



ASSISTANT ADMINISTRATOR FOR ENFORCEMENT AND COMPLIANCE ASSURANCE

WASHINGTON, D.C. 20460

December 30, 2024

MEMORANDUM

SUBJECT: Tribal Underground Storage Tank Compliance Protocols

FROM: David M. Uhlmann

TO: Regional Administrators
Deputy Regional Administrators
Regional Enforcement and Compliance Assurance Division Directors
Regional Land, Chemicals and Redevelopment Division Directors
Regional Counsels

I am pleased to announce distribution of the Tribal Underground Storage Tank Compliance Protocols (Protocols, attached herein) transitioning this successful three-year pilot into a full program, which will continue to facilitate the Environmental Protection Agency's (EPA or Agency) ability to ensure that the human health and environmental protections afforded by the underground storage tank (UST) program are realized in Indian country. These Protocols were updated to reflect the experience and input of EPA enforcement staff and Tribal environmental professionals during the pilot phase.

The Protocol's hallmarks are twofold: (1) ensuring Tribal governments are provided with information on, and notice of consultation or coordination opportunities related to announced inspections and findings of noncompliance at UST facilities in Indian Country and providing information on compliance assistance and potential enforcement responses for Tribal UST facilities¹ and (2) streamlining the administrative process and allowing the use of expedited enforcement tools by providing advance concurrence from the OECA Assistant Administrator to Regions who follow the Protocols.² Adopting this pilot as a full program will allow the EPA to continue to improve compliance at Tribal government USTs, which includes leaking underground storage tanks (LUSTs) at Tribal facilities.

Through this program, EPA Regions using the Protocols and associated templates are provided advance OECA Assistant Administrator concurrence on the use of expedited enforcement tools to address

¹ Tribal Facilities are defined in EPA's *Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy* (Jan. 17, 2001), available at <https://www.epa.gov/sites/production/files/documents/finaltribalguidance011701.pdf>.

² See, *Indian Policy Implementation Guidance* (Nov. 8, 1984), which calls for concurrence before initiating a penalty or unilateral enforcement action against a Tribal facility.

violations of UST requirements at Tribal UST facilities, and traditional administrative enforcement when those tools are used but not successful in returning the Tribal UST facility to compliance in a timely manner. Going forward, regions do not need to obtain case-by-case concurrence before using the following expedited enforcement tools at a Tribal UST facility, when initiated consistent with the attached Protocols: (1) a Field Citation; (2) an Expedited Settlement Agreement (ESA); (3) a Delivery Prohibition Action; and (4) filing of a non-expedited administrative enforcement action following a Field Citation or ESA offer that was rejected or ignored. My concurrence is conditioned on the issuing office following the process outlined in the Protocols and use of the associated templates.³

Making the pilot permanent is consistent with the [*EPA Policy for the Administration of Environmental Programs on Indian Reservations*](#), which sets forth Principles to guide the Agency's work in Indian country and is consistent with the federal trust relationship with federally recognized Tribes. Importantly, our decision aligns with the Office of Enforcement and Compliance Assurance's (OECA) [*Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy*](#), which is designed to ensure that "the Agency will strive to assure compliance with environmental statutes and regulations on Indian reservations," and with our commitment that implementation of federal environmental protections be as robust inside Indian country as the EPA requires outside of Indian country.

Background

The EPA began developing the Protocols in 2020. In 2021, the EPA undertook a national consultation with federally recognized Tribes, and coordination with Tribal environmental professionals, on the Protocols and proposed a three-year pilot. OECA considered all the Tribal comments received and revised the Protocols in response to input received during the consultation period. The three-year pilot began on January 1, 2022.

The decision to make the Protocols permanently available was informed by discussions with Tribal environmental professionals and the Office of Underground Storage Tanks in the EPA's Office of Land and Emergency Management, and the implementation experiences of our partners in the EPA regions.

During the pilot, the EPA experienced a significant increase in communication with Tribes about UST compliance. These communications included general compliance information, notices of inspections, notices of potential violations and the opportunity for owners/operators to correct noncompliance in a timely manner, with the understanding that there is a potential for agency enforcement if violations remained uncorrected. Importantly, the EPA's review of the pilot implementation data indicate a steady improvement in compliance without a significant increase in the use of formal enforcement at USTs in Indian country during the period in which the Protocols were piloted.⁴ The EPA's experience implementing the pilot affirmed the need to retain the Agency's commitment to providing Tribal governments consultation or coordination opportunities, access to information, and additional time to respond to noncompliance prior to EPA enforcement at Tribal government USTs. Continuation of this program will help ensure that Tribal governments and Tribal UST facilities have the information they need to address violations more quickly, thereby reducing the duration of violations, preventing future

³ Case-specific concurrence is appropriate if issuing the above enforcement tools in a manner inconsistent with the Protocols and when referring an enforcement matter to the U.S. Department of Justice.

⁴ The Office of Underground Storage Tanks collects and reports data on the percentage of facilities in significant operational compliance and those in compliance with UST regulations on a semi-annual basis. The reports are available at <https://www.epa.gov/ust/ust-performance-measures>.

violations, and, ultimately, reducing the number and severity of UST releases and potential harm to human health or critical resources such as drinking water.

I wish to thank our EPA colleagues who invested significant time and resources in developing and piloting the Protocols and who will implement them moving forward. I also wish to thank the American Indian Environmental Office in the Office of International and Tribal Affairs, and the Office of General Counsel for their participation and support of this effort. Working together with our Tribal partners, we can better protect public health and the environment by ensuring UST compliance in Indian country.

This memorandum, the Protocols, and attached templates are available on the internet at <https://www.epa.gov/enforcement/tribal-underground-storage-tank-compliance-protocols>.

Attachment: Tribal Underground Storage Tank Compliance Protocols with Attachments

cc: Dimple Chaudhary, Acting General Counsel

Jane Nishida, Acting Deputy Administrator

Kenneth Martin, Director, American Indian Environmental Office

Barry Breen, Principal Deputy Assistant Administrator, Office of Land and Emergency Management

Cliff Villa, Deputy Assistant Administrator, Office of Land and Emergency Management

OECA Office Directors and Deputy Office Directors