



DEPARTMENT OF
ECOLOGY
State of Washington

Rule Implementation Plan
Chapter 173-360 WAC
Underground Storage Tank Regulations

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For more information contact:

Toxics Cleanup Program
P.O. Box 47600
Olympia, WA 98504-7600

Phone: 360-407-7170

Washington State Department of Ecology - www.ecy.wa.gov

- Headquarters, Olympia 360-407-6000
- Northwest Regional Office, Bellevue 425-649-7000
- Southwest Regional Office, Olympia 360-407-6300
- Central Regional Office, Yakima 509-575-2490
- Eastern Regional Office, Spokane 509-329-3400

Ecology publishes this document to meet the requirements of the Washington State Administrative Procedure Act (RCW 34.05.325)

If you need this document in a version for the visually impaired, call the Toxics Cleanup Program at 360-407-7170. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

Table of Contents

TABLE OF CONTENTS.....	1
PURPOSE	1
INTRODUCTION	1
IMPLEMENTATION AND ENFORCEMENT.....	2
INFORMING AND EDUCATING PERSONS AFFECTED BY THE RULE	4
PROMOTING AND ASSISTING VOLUNTARY COMPLIANCE	5
EVALUATING THE RULE.....	5
TRAINING AND INFORMING ECOLOGY STAFF	6
LIST OF SUPPORTING DOCUMENTS THAT MAY NEED TO BE WRITTEN OR REVISED	6
MORE INFORMATION	7
CONTACT INFORMATION	7

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Purpose

Ecology provides the information in this implementation plan to meet agency and Administrative Procedure Act (RCW 34.05.328) requirements related to rule adoptions.

Introduction

The purpose of this rule implementation plan is to inform those who must comply with the Underground Storage Tank (UST) Regulations (Chapter 173-360 WAC) about how the Department of Ecology (Ecology) intends to:

- Implement and enforce the rule,
- Inform and educate persons affected by the rule,
- Promote and assist voluntary compliance for the rule,
- Evaluate the rule, and
- Train and inform Ecology staff about the new or amended rule.

Also included in this plan is information about:

- Supporting documents that may need to be written or revised because of the new rule or amended rule,
- Other resources where more information about the rule is available, and
- Contact information for Ecology employees who can answer questions about the rule implementation.

Ecology is amending the UST rule in order to implement changes specified by the Legislature in 2007 in Substitute Senate Bill 5475, Underground Storage Tanks¹, which amended Chapter 90.76 RCW. The changes are necessary to comply with the new federal requirements in the Underground Storage Tank Compliance Act of 2005 (42 U.S.C. Sec. 15801 et seq., Energy Policy Act of 2005, P.L. 109-58, Title XV, subtitle B). There are four components to the UST Rule amendment:

1. **Delivery Prohibition:** The UST rule revisions authorize Ecology to stop the regulated substances from being delivered to UST systems that do not comply with regulatory requirements;
2. **Operator Training:** The UST rule revisions establish an operator training program for individuals who operate and maintain UST systems;
3. **Secondary Containment:** The UST rule revisions require secondary containment of tanks and pipes installed or replaced after October 1, 2012; and
4. **Under-dispenser Containment:** The UST rule revisions require containment under dispenser systems if the dispenser, dispenser system, or underground piping connected to the dispenser system is installed or replaced after October 1, 2012.

¹ The session law is available here: <http://apps.leg.wa.gov/documents/billdocs/2007-08/Pdf/Bills/Session%20Law%202007/5475-S.SL.pdf>

Implementation and Enforcement

Ecology will implement and enforce the amended rule through the UST inspection process. Ecology inspects each UST facility at least once every three years. If needed, Ecology may conduct more frequent inspections. Ecology intends to implement the four components of the amended rule as follows:

A. Delivery Prohibition

Ecology currently has the authority to prohibit fuel delivery through the removal of facility tags. This affects all UST systems at a facility. The rule amendment will allow Ecology to prohibit delivery to individual UST systems by placing red tags on individual UST systems without shutting down the entire facility. Ecology actions to remove facility tags or place red tags on individual tanks requires a 30 day appeal period unless there is an immediate threat to human health or the environment.

Ecology will work with the Office of the Attorney General to support implementation and enforcement of new delivery prohibition provisions.² These include:

- Develop an implementation and enforcement policy. The policy will address when delivery prohibition is mandatory, when inspectors have the discretion to prohibit delivery and the factors that inspectors should consider when exercising that discretion.
- Develop an implementation and enforcement procedure. The procedures will address enforcement procedures and due-process issues associated with implementing the new requirements. They will allow immediate red tag placement in emergency situations, and in non-emergencies describe how to start the 30 day compliance date clock (required appeal period) for eventual red tag placement.
- Amend the existing boilerplate Enforcement Order.
- Develop a new boilerplate letter for authorizing the removal of the red tags from UST systems.
- Develop field order and/or amend field citation.
- Design and purchase red tags for use by UST inspectors.
- Forms or checklists.
- Develop a Focus sheet for owners and operators that explains what is required to accept a product and what circumstances may lead Ecology to prohibit delivery.
- Develop a Focus sheet for product deliverers and waste oil collectors that explains what is required to deliver product or remove waste oil and identify where they can obtain a list of UST systems subject to delivery prohibition.
- Other education, training and implementation activities described in other sections of this implementation plan.

Ecology will complete these activities prior to the effective date of the UST rule amendments (October 1, 2012).

² Ecology is developing an UST Enforcement Manual. The delivery prohibition section of the enforcement manual is a high priority and will be developed prior to the rest of the manual which will not be completed until the end of 2012.

B. Operator Training

Owner/operator training for Class A, B and C owners and operators has been encouraged but will now become mandatory with the rule amendment. Owners and operators must be trained by the end of 2012, and have the documentation available for inspection. Ecology may require re-training and/or the creation of Operation and Maintenance Plans when owners and operators have not complied with applicable training requirements.

UST Inspectors will evaluate compliance with owner/operator training requirements beginning on January 1, 2013. Ecology will work with the Office of the Attorney General to support implementation and enforcement of the new requirements. Activities include:

- **Implementation and enforcement policy:** Ecology has broad discretion regarding re-training of owners and operators, and Operation and Maintenance Plan requirements. Ecology will develop a policy to explain what factors should be considered by inspectors when exercising this discretion. This policy will be included in the planned UST Enforcement Manual.
- **Focus sheet.** Update current Focus sheet on operator training to reflect final UST rule requirements and compliance dates.
- **WATOT training tool:** Ecology is developing an online tool, the Washington Tank Operator Training (WATOT) to aid owners and operators with the creation of an Operation and Maintenance Plan. It is under development and scheduled for completion by the end of 2012. Ecology will not require an Operation and Maintenance Plan to be produced until the tool is ready.
- Other education, training and implementation activities described in other sections of this implementation plan.

C. Secondary Containment

Secondary containment of USTs and piping is now an industry standard for new installations. No special enforcement policy or procedure is necessary to implement this requirement. UST Inspectors will check for compliance with this requirement during normal inspections. Many of the other education, training and implementation activities described in other sections of this plan will support implementation and enforcement of the secondary containment requirements.

D. Under-dispenser Containment

Under-dispenser containment, a type of secondary containment, collects drips and spills from the fuel dispenser. No special enforcement policy or procedure is necessary to implement this requirement. UST Inspectors will check for compliance with this requirement during normal inspections. Many of the other education, training and implementation activities described in other sections of this plan will support implementation and enforcement of the under-dispenser containment requirements

Informing and Educating Persons Affected by the Rule

Ecology will take a wide range of actions to inform and educate persons affected by the rule amendment. These actions include:

- **UST web page:** Ecology maintains an UST web page (<http://www.ecy.wa.gov/programs/tcp/ust-lust/tanks.html>) which provides information on UST program requirements, policies and procedures. Ecology plans to update and restructure the web page to reflect additional regulatory requirements. Ecology also plans to post a list of frequently asked questions and answers which will be updated on a regular basis.
- **Focus sheets:** Ecology will prepare Focus sheets on the four new rule requirements. Ecology will complete the Focus sheets as soon as possible prior to the effective date of the rule amendments. The Focus sheets will be posted on the UST webpage. Inspectors will also distribute the Focus sheets during facility inspections. The four rule categories are:
 - a. Delivery Prohibition (2 new),
 - b. Operator Training (update),
 - c. Secondary Containment (new), and
 - d. Under-dispenser Containment (new).
- **UST ListServ:** Ecology has developed an UST ListServ that will be used to distribute UST news and updates. Persons wishing to sign up can do so at <http://listserv.wa.gov/cgi-bin/wa?A0=ECOLOGY-UST-RULE>. Additionally, the public can send email to tanks@ecy.wa.gov.
- **Industry Meetings and Newsletters:** Ecology will attend meetings sponsored by trade organizations such as the Washington Oil Marketers Association (WOMA). Ecology has had an information booth at the WOMA Annual Convention for years, and has again this year. Ecology will also continue to work with trade organizations such as WOMA, Western States Petroleum Association (WSPA), Automotive United Trades Organization (AUTO), and the Korean-American Grocers Association (KAGRO) to announce the new requirements through their newsletters.
- **UST Service Provider Training:** Ecology will provide training to UST Service Providers in 2012 so they will know how to inform their customers of the new requirements. Owners and operators will also be able to attend this training. Michael Feldcamp, the TCP rule writer, with the assistance of Headquarters (HQ) and regional inspectors, will provide the training.

Promoting and Assisting Voluntary Compliance

Ecology will continue to promote and assist voluntary compliance with UST rule requirements. Many of the activities discussed above will support these efforts. Activities include:

- **Informational materials related to all the amendments:** Ecology has and will continue to prepare Focus sheets and guidance documents as part of UST operations. UST and rule web pages are updated frequently to keep interested persons informed. Mailings regarding the rule changes have been sent to owners and operators of record, and another mailing regarding the final rule is planned, executed by TCP HQ staff.
- **Service Provider Training:** Ecology will hold several training sessions for UST service providers to explain new UST rule requirements. UST owners and operators can also attend these sessions. This training will occur by the effective date of the rule.
- **Operator Training:** Ecology has and will continue to promote and assist voluntary compliance for the owner and operator training requirement of the rule amendment. After the effective date of this requirement voluntary compliance efforts will be combined with enforcement. The effective date of the training requirement has been extended beyond the effective date of other rule amendment requirements to December 31, 2012 to give owners and operators of UST facilities a chance to voluntarily comply. Alerts to this upcoming requirement have been posted on Ecology's UST web pages for several years, and UST Inspectors have been spreading the word at site inspections for a similar time period.
- **Updated Training Vendor Approvals:** Ecology approves the owner and operator training programs of the vendors who provide the training. All vendors will need to update their training to reflect the rule amendments, and Ecology will re-approve the programs of all the vendors to ensure they do that. Submittal of updated training programs to Ecology should occur by the end of 2012, and TCP HQ staff will review them.
- **WATOT Training Tool:** Ecology is developing the WATOT tool to assist in the owner and operator trainings, and help them develop their Operation and Maintenance Plans when needed. It will be available by the December 31, 2012 compliance date of the requirement.

Evaluating the Rule

Ecology has and will continue to maintain complete records of inspections and enforcement actions. This information is entered in a searchable database. Periodic reports based on these records are evaluated to determine program success, measured by regulatory compliance. Counts of violations, penalty amounts, Notices of Non-Compliance, and Significant Operational Compliance are some examples of data which are evaluated.

Additionally, Class A, B, and C Operator Trainers will be queried to determine the quantity of owners and operators which they have trained. UST Inspectors will note the identity of the trainer during inspections which have resulted in violations.

Training and Informing Ecology Staff

Training and informing staff are Ecology and Toxics Cleanup Program (TCP) standard procedure. TCP will use the following methods for training and informing staff about the new rule requirements:

- **UST Inspector Meetings:** TCP provided training on the UST rule revisions at the “UST All-Hands Inspector Meeting held June 6 and 7, 2012. TCP holds in-person ‘All-Hands’ UST Inspector meetings at least once a year to go over current issues.
- **Monthly Conference Calls:** Ecology UST Inspectors hold monthly teleconference meetings to discuss issues, especially technical and regulatory issues. Regulatory issues will include the new rule amendments.
- **Workshops:** TCP has held numerous program workshops. These workshops provide opportunities for UST Inspectors to get together for presentations and discussions, including rule changes. No workshops are presently planned, but the need for these is periodically evaluated.
- **TCP Intranet:** TCP posts informational materials, guidance, and forms on the TCP intranet (internal) site.
- **In-house training:** The TCP facilitates new and existing staff training with both in-house and outside training on various specific topics, like the Cathodic Protection training which took place at the Northwest Regional Office in late June 2012. The need for training on the rule amendment will be evaluated.
- **EPA training:** The United States Environmental Protection Agency hosts advanced Inspector training annually and Ecology makes full use of that. The next one is scheduled in late October or early November 2012.
- **E-mail communication:** Staff use of email is consistent and extensive, keeping each other informed on the latest developments that affect their work, including regulations.

List of Supporting Documents that May Need to be Written or Revised

Ecology will write or revise numerous documents as a result of the UST rule amendments:

- Ecology and the Department of Revenue, which collects the UST annual fee, have revised the Addendum form submitted by UST owners and operators.
- TCP will revise the UST Inspection checklist prior to the rule effective date (October 1, 2012).
- TCP will revise the UST Retrofit/Repair Checklist prior to the compliance date in the rule amendment.

- Ecology will develop an Enforcement Policy prior to the compliance dates in the rule amendment that especially addresses Delivery Prohibition. Operator Training and Secondary Containment (including under-dispenser containment) will be addressed by the end of 2012.
- The Field Citation Books will be revised to reflect the rule changes.
- The Notice of Non-Compliance form will be revised to reflect the rule changes.
- Focus sheets that provide information and guidance are to be developed or updated, as appropriate, as soon as possible prior to the effective date in the rule amendment.

More Information

Toxics Cleanup Program, Underground Storage Tanks, Rulemaking Page:

<http://www.ecy.wa.gov/programs/tcp/regs/UST/2012/rule-making.html>

Toxics Cleanup Program, Underground Storage Tanks:

<http://www.ecy.wa.gov/programs/tcp/ust-lust/tanks.html>

Department of Ecology, Laws and Rules Page:

<http://www.ecy.wa.gov/laws-rules/index.html>

Contact Information

Michael Feldcamp

Washington Department of Ecology
Toxics Cleanup Program, Headquarters
PO Box 47600
Olympia, Washington 98504-7600
(360)407-7531
michael.feldcamp@ecy.wa.gov

Joe Hickey

Washington Department of Ecology
Toxics Cleanup Program, Headquarters
PO Box 47600
Olympia, Washington 98504-7600
(360)407-7382
joe.hickey@ecy.wa.gov