside-parties-regarding-enforcement-actions>.

¹⁴ Unless specified otherwise in the Protocols or model letters, correspondence to the “tribal government” should be addressed to the tribal leadership, with a cc to the tribal council, the tribal environmental department, and the tribal business enterprise or council.

¹⁵ For the purposes of these Pilot Protocols, the term “reservation” refers to land described under the definition of “Indian country,” at 18 U.S.C. §1151(a).

the environment in Indian country by, among other things, ensuring that facilities understand their compliance obligations, and working with EPA to provide compliance assistance to tribal UST facilities. For the purposes of this Pilot, the region should communicate with the tribal governments, including the environmental departments, as follows regarding inspections at UST facilities.¹⁶

A. Periodic Letter to Tribal Government Regarding UST Inspections and Compliance Generally

First, a region should send periodic letters to the tribal government about general UST inspections to be conducted by the region on the tribe's reservation. While a region should send this letter before beginning UST inspections on the reservation, the regions have flexibility regarding when and how often to issue the letter (*e.g.*, annually, only in those years in which the region inspects UST on the reservation, quarterly, etc.). The letter should inform the tribal government about:

- Upcoming inspections for a discrete time period (*e.g.*, over the next year or quarter);
- General information about the importance of UST compliance, including why EPA inspects UST facilities;
- General UST compliance assistance information; and
- The potential enforcement repercussions if EPA finds noncompliance, including how EPA is piloting a new approach that should result in a faster return to compliance for tribal UST facilities and may result in civil penalties.

In addition, the letter should include a list of either all UST facilities on the reservation, or the subset that the region plans to inspect during the time period identified in the letter. The region should designate on the list: a) UST facilities the region believes are tribally owned/operated, and b) UST facilities the region believes are not tribally owned/operated in which the tribal government may have a substantial interest.¹⁷ The letter should request that the tribal government correct or provide information regarding any such designations within a specific time period. (*See Attachment A for a template letter.*)¹⁸

B. Pre-Inspection Notification

It is current EPA practice to send a letter to an UST facility prior to an announced inspection. As part of this Pilot, regions should provide a copy of that letter to the tribal government (as a cc for example). Thus, in addition to the periodic general letter about UST inspections on the tribe's reservation, a region will be providing more specific advance notice to the tribal government when the region intends to inspect an UST facility on the tribe's reservation. (*See Attachment B1 for an example of a letter to the UST operator after the inspection has been scheduled, a copy of which should be sent to the tribal government. Attachment B2 is an example of a list of documents that should be available during an inspection, which is an optional enclosure to Attachment B1.*)

¹⁶ Note that if a region wants to be able to issue the expedited tools for which advance concurrence is provided in the Pilot following an inspection performed by an EPA-credentialed tribal inspector, the region must ensure that these Protocols are followed, including the pre- and post-inspection communications.

¹⁷ The tribe may have a substantial proprietary or non-proprietary interest in the facility. *See Tribal Enforcement Guidance* at 3.

¹⁸ The letter does not need to include the request to confirm whether the UST facilities are or are not tribal facilities if the region is confident in its evaluation.

III. Post-Inspection Notice About Potential Violations and Enforcement Response Options

A. Post-Inspection Notice About Potential Violations and Letter to the Tribal Government

Pursuant to OECA's [*Interim Policy on Inspection Report Timeliness and Standardization*](#) (June 29, 2018),¹⁹ inspectors should already be providing real-time information to an UST facility about potential deficiencies, discussing and documenting actions by a facility to correct any potential deficiencies or areas of concern, and providing a complete inspection report to the facility within 60 calendar days of the inspection.

In addition, as part of this Pilot, if a region identifies a deficiency at a tribal facility that may be a violation and the region is considering enforcement, the region must provide notice about potential violations to the tribal UST facility and send a copy to the tribal government. Such notice is a mandatory step that must precede any enforcement action as part of this Pilot.

The notice should:

- (1) Detail the deficiencies found, with a citation to the regulatory requirement potentially violated, and summarize compliance assistance resources to assist the facility in addressing identified deficiencies;
- (2) Request that within a specified period of time, the facility operator (or UST owner, if appropriate) submit to EPA documentation of the actions taken to address the noted deficiencies; and
- (3) Advise the owner/operator of the UST facility that they may be subject to an enforcement action, including the assessment of civil penalties, if EPA makes a determination that there are UST violations at the facility.

The *Tribal Enforcement Guidance* provides that when EPA finds potential noncompliance the agency should develop and implement a short, written compliance plan that specifies the nature and timing of compliance assistance to be provided to a tribal facility and establishes EPA's expectations for compliance. (See *Tribal Enforcement Guidance* at 4-5). A notice about potential violations, which provides compliance assistance resources with a request to provide EPA with documentation of compliance as to the deficiencies noted, constitutes a compliance plan for purposes of the *Tribal Enforcement Guidance*. Thus, while the Pilot will standardize this "compliance plan" through the use of a notice about potential violations, the concept of following up on an inspection at a tribal UST facility with information about potential noncompliance and a plan for achieving compliance is not new.

See Attachment C1 for a template for a notice about potential violations, Attachment C2 for a template for a letter forwarding such notice to the tribal government when the tribe is the owner/operator of the tribal UST facility, and Attachment C3 for a template for a letter forwarding such notice to the tribal government when the tribe is not the owner/operator of the tribal UST facility.

Under this Pilot, if the tribal UST facility documents that it addressed all the identified deficiencies in a timely manner following issuance of the notice about potential violations (e.g., within the time period set forth in the notice), then the region may not take any enforcement action to address those violations without seeking concurrence from the OECA AA in advance for that case.

¹⁹ <https://www.epa.gov/sites/production/files/2018-07/documents/inspectionreportpolicy.pdf>

B. UST Field Citations and Expedited Settlement Agreements

EPA's expedited enforcement tools are designed to facilitate a prompt return to compliance while simultaneously reducing the transaction costs for both EPA and respondent associated with more traditional enforcement responses, such as the filing of an administrative penalty action under 40 C.F.R. part 22 or a civil judicial referral to the Department of Justice. A Field Citation or Expedited Settlement Agreement (ESA) (described further below) typically is a brief settlement agreement that the UST facility may accept, at the offered penalty amount, within a specific amount of time.²⁰ The benefits of a Field Citation or ESA to EPA are a quick return to compliance and minimized transaction costs. The facility also benefits from the minimized transaction costs and gets a reduced penalty as well in exchange for quickly returning to compliance and waiving its opportunity for a hearing. Importantly, part of the reason that Field Citations and ESAs are successful expedited tools is that the documents are standardized, and their terms and penalties are non-negotiable.

This section of the Pilot Protocols explains how the regions can issue Field Citations and ESAs to tribal UST facilities with the advance concurrence of the OECA AA, including communicating and notifying the leadership of tribal governments of the opportunity to consult with EPA. In general, these steps ensure that the regions follow the applicable guidance and policies for the expedited tool (e.g., Field Citation), as well as *Tribal Enforcement Guidance* regarding providing an opportunity to consult as part of the communications regarding the enforcement action.

This Pilot does provide an additional flexibility for Field Citations and ESAs. Field Citations or ESAs issued to tribal UST facilities under this Pilot may provide an initial period of up to 60 days for the tribal UST facility to respond. In addition, the tribal UST facility may request a 30-day extension (for a total of 90 days to respond). The region should condition the grant of a 30-day extension on the following: (1) the tribal UST facility files a formal request for the extension no later than 10 days before the expiration of the 60-day period, (2) the tribal UST facility demonstrates that there are factors beyond the control of the facility that necessitate an extension, and (3) the region believes that compliance will be achieved within the period of the extension. Note that EPA is not extending the period for responding to a Notice of Intent to Prohibit Delivery (NIPD) in this Pilot.

1. Field Citations

A Field Citation is an expedited enforcement tool issued pursuant to RCRA section 9006, 42 U.S.C. § 6991e, that resolves UST violations that are easily detected, do not cause significant actual harm, and are easy to correct.²¹ The Field Citation is an opportunity to settle the violations for a non-negotiable reduced penalty in return for a rapid return to compliance and a resource-efficient settlement. A facility receiving a Field Citation may accept or reject the Field Citation.

When a tribal UST facility fails to provide documentation that it has addressed all the deficiencies identified in a notice about potential violations and the region determines that there are violations at the tribal facility, the region may proffer a Field Citation to the tribal facility if the violations are Field

²⁰ More information on UST Field Citations and ESAs can be found at <https://www.epa.gov/ust/compliance-and-enforcement-policy-and-guidance>.

²¹ EPA first developed its UST Field Citation program in the early 1990s.

Citation-eligible.²² If the UST facility is owned or operated by the tribe,²³ the region should send a letter to the tribal government enclosing a copy of the Field Citation and providing notice of an opportunity to consult about the actions that must be taken to come into compliance. (See Attachment D1 for a model letter to the tribal government). Typically, Field Citations are proffered by an EPA inspector when on site for an inspection or issued from an EPA office after the inspection. However, pursuant to these Pilot Protocols, a Field Citation will be issued only from an EPA office after the inspection and following the issuance of a notice about potential violations.

If the tribal government requests consultation, consistent with the general Field Citation Guidance as implemented in this Pilot, the expectation remains that if the UST facility plans to accept the Field Citation, the facility will return to compliance and provide payment of penalty within 60 days of receiving the Field Citation, or any extension granted consistent with the Field Citation Guidance and this Pilot. Regions may not negotiate revisions to the Field Citations or their penalties, as part of this Pilot.

2. Expedited Settlement Agreements

Issued pursuant to RCRA Section 9006, 42 U.S.C. § 6991e, and 40 CFR Part 22, an UST ESA is an expedited enforcement tool that can be used for certain situations where a Field Citation is not available (e.g., repeat violators).²⁴ ESAs can also be used to resolve certain LUST violations.²⁵ Although ESA offers contain higher penalties than Field Citations, such non-negotiable penalties still are typically lower than those imposed through more traditional administrative enforcement actions or civil judicial cases. Like Field Citations, ESAs are an optional enforcement settlement mechanism that an UST facility may accept or reject.

When a tribal UST facility fails to provide documentation that it has addressed all the deficiencies identified in a notice about potential violations, and the region determines that there are violations at the tribal facility, the region may proffer an ESA to the tribal facility if the violations are ESA-eligible violations.²⁶ If the UST facility is owned or operated by the tribe, the region should send a letter to the tribal government enclosing a copy of the ESA and offering an opportunity to consult about the actions that must be taken to come into compliance. (See Attachment D2 for a model letter to the tribal government).²⁷

²² Under this Pilot, there is no advance concurrence for a Field Citation if the tribal facility documents that it addressed all the identified deficiencies in a timely manner following issuance of a notice about potential violations (e.g., within the timeframe set forth in a notice about potential violations).

²³ If the UST facility is not owned or operated by the tribe, then consistent with the *Guidance on Communications with Outside Parties*, EPA should not share information with the tribe regarding the status of a settlement discussion regarding the UST facility. The region should send a copy of any final settlement documents to the tribal government.

²⁴ EPA has had a pilot for ESAs for the UST program since 2014.

²⁵ See [Interim Consolidated Enforcement Penalty Policy for Underground Storage Tank \(UST\) Regulations and Revised Field Citation Program and ESA Pilot](#) (Oct. 5, 2018).

²⁶ Under this Pilot, there is no advance concurrence for an ESA if the tribal facility documents that it addressed all the identified deficiencies in a timely manner following issuance of a notice about potential violations (e.g., within the timeframe set forth in a notice about potential violations).

²⁷ If the UST facility is not owned or operated by the tribe, then consistent with the *Guidance on Communications with Outside Parties*, EPA should not share information with the tribe regarding the status of a settlement discussion regarding the UST facility. The region should send a copy of any final settlement documents to the tribal government.

If the tribal government requests consultation, consistent with the general UST ESA guidance as implemented in this Pilot, the expectation remains that if the UST facility plans to accept the ESA, the facility will return to compliance within 60 days of receiving the ESA, or any extension granted consistent with the UST ESA guidance, and provide payment in a timely manner consistent with the ESA instructions. Regions may not negotiate revisions to the ESAs or their penalties, as part of this Pilot.

3. Administrative Enforcement When a Field Citation or ESA Offer is Rejected, Ignored or Otherwise Unsuccessful in Resolving the Noncompliance

As noted in the Field Citation and ESA guidance documents, if a Field Citation or ESA is rejected or ignored, then traditional administrative or civil judicial enforcement options should be pursued.²⁸ Thus, as part of this Pilot, the OECA AA has provided advance concurrence for a region pursuing traditional administrative enforcement under 40 CFR part 22²⁹ against a tribal facility that rejects a Field Citation or ESA issued pursuant to these Pilot Protocols, or otherwise fails to return to compliance and pay the Field Citation or ESA penalty.³⁰ While a region does not need to obtain case-by-case concurrence from the OECA AA for such administrative penalty actions, the region should provide notice to the Cross-Cutting Policy Staff and the Waste and Chemical Enforcement Division in the Office of Civil Enforcement no later than concurrent with the filing of the administrative complaint.

C. Delivery Prohibition Actions

Section 9012 of RCRA, 42 U.S.C. § 6991k, makes it unlawful to deliver to, deposit into, or accept a regulated substance into an UST that has been identified by EPA as being ineligible to receive such deliveries. In 2012, EPA issued a [policy](#) on UST delivery prohibitions.³¹ The Delivery Prohibition Policy provides recommended procedures for prohibiting deliveries and describes when delivery prohibition may be appropriate.

While such authority is an invaluable tool to achieve compliance quickly, given the potential impact of a delivery prohibition, it should only be used when dealing with more serious situations, such as those described in the Delivery Prohibition Policy, and not for minor violations. According to the Delivery Prohibition Policy, the delivery prohibition tool may be used in the following situations:

- Where there are violations that pose a serious threat to human health, safety, or the environment;
- Where an UST owner/operator has no financial responsibility;
- Where an owner/operator has a history of non-compliance and is not responding to previous enforcement or compliance assistance; or

²⁸ See, e.g., [Interim Consolidated Enforcement Penalty Policy for Underground Storage Tank \(UST\) Regulations and Revised Field Citation Program and ESA Pilot](#) (Oct. 5, 2018) at 4.

²⁹ This Pilot addresses only the concurrence of the OECA AA required by the *1984 Indian Policy* and the *Tribal Enforcement Guidance*. Regions should pursue any administrative enforcement consistent with all other aspects of those and other applicable policies.

³⁰ Case-by-case OECA AA concurrence is still required for a referral to the Department of Justice for a civil judicial enforcement action.

³¹ https://www.epa.gov/sites/production/files/2014-01/documents/ust_delv_proh_guid_6-25-12.pdf

- Where there is an emergency or potential emergency (e.g., ongoing leaks, threatened releases). Note that these emergency situations may or may not involve a violation of UST program requirements.

1. General Protocol for Delivery Prohibitions Under the Pilot

Consistent with the Delivery Prohibition Policy, under this Pilot, EPA will exercise this delivery prohibition authority only after first issuing a Notice of Intent to Prohibit Delivery (NIPD), which provides an UST owner/operator 30 days to resolve the violations identified in the NIPD before EPA will prohibit fuel delivery.³² The region should send a copy of the NIPD to the tribal government.

As with any NIPD, an NIPD issued to a tribal facility should advise that the failure to correct all of the listed violations within 30 days will result in EPA halting fuel delivery. For non-immediate prohibition situations, the region should offer to meet with the owner or operator and discuss the NIPD as soon as possible and generally within 10 business days after receiving a meeting request. An owner or operator may request in writing to meet at a later date, but the meeting should take place within 30 calendar days of an owner or operator receiving the NIPD.

When the tribal government is the owner/operator of the UST facility, it may also request an opportunity to consult with EPA on what it needs to do to return to compliance. Consistent with the Delivery Prohibition Policy, any meeting or consultation will not delay the obligation of the owner/operator to correct the violations noted within 30 days. (See Attachment E1 for a template letter to the tribal government who is owner/operator of the UST facility, and Attachment E2 for a template letter to the tribal government who is not owner/operator of the UST facility.)

Note that if the region issues an NIPD in conjunction with another enforcement action (e.g., a Field Citation or ESA), the Pilot Protocols and guidance for the other enforcement action also apply.

If the facility does not return to compliance within 30 days, then the region should decide how to proceed, consistent with the Delivery Prohibition Guidance. EPA typically halts fuel delivery with the placement of a red tag on the fill pipe for an UST. Once an UST has been red tagged, it is a violation of federal law to accept or deliver fuel or any other regulated substance to that tank.

2. Protocol for Delivery Prohibitions in Rural and Remote Areas Under the Pilot

Many areas of Indian country encompass rural areas where gas stations are few and far between. RCRA section 9012(a)(4)(A) provides that in rural and remote areas, EPA may delay prohibiting fuel delivery to an UST for up to 180 days if halting the delivery would jeopardize the availability of fuel in such

³² The *Tribal Enforcement Guidance* contains an exemption from obtaining OECA AA concurrence prior to taking action when there is are exigent circumstances. *Tribal Enforcement Guidance* at 1-2, fn 5. Exigent circumstances are situations requiring immediate response to protect human health or the environment. *2007 Questions and Answers on the Tribal Enforcement Process* at 13 (Q. 31). Thus, where an immediate response is required, the region does not need to seek OECA AA concurrence before issuing an immediate delivery prohibition, and such immediate delivery prohibitions are not subject to the Pilot Protocols. Where EPA believes an emergency exists or is likely to occur if the UST receives another delivery, EPA can take steps to immediately prohibit deliveries (e.g., emergencies may be an ongoing leak or evidence of a leak; potential emergencies may be where the probability and potential extent of the harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate the actual or potential damages to human health, safety, or the environment).

areas. 42 U.S.C. § 6991k(a)(4)(A). Pursuant to the Delivery Prohibition Policy, “[a]n UST is considered to be in a rural and remote area if there are no other USTs that contain similar motor fuel for sale within 30 miles by automobile on a road.”³³ The Delivery Prohibition Policy further provides that “[a] motor fuel is considered similar to another motor fuel if it can run the same motor engine.”³⁴ For example, if a facility’s lone diesel UST is subject to delivery prohibition, and there is no other retail diesel UST within 30 road miles, then the rural and remote exemption should generally apply.³⁵

When issuing an NIPD, the region should undertake its own analysis regarding whether the tribal UST facility is in a rural and remote area and thus whether EPA may delay prohibiting fuel delivery for up to 180 days. If the region has reason to believe a fuel station UST facility is located in a rural and remote area in Indian country, the letter to the tribal government conveying the NIPD should include language regarding this provision of the Delivery Prohibition Policy, including EPA’s analysis of this provision and its impact on any delay on the prohibition of fuel delivery. (See Attachments E1 and E2.) As noted above, when EPA issues an NIPD, it offers to meet with the owner/operator about the NIPD and thus any such meeting can include a discussion about whether EPA should delay any delivery prohibition for up to 180 days (versus 30 days). When the tribal government is not the owner/operator of the tribal UST facility, the letter from the region to the tribal government enclosing the NIPD issued to the privately-owned/operated UST facility should offer the tribal government an opportunity to consult with EPA for the purposes of (i) providing evidence to EPA that the tank subject to possible delivery prohibition is located in a rural and remote area, (ii) explaining the possible impacts on the tribal government if that tank cannot dispense fuel within 30 days of the NIPD, and (iii) setting forth why the tribe thinks EPA should delay prohibiting fuel delivery to an UST for up to 180 days.

Following any such consultation, the region should communicate to the tribal government its decision about whether EPA is delaying prohibiting fuel delivery beyond the initial 30 days, or not, and if so for how long.

ATTACHMENTS:

Attachment A

- Template for Letter to Tribal Government on Upcoming UST Inspections and Request for Information on Tribal UST Facilities

Attachments B

- B1: Template for Pre-Inspection Letter to Tribal UST Facility Operator (with copy to Tribal Government)
- B2: List of Examples of Records/Documents to Be Made Available During an EPA Underground Storage Tank (UST) (suggested enclosure to B1)

Attachments C

- C1: Template for EPA Underground Storage Tank Notice About Potential Violations (for Facility Operator)
- C2: Template for Letter to Tribal Government When Tribe is the Owner/Operator of Tribal Facility Transmitting Copy of a Notice About Potential Violations Given to Operator

³³ See Delivery Prohibition Policy at 3.

³⁴ *Id.*

³⁵ *Id.*

- C3: Template for Letter to Tribal Government When Tribe is Not the Owner/Operator of Tribal Facility Transmitting Copy of a Notice of Potential Violations Given to Operator

Attachment D

- D1: Template for Letter Offering Field Citation for UST Violation(s) at Tribal Facility where Tribal Government is the Owner/Operator of the Facility
- D2: Template for Letter Offering Expedited Settlements Agreement for UST Violation(s) at Tribal Facility where Tribal Government is the Owner/Operator of the Facility

Attachments E

- E1: Template for Letter Informing Tribal Government of a Notice of Intent to Prohibit Deliveries to an UST Facility Owned or Operated by a Tribal Government
- E2: Template for Letter to Tribal Government When Tribe is Not the Owner/Operator of Tribal UST Facility with Notice of Intent to Prohibit Delivery of Fuel to UST

Attachment A: Template of Letter to Tribal Leadership on Upcoming Inspections with Request for Information on Tribal UST Facilities

Explanatory Note:

As part of the Tribal UST Compliance Pilot, a region should send periodic letters to the tribal government about general UST inspections, before beginning inspections on the tribe's reservation. The letter should be addressed to the tribal leadership, with cc's to the tribal council, the tribe's Environmental Department, and the tribe's Business Enterprise or Council.

While a region should send this general letter before beginning UST inspections on the reservation, the regions have flexibility regarding when and how often to issue the letter (e.g., annually, only in those years in which the region inspects an UST on the reservation, quarterly, etc.). The letter should inform the tribal government about:

- *Upcoming inspections for a discrete time period (e.g., over the next year or quarter)*
- *General information about the importance of UST compliance, including why EPA inspects UST facilities;*
- *General UST compliance assistance information; and*
- *The potential enforcement repercussions if EPA finds noncompliance, including how EPA is piloting a new approach which may result in civil penalties. [Include Enclosure 1 and a copy of, or link to, the Pilot documents]*
- *In addition, the letter should include a list of all UST facilities on the reservation that the region plans to inspect during the specified time period.*
 - *For each UST facility to be inspected, the list should include (1) the address; (2) the name of the owner, if known; and (3) the name of the operator, if known*
 - *Unless the region is 100% certain which facilities are tribally-owned/operated, or in which the tribe has a substantial interest, the region should designate on the list a) UST facilities the region believes are tribally owned/operated, or b) UST facilities the region believes are privately owned/operated that the tribal government may have a substantial interest in. The letter should then request that the tribal government correct or provide information regarding any such designations within a specific time period.*

See below for template letter.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SENT VIA EMAIL AND CERTIFIED MAIL- RETURN RECEIPT REQUESTED

The Honorable [Insert Name], Chair
[Insert name of Tribe] Indian Tribe
[Insert Address]
[Insert City, State Zip Code]

Re: Inspection Coordination Letter for Underground Storage Tank Inspections on the
[Name of Tribe and Reservation/Rancheria/etc.]

Dear Chairman [INSERT Name]:

I am writing to notify you that the U.S. Environmental Protection Agency (EPA) plans to conduct underground storage tank (UST) inspections on the [Insert name of Reservation/Rancheria/Pueblo/etc.] on [dates generally (e.g., this year, next month, next quarter)]. As the date of any given inspection approaches, we plan to coordinate more closely with the UST facility, [and with you regarding any tribally-owned or operated UST facilities.]

This letter provides information on the UST program generally and why EPA conducts UST inspections. The letter also discusses the potential consequences of noncompliance with federal UST requirements, including information about a pilot that EPA is conducting regarding the use of expedited enforcement tools at tribal facilities. Finally, the letter requests information about the tribal government's interest in the facilities that EPA plans to inspect.

Why EPA Inspects USTs

If USTs are not installed, operated and maintained to prevent and detect releases of petroleum products and other regulated substances, USTs may leak and potentially contaminate land and drinking water sources. Thus, EPA has promulgated regulations governing the installation, operation, maintenance, and release prevention and detection of USTs, as well as the response action that may be taken to respond to UST releases. Due to statutory limitations, EPA cannot authorize tribes to implement this federal program. Thus, EPA is responsible for implementing and enforcing the UST program in Indian country. One requirement of the program is that each UST must be inspected at least once every three years. More information about the federal UST program can be found at <https://www.epa.gov/ust>. Specific information about the UST program in Indian country is available at <https://www.epa.gov/ust/underground-storage-tanks-usts-program-indian-country>.

The [EPA inspector/EPA contractor] is conducting on-site inspections to assess the USTs' compliance with the federal UST program. The inspection may involve, among other things, determining whether

the USTs are installed, operated, maintained and closed in compliance with federal requirements. For example, the inspector may assess whether the USTs are operational and whether “release prevention” and “release detection” standards are satisfied. The inspector may also review records and reports and insurance requirements, take photographs, and interview UST operator representatives. Typically, the EPA inspector will meet with the tribe’s environmental staff to discuss the planned activities. Upon request, the inspector can also meet with you or your representatives. Like all EPA UST inspections designed to assess compliance, the fundamental goal is to protect human health by preventing, detecting and cleaning up releases of petroleum and hazardous substances.

Inspections that Identify Noncompliance with Federal UST Requirements

If EPA identifies noncompliance with federal UST requirements as a result of the inspection or other available information, EPA has several options available to it regarding how it may proceed. Enclosed with this letter is a short summary of the various types of formal civil enforcement actions that EPA may pursue against facilities that violate UST requirements. The options range from a quick, ticket-like Field Citation, to an Expedited Settlement Agreement, to the filing of an administrative complaint or a referral of a civil judicial action to the Department of Justice. In certain circumstances, EPA can also prohibit fuel delivery to an UST.

For UST facilities that are not owned or operated by the tribal government, or in which the tribe does not have a substantial interest, EPA generally proceeds directly against a violating facility, while keeping the Tribal government informed of its efforts and progress. However, pursuant to EPA policy, where the UST facility is a tribal facility (e.g., owned or operated by the tribal government, or in which the tribe has a substantial interest), EPA typically offers compliance assistance, and often a compliance plan, to the tribal government prior to considering a formal enforcement action.

While this approach has often resulted in the correction of UST violations at tribal facilities, EPA is aware that violations have sometimes lingered without correction or have been repeated despite the compliance assistance provided. As a result, EPA is piloting an approach designed to achieve a faster return to compliance for tribal UST facilities. Please be aware that this pilot approach could also result in the EPA more frequently assessing penalties for UST violations at tribal facilities. During this pilot, if EPA identifies potential compliance problems at a tribal UST facility, EPA first will provide the owner/operator with a notice about potential violations, which will (i) identify possible violations, (ii) provide the owner/operator with compliance assistance, and (iii) request that the owner/operator submit documents to the EPA within a specified period of time, demonstrating that the deficiency has been corrected. This notice effectively serves as compliance assistance and a compliance plan, which EPA typically provides before escalating to formal enforcement against a tribal facility. EPA will provide a copy of the notice to the tribal government. If the potential compliance problems are not addressed in a timely manner, the EPA regional office may immediately follow-up by issuing either a Field Citation or Expedited Settlement Agreement, or if the circumstances necessitate, prohibiting delivery at an UST. As discussed in the attached summary, both Field Citations and Expedited Settlement Agreements contain a penalty, but it is a penalty that is lower than would otherwise be assessed under the applicable UST penalty policy. The pilot documents are [attached/available at <https://www.epa.gov/enforcement/tribal-underground-storage-tank-compliance-pilot>]. EPA finalized this pilot after consultation with tribes pursuant to the EPA Policy on Consultation and Coordination with Indian Tribes.¹

¹ EPA Policy on Consultation and Coordination with Indian Tribes. <https://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes>

USTs to be Inspected and Request for Information from the Tribal Government

Enclosed with this letter is a list of the UST facilities on [ID reservation/etc.] that EPA plans to conduct [insert period identified in opening paragraph]. EPA requests that you do not provide the UST facilities with information about the upcoming inspections. We make this request to avoid confusion, as EPA will provide separate advance notice to the UST facilities about announced inspections, and some inspections may be unannounced. For example, in environmental emergency situations EPA may not be able to provide the Tribe with advance notice of an inspection, but will coordinate with the Tribal Environmental Director as soon as possible.

We request your cooperation in determining the status of these UST facilities. On the enclosed list, EPA has indicated where it believes the tribal government owns or operates the facility, or otherwise has a substantial interest in the facility. Please review the attached list of UST facilities and provide your view on whether the tribal government owns, manages or controls any of these UST facilities, as well as any other facts or information you wish to provide in writing to aid EPA efforts in addressing UST noncompliance on [insert the Name Reservation, Rancheria, Pueblo]. In addition, please let us know if you believe that a specific UST facility provides an essential or unique service to the tribal government, or any other information you would like to share.

Please email [insert name of EPA program contact] of my staff at [insert _____@epa.gov] with this information within 30 days of receiving this letter.

If you have any questions regarding this letter, please contact me at [insert phone number]. If you or your staff would like to schedule an entrance or exit briefing with the EPA inspectors, please contact [insert EPA UST contact's name] at [insert phone number] or by email at _____@epa.gov.

Thank you in advance for your ongoing partnership with the EPA to protect public health and the environment on the [insert name Reservation/Rancheria/etc.].

Sincerely,

[INSERT Name]
[Enforcement and Compliance Assurance Division
or Land, Chemicals and Redevelopment Division,
per regional realignment/delegations]
Region [insert]

Enclosures

cc: [Insert names of all members of the Tribal Council]
[Insert name/title of Tribe's Environmental Director]
[Insert name/title of Director of Tribal Enterprise or Business Council]

Summary of Expedited Enforcement Tools in Tribal UST Compliance Pilot

I. Field Citations and Expedited Settlement Agreements

Field Citations and Expedited Settlement Agreements (ESAs) are tools EPA uses to resolve eligible violations of Resource Conservation and Recovery Act (RCRA) Subtitle I for a reduced penalty in return for a quick return to compliance. They address violations that are easily identified and easily corrected. EPA does not use them to resolve violations that result in significant harm to human health or the environment, or which may present an imminent or substantial endangerment to human health or the environment.

In October 2018, the EPA issued the [Interim Consolidated Enforcement Penalty Policy for Underground Storage Tank \(UST\) Regulations and Revised Field Citation Program and ESA Pilot](#) (Interim Policy).¹ The Interim Policy sets forth the base penalty values for a list of selected violations of Federal UST regulation requirements, as well as the penalty values for eligible violations under the Field Citation program and UST ESA Pilot.

A. **Field Citations²**

The EPA developed Field Citations over 25 years ago to address relatively minor violations by first-time UST violators. While EPA sometimes issues Field Citations to an UST owner/operator at a facility immediately following an inspection, for the purposes of the Tribal UST Compliance Pilot, the EPA office will issue a Field Citation only following a separate notice about potential violations.

A Field Citation allows an UST owner/operator an opportunity to expeditiously settle an enforcement case for a reduced penalty. Field Citations are optional; an UST owner/operator receiving a Field Citation is free to take advantage of the possible opportunity to settle with a reduced penalty or pass it by. However, if an UST owner/operator chooses to not to settle under a Field Citation, EPA is likely to pursue other enforcement options, including the pursuit of a traditional UST administrative or judicial enforcement action against the UST owner/operator, while seeking a higher penalty.

The terms of a Field Citation are non-negotiable. If the UST owner/operator wishes to accept the Field Citation, he or she must (1) correct the violations, (2) pay the penalty (as directed in the Field Citation), (2) sign the Settlement Agreement portion of the Field Citation, and (3) mail the Field Citation back to the EPA along with documentation of violation correction and penalty payment. Under the Pilot the document must be postmarked within sixty (60) calendar days of the owner/operator having received the Field Citation, unless a 30-day extension has been granted. More detailed instructions are provided on the Field Citation Form issued by the EPA.

¹ <https://www.epa.gov/sites/production/files/2019-12/documents/final-interim-consolidated-ust-penalty-policy-v3.pdf>.

² The current Field Citation Policy is located at <https://www.epa.gov/sites/production/files/2014-02/documents/d9610.16.pdf>.

B. Expedited Settlement Agreements³

In 2014, EPA launched the UST Expedited Settlement Agreement (ESA) pilot to provide an expedited settlement tool for repeat violators. The penalties for violations eligible for an ESA are still less than the base penalty for the same violation but higher than the Field Citation penalty.

As with a Field Citation, an ESA is optional; an UST owner/operator may accept or reject a proposed ESA sent by EPA. However, if an UST owner/operator declines or does not adequately respond to the ESA offer, EPA is likely to pursue traditional administrative or judicial enforcement – and to seek higher penalties -- to resolve the violations.

Under the Pilot, if the UST owner/operator wishes to settle under the ESA, the UST owner/operator must: (1) correct the violations identified in the ESA and document those corrections; (2) submit documentation that the owner/operator has returned to compliance with UST requirements; (3) sign the enclosed ESA; and (4) mail the ESA and supporting documentation to the EPA within 60 days of receiving the ESA offer unless a 30-day extension has been granted. If the owner/operator meets all the terms of the ESA, the EPA will send a fully executed ESA to the owner/operator who must then pay the penalty as provided for in the ESA. As with the Field Citation, the terms of the ESA, including the penalty, are non-negotiable.⁴ More detailed instructions are provided in the letter transmitting an ESA.

II. Delivery Prohibitions

Congress provided EPA the authority to prohibit deliveries of regulated substances to federally-regulated USTs. Delivery prohibition makes it unlawful to deliver, deposit, or accept a regulated substance into an UST that EPA has identified as ineligible for delivery, deposit, or acceptance. EPA can identify USTs as ineligible due to violations of federal UST regulations (including federally approved state regulations), and in emergency situations, or potential emergency situations.

Delivery prohibitions are an invaluable tool to quickly return facilities to compliance with UST requirements. They can also prevent or mitigate releases of regulated substances from UST systems in emergency or potential emergency situations. However, given the potential impact of this enforcement option, EPA uses this authority only in more serious situations such as those described in the [Delivery Prohibition Policy](#),⁵ and not for minor violations. EPA may exercise its delivery prohibition authority concurrent with other enforcement options, such as Field Citations and ESAs.

When EPA determines that conditions warranting delivery prohibition exist at an UST facility, it will typically issue a Notice of Intent to Prohibit Delivery (NIPD). An NIPD will contain: (1) a list of violations or deficiencies at each tank; (2) an offer for the EPA to meet with the UST owner/operator regarding the NIPD, and (3) notice that the violations or deficiencies are not fully corrected within 30 days, the EPA will prohibit deliveries to a tank or facility (usually by red

³ The current ESA Pilot is described in the Interim Policy.

⁴ The only exception being the ability to request an extension of the initial 60-day response period.

⁵ https://www.epa.gov/sites/production/files/2014-01/documents/ust_delv_proh_guid_6-25-12.pdf.

tagging a tank or tanks).⁶ In very limited situations, where the EPA determines an emergency situation exists (e.g., evidence of an ongoing leak), the EPA will immediately prohibit delivery.

III. Administrative Enforcement

EPA may issue an administrative order requiring an UST owner/operator to take certain actions to compel compliance with RCRA Subtitle I and/or the UST regulations. An administrative order may also be issued to compel an investigation or cleanup of a suspected or confirmed release from a regulated UST.

EPA may issue a unilateral administrative order (UAO), in which the EPA demands cleanup and/or compliance by an UST owner/operator. Or, the EPA may issue an administrative order on consent (AOC). An AOC represents an agreement between the EPA and the owner/operator spelling out the way(s) in which the UST owner/operator will achieve completion of an investigation and/or cleanup and/or achieve compliance.

RCRA sections 9003(h), and 9006 authorize the EPA to issue administrative orders against owners and operators of USTs. Orders issued under RCRA section 9003(h) are governed by rules set forth in 40 CFR Part 24. Orders issued under RCRA section 9006 are governed by rules set forth in 40 CFR Part 22. Both the Part 22 and Part 24 rules describe the process by which an owner/operator may request a hearing.

EPA may also issue orders under RCRA Section 7003, based on a finding that there is an imminent and substantial endangerment. Such orders may be issued where an UST release presents such an endangerment. Orders issued under RCRA Section 7003 should be directed to entities who have contributed to -- or are contributing to -- such endangerment. As such, RCRA Section 7003 Orders are not typically subject to pre-enforcement review, meaning that the recipient of such an order is not entitled to an administrative hearing.

⁶ If the UST is located at a retail facility selling motor fuel in a rural and remote area, the region may decide not to prohibit delivery for up to 180, versus 30, days. When receiving an NIPD, an owner or operator can provide evidence to the EPA office issuing the NIPD that the UST subject to delivery prohibition is in a rural or remote area.

**Attachment B1: Template of Pre-Inspection Letter to the Tribal UST Facility
Owner/Operator (with a copy to the Tribal Leadership)**

Explanatory Note:

As part of the Tribal UST Compliance Pilot, and in accordance with OECA's 2001 "Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy," Regions should notify the tribal government before EPA (or another federally credentialed inspector) conducts inspections at a facility on a reservation.

This is a model of a letter to be sent to the owner/operator in advance of an UST inspection with a copy to the Tribal Government; copies should also be sent to the tribe's leadership, Environmental Department and/or Business Enterprise. Where the Tribal Government is the owner and/or operator, the Tribal Government should be an addressee and copies should be sent to the tribal Environmental Director and/or Business Enterprise.

Although the Regions may modify this model letter, the pre-inspection letter should communicate the following:

- *Confirm the date and time of the inspection;*
- *Request the operator ensure that the person most familiar with the facility's UST systems be present at the inspection;*
- *Request that all areas that are normally secured in some manner (e.g., sump covers, fill caps, etc.) be **UNLOCKED and/or UNBOLTED**;*
- *Advise the operator of which records should be available for inspection (see attached list);*
- *If applicable, identify violations detected during the facility's last inspection and any compliance assistance that was provided to address the violation;*
- *If EPA has not received verification that the previously identified violations has been corrected, advise the operator that it will be asked to verify that the violation has been corrected.*
- *Advise the operator that the owner/operator may be assessed a penalty for violations. Include the summary of potential formal enforcement actions as an enclosure. Advise the Tribal Government that following the inspection it may receive a Notice of Potential Violation listing deficiencies that should be corrected and compliance assistance resources to assist in correcting these.*

See below for a template letter.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



BODY OF PRE-INSPECTION LETTER

[Insert Name of Operator]

[Insert Address]

[Insert City, State + Zip Code]

RE: Upcoming Underground Storage Tank [or LUST, if appropriate] Inspection

Dear *[Insert Name of Operator]*:

The U.S. Environmental Protection Agency (EPA) will be conducting a routine compliance inspection of the underground storage tank (UST) system located at the following address:

Name of Facility
Address of Facility
City, State and ZIP Code of Facility
EPA UST Facility ID No. XXXXXXXX

[Insert description of prior communication scheduling the inspection (e.g., “As we discussed during our recent telephone conversation with NAME,” “Per our email exchange of DATE”), this inspection will be conducted on [insert day, date] at approximately [insert time].

Purpose of the Inspection

The purpose of the inspection is to evaluate whether your facility is in compliance with federal regulations that govern the installation, operation and maintenance of the UST system, and the prevention, detection and cleanup of any releases that may occur from that system. During the inspection, I will be able to answer any questions that you may have about the applicable federal UST requirements for your system and what you may need to do to come into compliance. In addition, please be sure to contact me if you have any questions in the future about how to comply with UST requirements. Our main goal is to assist you in maintaining compliance with federal UST regulations codified in 40 CFR Part 280, and outlined in the EPA guidance document titled *Musts for USTs* (November 2015) which is available on the EPA’s website at <https://www.epa.gov/ust/musts-usts>.

Steps to Take to Prepare for the Inspection

To prepare for the inspection, please have the individual most familiar with your UST system available to meet with us. Also, please have all areas that are normally secured in some manner

(e.g., sump covers, fill caps, etc.) **UNLOCKED and/or UNBOLTED**. We also ask that you make sure that someone is available to lift and remove covers from the UST equipment. If the system is equipped with an overfill alarm, be prepared to make it sound. Additionally, there are several documents that you must have available at the facility at the time of the inspection. (For more information on the kinds of documents you must have available, *see* the attached list.)

Impact of Past Violations

[INSERT THIS SECTION/PARAGRAPH IF EPA FOUND VIOLATIONS AT THIS FACILITY DURING ITS LAST INSPECTION AND EPA HAS NOT RECEIVED CONFIRMATION THAT THE VIOLATION HAS BEEN CORRECTED.] When EPA conducted its last inspection of your facility, we identified the following violations [list those violations]. At the time of the upcoming inspection, please be prepared to verify that these violations have been corrected. If these violations have not been corrected or are found to have been repeated, please be advised that you may be subject to enforcement, including the assessment of civil penalties.

In the Event EPA Finds Potential Violations

If EPA finds a potential violation at this facility, EPA will notify the owner/operator and provide compliance assistance resources to assist in correcting any potential violations. The owner/operator may also be subject to enforcement for any UST violation, including the assessment of civil penalties. See the Enclosure for a further explanation of potential enforcement responses to a violation.

Closure and Questions

If you have any questions pertaining to this inspection, I can be reached by telephone at work at (xxx) xxx-xxxx, [also insert inspector's EPA mobile phone number, if applicable] or by e-mail at xxxxx.xxxx@epa.gov. Thank you for your cooperation in this matter.

Sincerely,

[Inspector Name]

Enclosure

cc: Tribal Chair and other Members of the Tribal Council
[Insert name/title of Tribe's Environmental Director]
[Insert name/title of Director of Tribal Enterprise or Business Council]

Attachment B2: List of Examples of Records/Documents to Be Made Available During an EPA Underground Storage Tank (UST) Inspection

This list is not a regulation but is provided to assist UST owners and operator in preparing for an EPA UST inspection. It is not an exhaustive list of all records and information required to be kept or maintained under Subtitle I of the Resource Conservation and Recovery Act (RCRA) or the regulatory requirements found at 40 CFR Part 280. While EPA has made every effort to ensure the accuracy of this information, if there is a conflict between the description of regulatory requirements in this document and any statute or regulation, the statute or regulation is controlling. Nothing contained in this document should be interpreted as limiting EPA's ability to seek full compliance with RCRA, including the assessment of penalties for any past or ongoing violations of RCRA's UST requirements. This is a living document and may be revised periodically. EPA welcomes public input on this document at any time.

1. Financial Responsibility/Insurance Documentation

- If using insurance, a "Certificate of Insurance" or "Endorsement" with associated paperwork listing the inspected facility as being covered under the policy. It also must include a list or attachment showing the facility (s)/tanks covered under the policy. The ACCORD page will NOT suffice to show compliance with financial responsibility.
- In cases of self-insurance, a signed copy of the current "Letter from the Chief Financial Officer" and associated paperwork listing the inspected facility as being covered under the letter.
- If not insurance or self-insurance, an alternate financial assurance mechanism (e.g. guarantee, surety bond, letter of credit, trust fund, standby trust fund, local government bond rating test, local government financial test, local government guarantee, local government fund). (See Subpart H of 40 CFR Part 280)

Note: All financial responsibility mechanisms must include a Certification of Financial Responsibility signed by an authorized person for the owner/operator and a witness or notary (See 40 CFR 280.111(b)(11)).

2. Equipment, Repairs and Upgrades

- Documentation to verify tank and piping material type if visual confirmation cannot be made, such as:
 - o Photos of installation
 - o Warranties with installation date and type of equipment
 - o Paid invoices of equipment
- Repair records (i.e. invoices, work orders), if any repairs have been made to the tank(s) or piping, and testing results conducted within 30 days of the repair, if required

Note: These records must be kept for as long as the UST contains a regulated substance.

3. Petroleum Release Detection

- Monthly monitoring records for the past 12 months (e.g. automatic tank gauging (ATG), statistical inventory reconciliation (SIR), interstitial monitoring (IM), including sump sensor monitoring, or groundwater or vapor monitoring)
Note: Tanks and piping installed after April 11, 2016, must be monitored using IM.
- For any release detection system, written documentation is required by installer or manufacturer verifying regulatory performance standards have been met. Documentation by manufacturer may include: "results of U.S. EPA Standard Evaluation" or a third-party evaluation, which is to be retained for 5 years
- Equipment calibration, maintenance and repair records that are required to be kept for at least 1 year

- Equipment schedules prescribed by the manufacturer to keep equipment functioning properly that are required to be kept for at least 5 years from the date of installation
- Last 3 years of annual operation testing of the release detection system for the automatic tank gauge, probes, sensors and alarms (e.g., tank monitor certification)
- Results of any tank tightness testing or vapor monitoring using a tracer compound placed in the tank system, if conducted
- If your piping is pressurized, then you need the following:
 - o Last 3 years of annual testing results of automatic line leak detectors with the functional testing designed to simulate a leak; **and**
 - o The current year's line tightness testing results; **or**
 - o Last 12 months of interstitial monitoring (e.g., sump monitoring) records (**Note:** For piping installed or replaced (>50%) after April 11, 2016, piping must be monitored using IM); **or**
 - o Last 12 months of piping monthly monitoring records (e.g., SIR, CITLD, groundwater or vapor monitoring)
- If your piping is suction, then you need the following:
 - o Verification that the suction system is considered as "safe" suction or otherwise exempt from testing requirements stated in 40 CFR 280.41(b)(ii); or
 - o If not a "safe" suction system, the last 3-year tightness testing results or for piping installed or replaced (>50%) after April 11, 2016, the last 12 months of interstitial monitoring records

4. Cathodic Protection (i.e. Rust Prevention) (if you have steel tanks and/or product piping and/or metal flex connectors)

- Plans and maps of the cathodic protection system
- Integrity assessment (i.e. results of an inspection by a qualified cathodic professional before the addition of cathodic protection) if added to an existing tank
- Test results of the last two cathodic protection system tests required within 6 months of installation and every 3 years thereafter
- For impressed current systems, the results of the last three inspections as documented in your log of impressed current readings that are required every 60 days
- A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used

5. Lined Steel Tanks (if your tank is made of steel and is lined)

- Documentation of tanks being internally lined, including an integrity assessment if added to an existing tank
- Internal inspection if lining is greater than 10 years old, to be done every 5 years

6. Owner/Operator Training (required as of October 13, 2018)

- Class A, B and C UST operator training records
- Class A, B and C UST operator re-training records (if needed)

7. Walk Through Inspections / Self-Audits (required as of October 13, 2018)

- Written documentation of required monthly and annual walkthroughs for the last 12 months

8. Containment Sump and Spill Bucket Testing (required as of October 13, 2018)

- Last 3-year tightness test of spill prevention equipment (e.g. spill buckets) and containment sumps used for interstitial monitoring (e.g. turbine sump, under dispenser containment sumps).
- If not tightness testing, then monthly monitoring records of double walled spill prevention equipment and/or containment sumps for as long as the equipment has been monthly monitored

9. Overfill Prevention Equipment Inspection (*required as of October 13, 2018*)

- Last 3-year inspection of the overfill prevention equipment (*e.g.* ball float, flapper, overfill alarm) to ensure that it is set to activate at the correct level and will activate if the fuel reaches that level.

Attachment C1: Underground Storage Tank Notice About Potential Violations

Explanatory Note:

As part of the Tribal UST Compliance Pilot, if a region finds potential violations at a tribal UST facility, it should provide a notice about potential violations following an inspection.

Below is a template of such a notice to be sent to the owner/operator of the UST facility (Attachments C2 and C3 transmit the notice separately to the tribal government).

Although the Regions may modify this template, any notice must communicate the following:

- (1) Detail the deficiencies found, with a citation to the regulatory requirement potentially violated and summarize compliance assistance resources to assist the facility in addressing identified deficiencies;*
- (2) Request that within a specified period of time the facility operator (or UST owner, if appropriate) submit to EPA documentation of the actions taken to address the noted deficiencies; and*
- (3) Advise the owner/operator of the UST facility that they may be subject to an enforcement action, including the assessment of civil penalties, if EPA makes a determination that there are UST violations at the facility.*

See below for template.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

UNDERGROUND STORAGE TANK NOTICE ABOUT POTENTIAL VIOLATIONS

In Indian country, the U.S. Environmental Protection Agency (EPA) is responsible for ensuring that owners/operators of underground storage tank (UST) facilities comply with federal UST requirements under the Resource Conservation and Recovery Act (RCRA) and the UST regulations at 40 CFR Part 280.

On _____, EPA conducted an onsite inspection and observed the deficiency(ies) described below. EPA has not yet determined whether there are any violations at your facility. Violations may subject the UST owner and/or operator to federal enforcement, including the assessment of civil penalties. If EPA identifies violations, EPA will inform the UST owner and the UST operator of any identified violations, and provide notice to the Tribal government.

In the interim, we ask you to provide EPA with documentation reflecting that the facility has addressed each deficiency identified below within the timeframe indicated.

UST Facility Information		
Date:		Facility Name:
Time In:		EPA Facility ID No.:
Time Out:		Tribe:
		Reservation/Pueblo/Rancheria:
	City:	State:
Inspection Participants		
EPA Inspector (Lead):		
Facility Representative(s):		
Tribal Government Representative(s):		
Other Participants:		
Additional Records Requested		
<i>Please Send the Following Documents to the EPA Representative Identified Below.</i>		
Deficiencies Identified		
<i>EPA requests documentation that each identified deficiency has been corrected within the timeframes indicated.</i>		
Observed Deficiency:	Regulatory Requirement (with citation):	Send Documentation of Deficiency Correction to EPA by:
Observed Deficiency:	Regulatory Requirement (with citation):	Send Documentation of Deficiency Correction to EPA by:

Observed Deficiency:	Regulatory Requirement (with citation):	Send Documentation of Deficiency Correction to EPA by:
EPA Assistance Material Provided (Listed Below)		
<p><i>To assist the UST's owner and operator, the EPA provided the following compliance assistance materials during the inspection and/or directed the UST's owner and operator to EPA's compliance assistance resource documents. Please contact the EPA Representative identified in this document if you need additional compliance assistance in addressing the noted potential violations.</i></p>		
[Insert Material Provided/Discussed]		
[Insert Material Provided/Discussed]		
<p><i>UST owners and operators can find comprehensive information on how to comply with the UST requirements at https://www.epa.gov/ust/meeting-underground-storage-tank-ust-requirements. This includes EPA's "Musts for USTs," which summarizes federal UST requirements for installation, reporting, spill and overfill prevention, corrosion protection, release detection, walkthrough inspections, compatibility, operator training, repairs, financial responsibility, release response, and closure.</i></p>		
<p><i>[This section is relevant if the notice is left with the facility at the time of inspection] The deficiency(ies) noted above have been described to me in satisfactory detail by the EPA representative. I understand that EPA has requested documentation by [insert date within 14-30 days of this notice] reflecting that all deficiencies identified have been corrected, or are in the process of being corrected. The requested documentation should be sent to the EPA representative listed below. The EPA will review the information provided and any inspection findings. Based on that information and review, the EPA will determine whether federal enforcement, including an action that would assess a civil penalty, is appropriate.</i></p>		
Print Name of Onsite Facility Representative		
Signature of Onsite Facility Representative		Date:
Contact Information for Onsite Facility Representative (if left with facility at time of inspection)		
Contact Name:		
Title:		
Phone:		
Email:		

Signature of Lead EPA Inspector		Date:
EPA Regional Representative (to Be Sent Requested Documents and Correction Documentation)		
Name:		
EPA Region:		
Address:		
City:	State:	Zip Code:
Phone:		
Email:		

**Attachment C2: Template of Letter to Tribal Government When Tribe is
Owner/Operator of Tribal Facility Transmitting Copy of Notice
About Potential Violations Issued to Operator**

Explanatory Note:

As part of the Tribal UST Compliance Pilot, a region should provide the tribal government a copy of any notice about potential violations sent to a tribal UST facility following an inspection.

Below is a template of such a letter to the tribal government when the tribal government is an owner/operator of the UST facility.

Although the Regions may modify this template letter, the letter should be addressed to the tribal leadership, and cc the tribal council, Environmental Department and/or Business Enterprise. The letter also should contain the following:

- 1) A copy of the notice sent to the tribal UST facility;*
- 2) A discussion of the tribal government's responsibilities as owner/operator of the UST facility;*
- 3) A description of the notice, including the timeframe for the facility to address the deficiencies;*
- 4) An explanation of the potential enforcement actions that EPA may pursue if the deficiencies are not addressed, including assessing a civil penalty; and*
- 5) An offer to consult with the tribal government, including on the actions needed to address the deficiencies in the notice.*

See below for a template letter.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

The Honorable
[Address]
[City, State, Zip]

Re: Underground Storage Tank Notice About Potential Violations
[Name of Facility]
EPA ID No. [Number]
[Address of Facility]

Dear [Name and Title]:

The purpose of this letter is to inform you that the U.S. Environmental Protection Agency (EPA or Agency) identified potential compliance problems at the above-referenced underground storage tank (UST) facility (Facility) owned/operated by [insert name of tribal government]. EPA is providing this information as part of its interest in working cooperatively with the Tribe to ensure UST compliance and inform tribal leadership that noncompliance could lead to enforcement which may include a civil penalty.

Tribal Government Responsibilities as Owner and Operator of UST in Indian Country

Owners and operators of USTs – including tribal government owners and operators – are responsible for complying with the federal regulations governing their operation, maintenance and closure. These requirements are designed to protect public health and the environment by preventing, detecting and cleaning up releases of petroleum and hazardous substances. If USTs are not installed and operated in compliance with requirements of 40 CFR 280 pursuant to Subtitle I of the Resource Conservation and Recovery Act (RCRA), the USTs are more likely to leak petroleum and hazardous substances which may, among other things, contaminate drinking water sources.

Inspection Conducted and Information Provided to the UST Operator

On [insert date], EPA provided the tribal government with advanced notice that the Agency would be conducting a compliance inspection at the Facility under the authority of RCRA Subtitle I. EPA's authorized inspector conducted that inspection on [insert date]. After the inspection, EPA provided the UST operator [or insert name of UST Facility Representative] with a notice about potential violations, a copy of which is enclosed. The notice:

- Identified possible UST violations, together with a citation to the applicable regulatory requirement;
- Summarized compliance assistance provided to the Facility and additional online resources to assist UST owners/operators in assuring compliance with federal UST requirements; and

- Requested the UST operator to provide documentation to EPA within [number] of days of the inspection to demonstrate that the identified deficiencies have been corrected. EPA strongly encourages you to discuss the deficiencies with the UST operator and ensure that the requested information is provided to the agency by the date requested.

Possible EPA Enforcement Actions to Address Violations and Consultation with the Tribe

EPA is responsible for assuring that all USTs in Indian country comply with the applicable federal regulations. As indicated in the notice, EPA is reviewing the information obtained during the inspection, including the descriptions of deficiencies, and the regulatory citations. Based on that review and any information provided by the operator or the tribal government – including the requested documentation reflecting that deficiencies have been corrected – EPA will determine whether there are UST violations at the Facility and whether federal enforcement, including the assessment of a civil penalty, is appropriate.

As noted in the [insert date] letter sent to the tribal government regarding EPA’s UST inspections on [insert tribe’s reservation etc], if EPA determines that an enforcement action is appropriate, EPA has several options regarding how to proceed. EPA will also continue to work with you or your designated representative to resolve any violations.

Please notify me by [DATE] if you would like an opportunity to consult with EPA on the corrective actions to be taken to address the deficiencies and any potential enforcement the Agency may take. EPA’s approach to resolving this potential noncompliance and offering a consultation opportunity is consistent with the [*EPA Guidance on the Enforcement Principles of the 1984 Indian Policy*](#) which, among other things, implements the [*EPA Policy on Consultation and Coordination with Indian Tribes*](#), EPA’s generally applicable UST guidance.

Please contact me at [insert phone number] or [insert email address ____@epa.gov] if you have any questions about this letter or have your representative contact [insert name of another contact at Region] at [insert phone number] or [insert email address: ____@epa.gov.

Sincerely,

Name, Title

Enclosure

Cc: [Insert names of all members of the Tribal Council]
[Insert name/title of Tribe’s Environmental Director]
[Insert name/title of Director of Tribal Enterprise or Business Council]
[Insert name of Tribe’s attorney]
[Insert name(s), UST Operator(s)]

Attachment C3: Template of Letter to Tribal Government When the Tribal Government has a Substantial Interest but is Not the Owner/Operator of Tribal Facility Transmitting Copy of Notice About Potential Violations Issued to Operator

Explanatory Note:

As part of the Tribal UST Compliance Pilot, a region should provide a tribal government a copy of any notice about potential violations sent to a tribal UST facility following an inspection.

Below is a template of such a letter to the tribal government when the tribal government is NOT an owner/operator of the UST facility.

Although the Regions may modify this template letter, the letter should be addressed to the tribal leadership, and cc the tribal council, Environmental Department, and Business Enterprise. The letter should contain the following, while also being consistent with the Guidance on Communications with Outside Parties:

- 1) A copy of the notice sent to the tribal UST facility;*
- 2) A short description of the notice, including the timeframe for the facility to address the deficiencies;*
- 3) An explanation of the potential enforcement actions that EPA may pursue against the facility if the deficiencies are not addressed, including assessing a civil penalty; and*
- 4) A notice of the opportunity to consult with EPA.*

See below for a template letter.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

The Honorable
[Address]
[City, State, Zip]

Re: Underground Storage Tank Notice of Deficiency
[Name of Facility]
EPA ID No. [Number]
[Address of Facility]

Dear [Name and Title]:

The purpose of this letter is to inform you that the U.S. Environmental Protection Agency (EPA or Agency) identified potential compliance problems at the above-referenced underground storage tank (UST) facility (Facility) located on [insert reservation etc]. We are informing you of these potential compliance problems because EPA believes that the Tribe has the following substantial interest in the Facility [insert why we think the Facility is a tribal facility]. EPA is providing this information as part of its interest in working cooperatively with the Tribe to ensure UST compliance.

Inspection Conducted and Information Provided to the UST Operator

On [insert date of pre-inspection letter], EPA provided the tribal government with advanced notice that the Agency would be conducting a compliance inspection at the Facility under the authority of RCRA Subtitle I. EPA's authorized inspector conducted that inspection on [insert date]. After the inspection, EPA provided the UST operator [or insert name of UST Facility Representative] with notice about potential violations, a copy of which is attached for your information. The notice:

- Identified possible UST violations, together with a citation to the applicable regulatory requirement;
- Summarized compliance assistance provided to the Facility and additional online resources to assist UST owners/operators in assuring compliance with federal UST requirements; and
- Requested the UST operator to provide documentation to EPA within [number] of days of the inspection to demonstrate that the identified deficiencies have been corrected.

Possible EPA Enforcement Actions Against the Owner/Operator of the Facility and Consultation with the Tribe

EPA is responsible for ensuring that all UST facilities in Indian country comply with the applicable federal regulations. As indicated in the notice, EPA is reviewing the information obtained during the inspection, including the descriptions of deficiencies, and the regulatory citations. Based on that review and any information provided by the operator or the tribal government – including the requested documentation reflecting that deficiencies have been corrected – EPA will determine whether there are UST violations at the Facility and whether federal enforcement against the Facility owner or operator, including the assessment of a civil penalty, is appropriate.

As noted in the [insert date of periodic letter] letter sent to the tribal government regarding EPA's UST inspections on [insert tribe's reservation etc], if EPA determines that an enforcement action is appropriate, EPA has several options regarding how to proceed.

Please notify me by [DATE] of your receipt of this letter if you would like an opportunity to consult with EPA regarding the information provided in this letter and the enclosed notice. Please keep in mind that EPA may be constrained from discussing some details of this matter because of the need to preserve the confidentiality of enforcement sensitive or confidential business information and to avoid jeopardizing the enforcement case.

EPA's approach to resolving this potential noncompliance and offering a consultation opportunity is consistent with the [EPA Guidance on the Enforcement Principles of the 1984 Indian Policy](#) which, among other things, implements the [EPA Policy on Consultation and Coordination with Indian Tribes](#), EPA's generally applicable UST guidance, and the [Restrictions on Communications with Outside Parties Regarding Enforcement Actions](#) (March 8, 2006).

Please contact me at [insert phone number] or [insert email address ____@epa.gov] if you have any questions about this letter or have your representative contact [insert name of another contact at Region] at [insert phone number] or [insert email address: ____@epa.gov].

Sincerely,

Name, Title

Enclosure

cc: [Insert names of all members of the Tribal Council]
[Insert name/title of Tribe's Environmental Director]
[Insert name/title of Director of Tribal Enterprise or Business Council]
[Insert name of Tribe's attorney]
[Insert name(s)], UST Operator(s)

Attachment D1: Template Letter for Settlement of UST Violations Using a Field Citation for an UST Facility Owned or Operated by a Tribal Government

Explanatory note: As part of the Tribal UST Compliance Pilot, if the region is issuing a Field Citation to a UST Facility owned or operated by the Tribe, the region should send the tribal government the Field Citation and cover letter.

Below is a template letter to the tribal government based on the model letter for issuing a Field Citation in the 2018 Interim UST Policy.

Although the Regions may modify this template letter, the letter should be addressed to the tribal leadership, and cc the tribal council, Environmental Department and/or Business Enterprise. The letter also should contain the following:

- 1. A section that (i) describes the date and time, etc., of the underlying inspection, (ii) contains information on relevant prior compliance assistance, compliance history, inspections, etc.; (iii) sets forth the violations; and (iv) addresses any required operator training;*
- 2. A section(s) describing the Field Citation and the process for accepting the Field Citation; and*
- 3. Notice of the opportunity to consult with EPA on the Field Citation, including on the actions needed to return to compliance.*

See below for a template letter.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable _____
[Tribal Government]
[Address]

Re: Underground Storage Tank (UST) Compliance Inspection of **[Facility Name, Facility Address, EPA UST ID No.]**: Opportunity for Consultation and Expedited Settlement within Sixty (60) Days.

Dear **[Name and Title]**:

I. Notice of Investigation Results

A. Violations Identified

On **[Date]**, the underground storage tanks located at the above address (the "Facility") were inspected by **[Name of the EPA, State, or Tribal inspector]** on behalf of the U.S. Environmental Protection Agency (EPA) to determine the Facility's compliance with UST requirements under Subtitle I of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. §§ 6991 *et seq.*) and its implementing regulations (40 C.F.R. part 280). It is our understanding that this facility is owned or operated by the **[Name of the Tribe]** and therefore, it is the Respondent in this enforcement action.

[Provide a paragraph describing any relevant prior compliance history including prior inspections, violations identified, and any compliance assistance provided.]

Based on that inspection, the EPA finds the Facility to be in violation of the following requirements:

[List the violation(s) and the applicable requirement(s)]

1. _____
2. _____
3. _____

If you (the Respondent) believe the UST Facility is not in violation of these UST requirements, you may provide a written explanation, along with any supporting documentation to the compliance officer at the EPA address shown below within 60 days of your receipt of this letter.

B. Need for Operator Retraining

In addition, based on the violations identified, the EPA has determined retraining is needed in accordance with 40 CFR §280.242 [**inert either has been waived or is required under 40 CFR §280.244**] for [**insert Class A Operator, or Class B Operator, or Both**] for the following topic areas:

Topic Areas of Regulation

1. _____
2. _____
3. _____

[Only add this if a retraining notice is enclosed]: Enclosed with this letter is an Underground Storage Tank (UST) Notice of Determination of Operator Retraining which provides further direction on how this retraining should be taken. Retraining must be completed within thirty (30) calendar days from receiving the “Underground Storage Tank (UST) Notice of Determination of Operator Retraining.” Failure to complete retraining within thirty (30) calendar days may subject the owner/operator to civil penalties.

II. Opportunity for Expedited Settlement

Under RCRA § 9006(d), the EPA may pursue civil penalties of up to \$60,039 per day (as adjusted for inflation) for each violation of UST requirements. However, the EPA is offering [**Insert Name of the Tribal Government**] an opportunity to settle this matter quickly and at a reduced penalty if you choose to follow the expedited settlement procedures provided in the enclosed UST Field Citation within sixty (60) days of your receipt of this letter.

This settlement process is optional. You are not required to submit this form. If you do not submit it, the EPA will conclude you are not interested in pursuing expedited settlement. The EPA will then consider other actions to resolve these violations including the possibility of formal (*i.e.*, non-expedited) administrative or judicial enforcement.

If you choose to participate in this expedited settlement process, and the EPA determines you have satisfied the requirements for expedited settlement under the Field Citation, the EPA will settle the outstanding violations for \$[**Amount**].

III. Procedures for Expedited Settlement Under an UST Field Citation

To take advantage of the expedited settlement process, within 60 days of your receipt of this letter, you must follow the instructions in the enclosed Field Citation. They include:

1. Correcting the violations identified in Part I of the Field Citation;
2. Paying the total penalty amount listed in the Field Citation;
3. Signing the Settlement Agreement portion of the Field Citation (Part II); and
4. Returning the Field Citation Form along with documentation of compliance and payment information to the EPA address listed on the Field Citation.

In signing the Settlement Agreement portion of the Field Citation, you are certifying under penalty of law that you have: (a) corrected the violation(s); (b) have submitted true and accurate documentation of compliance; and (c) have agreed to pay the civil penalty of [**Penalty Dollar Amount**] set out in the Agreement. Failure to meet these conditions means you may be liable for the original violations, as well

as liable for making a false representation to the U.S. Government under 18 U.S.C. § 1001. Also, by signing the Agreement, you agree to waive your opportunity for a public hearing pursuant to RCRA § 9006.

IV. Opportunity for Consultation

EPA is notifying **[Tribal Government]** of the opportunity to consult on this enforcement matter. If the **[Tribal Government]** wishes to request EPA consultation, please contact the EPA Compliance Officer listed below. Please be aware that this consultation does not affect the sixty-day time period for pursuing expedited settlement under an UST Field Citation. This opportunity to consult is offered consistent with the *Guidance on the Enforcement Principles of the 1984 Indian Policy* (January 17, 2007) which implements the *EPA Policy on Consultation and Coordination with Indian Tribes* (May 4, 2011).

V. Conclusion

We are committed to the fair and rapid settlement of this matter. If you have any questions or wish to discuss the general circumstances of your case, please contact the Compliance Officer assigned to your case: **[Name]** at **[Phone Number and/or E-mail Address]**.

Sincerely,

[EPA Manager's Name and Signature Block]

cc: [Insert names of all members of the Tribal Council]
[Insert name/title of Tribe's Environmental Director]
[Insert name/title of Director of Tribal Enterprise or Business Council]
[Insert name of Tribal attorney]

Enclosures

- UST Field Citation Form
- Standard Penalty Checklist Information for Small Businesses
- UST Notice of Determination of Operator Retraining **[if applicable]**.

Attachment D2: Letter Template for Settlement of UST Violations Using an Expedited Settlement Agreement and Final Order for an UST Facility Owned or Operated by a Tribal Government

Explanatory note: As part of the Tribal UST Compliance Pilot, if the region is offering an ESA to a UST Facility owned or operated by the Tribe, the region should send the tribal government the ESA cover letter and ESA.

Below is a template letter to the tribal government based on the model letter in the 2018 Interim UST Policy.

Although the Regions may modify this template letter, the letter should be addressed to the tribal leadership, and cc the tribal council, Environmental Department and/or Business Enterprise. The letter also should contain the following:

- 1. A section that (i) describes the date and time, etc., of the underlying inspection, (ii) contains information on relevant prior compliance assistance, compliance history, inspections, etc.; (iii) sets forth the violations; and (iv) addresses any required operator training;*
- 2. A section(s) describing the ESA offer and the process for accepting the offer (please make sure the payment protocol in the cover letter and the ESA are consistent); and*
- 3. Notice of the opportunity to consult with EPA on the ESA, including on the actions needed to return to compliance.*

See below for a template letter.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable _____
[Tribal Government]
[Address]

Re: Underground Storage Tank (UST) Compliance Inspection of **[Facility Name, Facility Address, EPA UST ID No.]**: Opportunity for Consultation and Expedited Settlement within Sixty (60) Days.

Dear [Name and Title]:

I. Notice of Investigation Results

A. Violations Identified

On [Date], the underground storage tanks (“USTs”) located at the above address (the “Facility”) were inspected by **[Name of the EPA, State, or Tribal inspector]** on behalf of the U.S. Environmental Protection Agency (EPA) to determine the Facility’s compliance with UST requirements under Subtitle I of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. §§ 6991 *et seq.*) and its implementing regulations (40 C.F.R. part 280). It is our understanding that the **[Name of the Tribe]** owns or operates the Facility, and therefore, it is the Respondent in this enforcement action.

[Provide a paragraph describing any relevant prior compliance history including prior inspections, violations identified, whether a field citation was issued, and any compliance assistance provided.]

Based on that inspection, the EPA finds the Facility to be in violation of the following requirements:

[List the violation(s) and the applicable requirement(s)]

1. _____
2. _____
3. _____

If you (the Respondent) believe the UST Facility is not in violation of these UST requirements, you may provide a written explanation, along with any supporting documentation to the EPA compliance officer at the EPA address shown below within 60 days of your receipt of this letter.

B. Need for Operator Retraining

In addition, based on the violations identified, the EPA has determined retraining is needed in accordance with 40 CFR §280.242 [**insert either *has been waived or is required under 40 CFR §280.244***] for [**insert *Class A Operator, or Class B Operator, or Both***] for the following topic areas:

Topic Areas of Regulation

1. _____
2. _____
3. _____

[Only add this if a retraining notice is enclosed:] Enclosed with this letter is an Underground Storage Tank (UST) Notice of Determination of Operator Retraining which provides further direction on how this retraining should be taken.] Retraining must be completed within thirty (30) calendar days from receiving the “Underground Storage Tank (UST) Notice of Determination of Operator Retraining.” Failure to complete retraining within thirty (30) calendar days may subject the owner/operator to civil penalties.

II. Opportunity for Expedited Settlement

Under RCRA § 9006(d), the EPA may pursue civil penalties of up to \$60,039 per day (as adjusted for inflation) for each violation of UST requirements. However, the EPA is offering [Insert Name of the Tribal Government] an opportunity to settle this matter quickly and at a reduced penalty if you choose to follow the expedited settlement procedures outlined below within 60 days of your receipt of this letter.

Enclosed for your consideration is Expedited Settlement Agreement and Final Order (ESA/FO or Agreement). This settlement process is optional. You are not required to submit this form. If you do not submit it, the EPA will conclude you are not interested in pursuing expedited settlement. The EPA will then consider other actions to resolve these violations including the possibility of formal (*i.e.*, non-expedited) administrative or judicial enforcement.

If you choose to participate in this expedited settlement process, and the EPA determines you have satisfied the requirements for expedited settlement described below, the EPA will settle the outstanding violations for \$[Amount].

III. Procedures for Expedited Settlement Under an ESA/FO

To take advantage of the expedited settlement process under this Agreement, within 60 days of your receipt of this letter, you must:

1. Correct the violations identified above. This means you must correct all past violations that can be corrected and ensure your USTs are in full compliance with the provisions that were identified as violated in Section I above. (Note: Some UST violations cannot be “corrected” because they require performance by, or within, a certain date or timeframe in the past. For example, an owner/operator cannot correct a failure to monitor tanks every 30 days for releases (40 C.F.R. § 280.41(a)) once those 30-day terms have expired. However, those violations will be considered remedied for purposes of this ESA/FO if an owner/operator demonstrates steps were taken to prevent a reoccurrence in the future.) This return to compliance along with the costs of returning to compliance must be documented by the owner/operator.

2. Submit documentation that your facility is now in compliance with UST requirements that were alleged to be violated.
3. Provide an estimate of the cost of returning to compliance.
4. Complete and return to the EPA the enclosed ESA/FO.

In signing the Agreement, you are certifying under penalty of law that you have: (a) corrected the violation(s); (b) have submitted true and accurate documentation of compliance; and (c) have agreed to pay the civil penalty of **[Penalty Dollar Amount]** set out in the Agreement. Failure to meet these conditions means you may be liable for the original violations, as well as liable for making a false representation to the U.S. Government under 18 U.S.C. § 1001. Also, by signing the Agreement, you agree to waive your opportunity for a hearing or appeal concerning your violation(s).

If the EPA determines you have satisfied the requirements for settlement under this Agreement, a fully-executed ESA/FO will be sent to you via certified mail once it has been filed with the EPA Regional Hearing Clerk. As provided in the Agreement, the civil penalty will be due within sixty (60) calendar days of the date that the ESA/FO is filed with the Regional Hearing Clerk. Payment instructions are provided on the Agreement. Please do not send a payment for penalty until you receive the fully-executed ESA/FO, which will include the docket number that is required in order to submit payment.

If you can demonstrate in writing that it is technically infeasible or impracticable to correct your violation(s) within sixty (60) calendar days, upon request, EPA, at its discretion, may grant an extension of up to thirty (30) calendar days. You must request that extension and demonstration of infeasibility or impracticability in writing to EPA no later than ten (10) calendar days before the end of the initial sixty (60) calendar day compliance period. The request must clearly indicate whether you intend to take advantage of this expedited settlement offer and contain a schedule for when you will come into compliance (which must not extend beyond the extension period). Any extensions must be granted in writing by EPA.

If you do not follow the procedures outlined in this letter for expedited settlement (e.g., correct the violation(s) and sign and return the Agreement) within sixty (60) calendar days of your receipt of this letter, then this settlement offer will be automatically withdrawn, without prejudice to EPA's ability to file an enforcement action for the cited violation(s) and to seek up to the statutory maximum penalty for each violation.

IV. Opportunity for Consultation

EPA is notifying **[Tribal Government]** of the opportunity to consult on this enforcement matter. If the **[Tribal Government]** wishes to request EPA consultation, please contact the EPA Compliance Officer listed below. Please be aware that this consultation does not affect the sixty-day time period for pursuing expedited settlement under an UST ESA/FO. This opportunity to consult is offered consistent with the *Guidance on the Enforcement Principles of the 1984 Indian Policy* (January 17, 2007) which implements the *EPA Policy on Consultation and Coordination with Indian Tribes* (May 4, 2011).

V. Conclusion

We are committed to the fair and rapid settlement of this matter. If you have any questions or wish to discuss the general circumstances of your case, please contact the Compliance Officer assigned to your case: **[Name]** at **[Phone Number and/or E-mail Address]**.

Sincerely,

[EPA Manager's Name and Signature Block]

cc: [Insert names of all members of the Tribal Council]
[Insert name/title of Tribe's Environmental Director]
[Insert name/title of Director of Tribal Enterprise or Business Council]
[Insert name of Tribal attorney]

Enclosures

- UST Expedited Settlement Agreement and Final Order
- Standard Penalty Checklist Information for Small Businesses
- UST Notice of Determination of Operator Retraining **[if applicable]**.

Attachment E1: Letter Template for Informing Tribal Government of a Notice of Intent to Prohibit Deliveries to an UST Facility Owned or Operated by a Tribal Government

Explanatory note: As part of the Tribal UST Compliance Pilot, a region should provide the tribal government a copy of a Notice of Intent to Prohibit Delivery issued to a tribal UST facility.

Below is a template letter to the tribal government when the tribal government is an owner/operator of the UST facility.

Although the Regions may modify this template letter, the letter should be addressed to the tribal leadership, and cc the tribal council, its Environmental Department and/or Business Enterprise. The letter also should contain the following:

- 1. A section alerting the tribal government of the issuance of an NIPD and what delivery prohibition means;*
- 2. A section describing prior compliance assistance, the compliance history and violations that led to the issuance of an NIPD;*
- 3. A section listing what actions can be done to resolve the identified violations/deficiencies so that EPA can rescind the NIPD;*
- 4. If applicable, a discussion on whether the UST targeted by the NIPD is in a rural or remote area and if so, how that impacts timing of any delivery prohibition; and*
- 5. An offer to consult with the tribal government consistent with OECA's 2001 Tribal Enforcement Guidance which implements the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011).*
- 6. A copy of the UST Delivery Prohibition Policy.*

See below for a template letter.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable [Name], Chair
[Name of Tribe]
[Address]

Re: Notice of Intent to Prohibit Deliveries at [Facility Name, Facility Address, EPA UST ID No.]:

Dear [Name and Title]:

Enclosed is the U.S. Environmental Protection Agency's Notice of Intent to Prohibit Deliveries ("NIPD" or "Notice") of fuel to the Underground Storage Tank (UST) [EPA ID No. ____] located at [Name and Address of the UST Facility], within the exterior boundaries of the [insert name of Reservation, Rancheria etc]. The EPA issued the enclosed NIPD on [insert DATE] based on the Facility's noncompliance with the federal UST regulations. It is EPA's understanding that the Tribe owns or operates the Facility and is therefore responsible for the Facility's compliance with UST requirements. **Please note that failure to correct the violations or other deficiencies¹ listed in this Notice within 30 calendar days from the date of the Notice will result in prohibition of fuel deliveries to this UST until the violations or deficiencies are corrected.**

I. Background

Section 9102 of the Solid Waste Disposal Act, 42 U.S.C. § 6991k, authorizes the EPA to prohibit deliveries of regulated substances to USTs that EPA has identified as ineligible for delivery. "Delivery prohibition" means the prohibition of delivery, deposit, or acceptance of a regulated substance into an UST that EPA has identified as ineligible for delivery, deposit, or acceptance. The *EPA Policy on Underground Storage Tanks Delivery Prohibition*, dated June 25, 2012 ("Policy"), provides recommended procedures and guidelines to initiate delivery prohibition at UST facilities where violations or other deficiencies pose a serious threat to human health, safety, or environment. The Policy also applies to facilities that continue to be out of compliance after other enforcement actions have been taken. A copy of the Policy is enclosed for your consideration.

The enclosed NIPD(s) for Tank(s) [EPA ID No. ____] contains:

- A list of outstanding violations or deficiencies for each tank;
- An offer to schedule a meeting with you and the EPA, at your request, and

¹ It is possible to issue an NIPD for deficiencies that may not be identifiable at the time as violations (e.g., leaks). Please see page 2 and footnote 5 of the enclosed Delivery Prohibition Policy for more information.

- Notice that you have 30 calendar dates from the date of the NIPD to correct the violations/deficiencies before the EPA will attach a “red tag’ on each tank prohibiting fuel delivery.

As the owner or operator of the Facility, you may request a meeting, video conference, or call with the EPA to discuss any questions it has regarding the delivery prohibition process, the NIPD, and what steps the facility needs to take to return to compliance. As part of any meeting you may request, the EPA is notifying the Tribe of the opportunity to consult on the NIPD consistent with the *Guidance on the Enforcement Principles of the 1984 Indian Policy* (January 17, 2001) which implements the *EPA Policy on Consultation and Coordination with Indian Tribes* (May 4, 2011). Please be advised that any meeting or consultation will not extend the 30-day period for returning your UST(s) to full compliance with federal requirements.

II. Description of the Violations/Deficiencies

[Provide a description of any relevant prior compliance history including prior inspections, violations identified, whether a field citation or ESA was issued, and any compliance assistance provided.]

[Also provide reason(s) why these outstanding violations/deficiencies warrant the issuance of an NIPD]

For the reasons indicated above, the EPA has issued the enclosed NIPD(s) for the UST(s) identified in this Notice.

III. Actions Needed to Address the Violations/Deficiencies Identified in the Enclosed NIPD

You must complete the following actions to avoid prohibition of deliveries at [EPA ID No. ____]:

[List the violation(s) by tank and steps needed to address violations/deficiencies.]

Tank No. _____

1. _____

2. _____

3. _____

Tank No. ____ **[If applicable]**

You must provide documentation that is sufficient for EPA to determine that violations or other deficiencies have been corrected and that it is appropriate to rescind the NIPD.

IV. UST Facilities in Rural and Remote Areas [Use only if you believe the UST facility might be in a rural and remote area]

Pursuant to Section 9012(a)(4)(A) of the SWDA, the EPA may decide to not identify an UST as ineligible to receive fuel or it may delay in prohibiting deliveries for up to 180 days if the UST is in a rural and remote area. 42 U.S.C. § 6991k(a)(4). When receiving an NIPD, an owner or operator can provide evidence to a region that the UST subject to delivery prohibition is in a rural and remote area. An UST is considered to be in a rural and remote area if there are no other USTs that contain similar motor fuel for sale within 30 miles by automobile on a road. More information on this provision is found on Page 3 of the enclosed Policy. Based on the EPA's analysis, the UST(s) subject to this Notice [is/is not] located in a rural and remote area. **If you believe the UST(s) subject to this Notice is in a rural and remote area, you should let us know immediately.**

V. Opportunity to Consult

Due to the time sensitive nature of NIPD, please notify me within ten days of your receipt of this letter if you would like an opportunity to consult with EPA regarding the information provided in this letter and the enclosed Notice of Intent to Prohibit Delivery

EPA's approach to resolving this potential noncompliance and offering a consultation opportunity is consistent with the [EPA Guidance on the Enforcement Principles of the 1984 Indian Policy](#) which, among other things, implements the [EPA Policy on Consultation and Coordination with Indian Tribes](#), the EPA's generally applicable UST guidance.

VI. Conclusion

Should you have any questions regarding this action, please contact [**Name of EPA Compliance Officer**] by phone at [**Phone Number**] or by email at [**Email Address**]. Your assistance in resolving this matter is greatly appreciated.

Sincerely,

[EPA Manager's Name and Signature Block]

Enclosures

- Notice of Intent to Prohibit Delivery for [**UST Facility Name**]
- EPA Policy on Underground Storage Tanks Delivery Prohibition
- Compliance History for the UST Facility (optional)
- Compliance Assistance and Enforcement History for UST Facility (optional)

cc: [Insert names of all members of the Tribal Council]
[Insert name/title of Tribe's Environmental Director]
[Insert name/title of Director of Tribal Enterprise or Business Council]
[Insert name of Tribe's attorney]

**Attachment E2: Template of Letter to Tribal Government When Tribe is Not
Owner/Operator of Tribal UST Facility Transmitting Copy of Notice
of Intent to Prohibit Delivery**

Explanatory Note:

As part of the Tribal UST Compliance Pilot, a region should provide a tribal government a copy of a Notice of Intent to Prohibit Delivery (NIPD) sent to a tribal UST facility.

Below is a template letter to the tribal government when the tribal government is NOT an owner/operator of the UST facility.

Although the Regions may modify this template letter, the letter should be addressed to the tribal leadership, and cc the tribal council, Environmental Department, and Business Enterprise. The letter should contain the following, while also being consistent with the Guidance on Communications with Outside Parties:

- 1) A copy of the NIPD sent to the tribal UST facility, and paragraph/section explaining what delivery prohibition means;*
- 2) If applicable, a discussion on whether the UST targeted by the NIPD is in a rural or remote area, and if so, how that impacts timing of any delivery prohibition; and*
- 3) An offer to consult with the tribal government consistent with OECA's 2001 Tribal Enforcement Guidance which implements the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011).*
- 4) A copy of the UST Delivery Prohibition Policy.*

See below for a template letter.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

The Honorable
[Address]
[City, State, Zip]

Re: Underground Storage Tank Notice of Intent to Prohibit Delivery
[Facility Name, Facility Address, EPA UST ID No.]

Dear [Name and Title]:

The purpose of this letter is to inform you that the U.S. Environmental Protection Agency (EPA or Agency) issued a Notice of Intent to Prohibit Deliveries (“NIPD” or “Notice”) of fuel to the Underground Storage Tank (UST) [EPA ID No. ___] located at [Name and Address of the UST Facility], within the exterior boundaries of the [insert name of Reservation, Rancheria etc]. The EPA issued the enclosed NIPD on [insert DATE] based on the Facility’s noncompliance with the federal UST regulations. We are informing you of this Notice and the potential prohibition on delivery of [fuel/regulated substance] to this UST because EPA believes that the Tribe has the following substantial interest in the Facility [insert why we think the Facility is a tribal facility]. EPA is providing this information as part of its interest in working cooperatively with the Tribe to ensure UST compliance.

Background

Section 9102 of the Solid Waste Disposal Act, 42 U.S.C. § 6991k, authorizes the EPA to prohibit deliveries of regulated substances to USTs that EPA has identified as ineligible for delivery. “Delivery prohibition” means the prohibition of delivery, deposit, or acceptance of a regulated substance into an UST that EPA has identified as ineligible for delivery, deposit, or acceptance. The *EPA Policy on Underground Storage Tanks Delivery Prohibition*, dated June 25, 2012 (“Policy”), provides recommended procedures and guidelines to initiate delivery prohibition at UST facilities where violations or other deficiencies pose a serious threat to human health, safety, or environment. The Policy also applies to facilities that continue to be out of compliance after other enforcement actions have been taken. A copy of the Policy is enclosed for your convenience.

UST Facilities in Rural and Remote Areas [Use only if you believe the UST facility might be in a rural and remote area]

Pursuant to Section 9012(a)(4)(A) of the SWDA, the EPA may decide to not identify an UST as ineligible to receive fuel or it may delay in prohibiting deliveries for up to 180 days if the UST is in a rural and remote area. 42 U.S.C. § 6991k(a)(4). When receiving an NIPD, an owner or operator can provide evidence to a region that the UST subject to delivery prohibition is in a rural and remote area. An UST is considered to be in a rural and remote area if there are no other USTs that contain similar motor fuel for sale within 30 miles by automobile on a road. More information on this provision is found on Page 3 of the enclosed Policy. Based on the EPA's analysis, the UST(s) subject to this Notice [is/is not] located in a rural and remote area. **If you believe the UST(s) subject to this Notice is in a rural and remote area, you should let us know immediately.**

Opportunity to Consult

Due to the time sensitive nature of NIPD, please notify me within ten days of your receipt of this letter if you would like an opportunity to consult with EPA regarding the information provided in this letter and the enclosed Notice of Intent to Prohibit Delivery. Please keep in mind that EPA may be constrained from discussing some details of this matter because of the need to preserve the confidentiality of enforcement sensitive or confidential business information and to avoid jeopardizing the enforcement case.

EPA's approach to resolving this potential noncompliance and offering a consultation opportunity is consistent with the [*EPA Guidance on the Enforcement Principles of the 1984 Indian Policy*](#) which, among other things, implements the [*EPA Policy on Consultation and Coordination with Indian Tribes*](#), the EPA's generally applicable UST guidance, and the [*Restrictions on Communications with Outside Parties Regarding Enforcement Actions*](#) (March 8, 2006).

Please contact me at [insert phone number] or [insert email address ____@epa.gov] if you have any questions about this letter or have your representative contact [insert name of another contact at Region] at [insert phone number] or [insert email address: ____@epa.gov].

Sincerely,

Name, Title

Enclosure

cc: [Insert names of all members of the Tribal Council]
[Insert name/title of Tribe's Environmental Director]
[Insert name/title of Director of Tribal Enterprise or Business Council]
[Insert name of Tribe's attorney]
[Insert name(s)], UST Operator(s)