

# UST ENFORCEMENT OVERVIEW



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Case Resolution Section



# Agenda

- Avoiding Enforcement: Common Violations
- The Enforcement Process
- Determining Penalties
- Contact Information



# Enforcement Objective

- **KY Division of Enforcement (DENF)**
  - **To deter and gain future compliance**



# Common UST Violations

## ■ 401 KAR 42:030 Section 1

- Section 1. Application of Federal Regulations. (1) The requirements for spill and overflow control, operation and maintenance of corrosion protection, compatibility, repairs, reporting and recordkeeping for underground storage tanks are governed by 40 C.F.R. Part 280, Subpart C and this administrative regulation. (2) The forms incorporated by reference in Section 4 of this administrative regulation shall be submitted to the cabinet within thirty (30) days of completion of cathodic protection system testing to document the results of the tests which are required by subsection (1) of this section.



# Common Violations

- **401 KAR 42:040 Section 1**
  - (1) The requirements for UST system release detection and recordkeeping for UST systems are governed by 40 C.F.R. Part 280 Subpart D and this administrative regulation.
  - (2) The documents incorporated by reference in Section 3 of this administrative regulation shall be used in meeting the requirements of subsection (1) of this section.
  - (3) **The results of the following tests required by 40 C.F.R. Part 280 Subpart D shall be submitted to the cabinet within thirty (30) days of the test completion:**
    - (a) **Annual Line Tightness Test for Pressurized Piping;**
    - (b) **Annual Operational Line Leak Detector Test;**
    - (c) **Five (5) year Tank Tightness Test; and**
    - (d) **Tri-annual Line Tightness Test for American Suction Piping.**



# Common Violations

- 401 KAR 42:030 Section 1
  - 1) The requirements for **spill and overflow control, operation and maintenance of corrosion protection, compatibility, repairs, reporting and recordkeeping for underground storage tanks** are governed by 40 C.F.R. Part 280, Subpart C and this administrative regulation.
  - (2) The forms incorporated by reference in Section 4 of this administrative regulation shall be submitted to the cabinet within thirty (30) days of completion of cathodic protection system testing to document the results of the tests which are required by subsection (1) of this section.



# Common Violations

- 401 KAR 42:020 Section 1
  - (1) Section 1. Application of Federal Regulations. (1) The requirements concerning **performance standards, registration, and alternatives for upgrading UST systems** are governed by 40 C.F.R. Part 280, Subpart B and this administrative regulation.
  - (2) 40 C.F.R. 280.22(b) allows for state forms to be used in lieu of federal forms for registration of UST systems. The "UST Facility Registration Form", DEP 7112, (August 2006) shall be used in meeting the requirements of this administrative regulation, 40 C.F.R. 280 Subpart B and 401 KAR 42:200.



# Common Violations

## ■ 401 KAR 42:070 Section 3; Temporary Closure

- 1) If a UST system is **temporarily closed**, the owners and operators shall continue operation and maintenance of corrosion protection and UST system release detection in accordance with 401 KAR 42:030 and 401 KAR 42:040. If a UST system release is suspected or confirmed, the owners and operators shall comply with 401 KAR 42:050 and 401 KAR 42:060. UST system release detection is not required as long as the UST system is empty.
- 2) If a UST system is temporarily closed for more than three (3) months, the owners and operators shall comply with the following requirements:
  - (a) Leave vent lines open and functioning;
  - (b) Cap and secure all other lines, pumps, man ways, and ancillary equipment; and
  - (c) Submit an amended "UST Facility Registration Form", DEP 7112, (August 2006), (incorporated by reference in 401 KAR 42:020) to the cabinet indicating that the UST system has changed to temporary closure status.
- 3)(a) If a UST system is temporarily closed for more than twelve (12) months, and does not meet the performance standards of 401 KAR 42:020, then the UST system shall be permanently closed in accordance with Section 4 of this administrative regulation.
- (b) The owners and operators shall permanently close the substandard UST system at the end of this twelve (12) month period, unless the cabinet provides an extension of the twelve (12) month temporary closure period. The cabinet may grant an extension if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.





# Common Violations

- 40 CFR 280.20(b)
  - The **piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion** in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory
- 40 CFR 280.20(c)(1)(i)
  - ...to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following **spill and overfill prevention equipment**
- 40 CFR 280.31(b)(1)
  - **All cathodic protection systems must be tested within 6 months of installation and at least every 3 years thereafter** or according to another reasonable time frame established by the implementing agency;



# Common Violations

## ■ 40 CFR 280.41 and 40 CFR 280.41(a)

Owners and operators of petroleum UST systems must provide release detection for tanks and piping as follows:

- (a) **Tanks. Tanks must be monitored at least every 30 days for releases using one of the methods listed in §280.43 (d) through (h) except that:**
  - (1) UST systems that meet the performance standards in §280.20 or §280.21, and the monthly inventory control requirements in §280.43 (a) or (b), may use tank tightness testing (conducted in accordance with §280.43(c)) at least every 5 years until December 22, 1998, or until 10 years after the tank is installed or upgraded under §280.21(b), whichever is later;
  - (2) UST systems that do not meet the performance standards in §280.20 or §280.21 may use monthly inventory controls (conducted in accordance with §280.43(a) or (b)) and annual tank tightness testing (conducted in accordance with §280.43(c)) until December 22, 1998 when the tank must be upgraded under §280.21 or permanently closed under §280.71; and
- (3) Tanks with capacity of 550 gallons or less may use weekly tank gauging (conducted in accordance with §280.43(b)).



# Common Violations

- 40 CFR 280.44(a) and 40 CFR 280.44(b)  
Each **method of release detection for piping** used to meet the requirements of §280.41 must be conducted in accordance with the following:
  - (a) *Automatic line leak detectors.* Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 pounds per square inch line pressure within 1 hour. An annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements.
  - (b) *Line tightness testing.* A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure.



# The Enforcement Process

- 1<sup>st</sup>: Communication to facility regarding enforcement referral
- 2<sup>nd</sup>: Schedule of an enforcement conference
- 3<sup>rd</sup>: Conduct Conference
  - Review violations cited
  - Comments and Explanation by Facility
  - Penalty Assessment
  - Negotiations



# Penalty Assessment

- Maggard Factors
  - The seriousness of the violation;
  - Economic benefit (if any) resulting from the violation;
  - Economic impact of the penalty on the violator including the cost of remediation;
  - History of other violations (Habitual repeat offender);
  - Culpability of the violator;
  - Good faith actions of the violator to remedy the violations; and
  - Number of days the Cabinet shows the violator to have violated the law.



# Penalty Assessment

- Assess penalties for each tank system
- Statute allows for a \$5,000 dollar civil penalty per violation with each day constituting a separate violation

Our goal is compliance and NOT to put people out of business. We want to work in cooperation with a facility to negotiate a resolution



# If Negotiations Fail?

- DENF refers the case of Office of Legal Services
  - Administrative Hearing
  - Franklin Circuit Court
    - Agreed Order



# Final Thoughts

- To avoid a meeting with DENF, know your UST system and specific requirements regarding
  - registrations,
  - proper operation and maintenance
  - leak detection,
  - testing,
  - recordkeeping, and
  - reporting





# Contact Information

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