

DEMONSTRATION OF ADEQUATE ENFORCEMENT PROCEDURES

I. Introduction

The Pennsylvania Department of Environmental Protection (DEP) has compliance monitoring and enforcement procedures and the legal authority necessary to ensure compliance with the underground storage tank (UST) requirements in accordance with 40 CFR Part 281, Subpart D (relating to adequate enforcement of compliance). DEP's regulations governing USTs are codified in 25 Pa Code Chapter 245. All references to specific subsections, sections or subchapters in this document are references to Chapter 245, unless otherwise specified. Compliance monitoring, data collection, review of inspections and investigations, and oversight of DEP-certified individuals' work are used to carry out enforcement responsibilities in DEP's UST program. The compliance monitoring procedures for the program are explained in detail for each of the following categories: forms and reports (records) submitted, evaluation of submitted records, retention of submitted records, investigation of submitted records, public reporting of violations and outreach, compliance assistance and sharing of information. The discussion of compliance monitoring procedures is presented as "UST Activities" which pertain to pollution prevention and "Leaking Underground Storage Tank (LUST) Activities" which pertain to cleanup, respectively.

II. Compliance Monitoring Procedures

A. Forms and Reports Submitted

"UST Activities"

Registration/Permitting of UST Systems: DEP requires the submittal of the "Storage Tanks Registration/Permitting Application Form" (Appendix A, 2630-PM-BECB0514) to initially notify DEP and register UST systems and to change information pertaining to registered UST systems. Changes may include reporting a change-in-service or permanent closure or change of ownership. DEP provides instructions with the form and also provides a "Storage Tank Registration" fact sheet (Appendix A, 2630-FS-DEP1457) to assist UST owners with the process. Submission of registration forms is required by Section 245.41 (relating to tank registration requirements).

DEP also provides a "Storage Tank Registration Amendment Form" (Appendix A, 2630-FM-BECB0607) to allow UST owners to report minor revisions such as a storage tank's operating status to currently-in-use or temporarily out-of-use or to change substance, capacity or contact information. Use of this form is necessary to ensure that storage tank facility and storage tank system information is current.

The "Underground Storage Tank Operator Training Documentation Form" (Appendix B, 2630-PM-BECB0514a), along with copies of the Class A and Class B Operators' training certificates, are required to be submitted with the Storage Tank Registration Form in the following situations: changing ownership of a UST facility, changing the status of a UST from temporarily out-of-use

to currently-in-use, adding a UST to an existing facility, or registering a new UST facility. Submission of this form is necessary to ensure that UST owners are complying with the UST operator training regulatory requirements prior to the issuance of an operating permit.

Installation of a new UST system or conversion of an existing UST system to store alternative fuels or fuel blends may require submittal of the “Alternative Fuel Storage Tank Installation/Conversion Form” (Appendix C, 2630-FM-BECB0608) with the Storage Tank Registration Form. This form is used to ensure compatibility of storage tank system components with gasoline blends containing greater than 10 percent alternative fuel and biodiesel blended fuels containing greater than 5 percent biodiesel. The form must be completed and signed by a DEP-certified installer certifying that all storage tank system components listed on the form are compatible with the product to be stored. Submission of this form is necessary to ensure that UST owners are complying with the compatibility regulatory requirements prior to the issuance of an operating permit. Appendix C also contains the “Underground Storage Tank (UST) Equipment Compatibility & Storage of Biofuels and Biofuel Blends” fact sheet (2630-FS-DEP4447). The fact sheet provides checklists that will assist the regulated community in complying with the compatibility requirements.

A Site-Specific Installation Permit is required for field-constructed UST systems and UST systems with a capacity greater than 1,100 gallons intended to store a highly hazardous substance. The Site-Specific Installation Permit requirements are found in Sections 245.231-237 (relating to site-specific installation permits). The permit application package (2630-PM-BECB0002) is found in Appendix D. Facility owners must submit an application for a Site-Specific Installation Permit prior to breaking ground to install the UST system. Use of the Site-Specific Installation Permit application ensures that the program receives all the information required to review and approve or deny an application to install these UST systems, which may pose a greater threat to human health and the environment. The application package includes instructions, the application form, and a completion checklist.

Installer, Inspector and Company Certification: Chapter 245, Subchapter B (relating to certification program for installers and inspectors of storage tanks and storage tank facilities) governs DEP’s certification program. Section 245.21 (relating to tank handling and inspection requirements) requires tank handling and inspection activities to be conducted by a certified individual. DEP requires individual tank installers and inspectors to submit a “Storage Tank Installer and Inspector Certification Application” (Appendix E, 2630-PM-BECB0506). For each certification category being requested, a separate copy of a complete “Storage Tank Installer and Inspector Certification Application– Attachment A” (Appendix E, 2630-PM-BECB0506c) must be submitted with the application. Use of the certification application ensures that the program receives all the appropriate information to review and approve or deny a certification application submitted by an individual. After demonstrating qualification to DEP, through relevant experience or education, applicants for individual certification must take and pass written examinations and attend any required training before being certified to perform tank handling or inspection activities in the Commonwealth. An individual may not sit for a certification exam unless they demonstrate that they have met the minimum qualification requirements.

Section 245.121 (relating to certification of companies) requires companies performing or employing certified individuals to perform tank handling or inspection activities to submit a “Storage Tank Company Certification Application” (Appendix E, 2630-PM-BECB0510) to apply for company certification. Use of the certification application ensures that the program receives all the appropriate information to review and approve or deny a certification application submitted by a company. Certified companies are required to submit this form within 14 days of any change in information.

A “Storage Tank Certified Installer and Inspector Amendment” form (Appendix E, 2630-PM-BECB0506a) is required to be submitted within 14 days of a change in the information provided in the individual's certification application. This includes employment, address, and phone number changes. Use of this form is necessary to ensure that certified installer and inspector information is current.

DEP provides the following fact sheets and other documents (Appendix E) to applicants to explain individual and company certification requirements and the application process: “Certification of Storage Tank Installers and Inspectors” (2630-FS-DEP1612), which provides an overview of the application process and requirements to assist individuals interested in installer or inspector certification, “Understanding the Certification Categories” (2630-FS-DEP1647) describes the tank handling activities applicable to each certification category, “Storage Tank Company Certification” (2630-FS-DEP1573) which provides an overview of the application process and requirements to assist companies interested in becoming certified, “Initial Qualifications – Applicants Requesting Storage Tank Installer and Inspector Certification” (2630-PM-BECB0506b), which describes the requirements for applicants requesting initial certification, and “Renewal Qualifications - Applicants Requesting Storage Tank Installer and Inspector Certification” (2630-PM-BECB0506b2), which describes the requirements for applicants requesting certification renewal.

DEP certification is valid for three years and must be renewed prior to expiration to remain valid. Individuals may not perform certified activities with expired or invalid certificates.

Technical Training Course Approval: Most DEP installer and inspector certification categories require applicants to receive technical training from a program-approved source. Individuals and companies wishing to obtain approval from the program to provide technical training must submit a “Storage Tank Training Course Approval Application” (Appendix F, 2630-PM-BECB0402). The training course application form ensures that the program receives all the appropriate information to determine if the proposed training course meets the requirements of Sections 245.141-142 (relating to training approval; and training courses). DEP provides instructions with the form and provides a “Storage Tank Training Course Approval” fact sheet (Appendix F, 2630-FS-DEP1574) which provides an overview of the training course approval process to assist individuals and companies interested in administering an approved training course.

Tank Handling Activity Modification Reports: Sections 245.108 (relating to suspension of certification) and 245.132 (relating to standards of performance) require certified tank installers

to submit to DEP an “Underground Storage Tank Modification Report” (Appendix G, 2630-FM-BECB0575) to document tank handling activities performed on regulated UST systems within 30 days of completion of the activity. Submission of the report form ensures that the program’s Environment Facility Application Compliance Tracking System (eFACTS) data reflects the most current conditions at each UST facility. All tank handling activities on storage tank systems such as installations, upgrades, repairs, removals, and permanent closure activities must be undertaken by a certified installer as described in Section 245.110 (relating to certification of installers). Technical guidance 263-0900-011 titled “Storage Tank Modification and Maintenance Issues” (Appendix G) specifies the classification of various storage tank system modification and maintenance activities and explains when certified installers are required. This guidance is used by DEP to ensure uniform application of the requirements for certified installers during tank handling modification activities that affect regulated storage tank systems.

Inspection Reports: Section 245.411 (relating to inspection frequency) requires newly installed UST systems to be inspected by a third-party between 6 to 12 months after installation. UST facility owners are to have subsequent third-party inspections conducted every 3 years. If the UST ownership changes, an inspection of the UST system is to be completed between the first 6 to 12 months from the ownership change unless another time frame is agreed to by DEP. To arrange an inspection, the owner must contact a DEP-certified inspector and schedule to have the inspection performed. The third-party inspector must be currently certified by DEP and submit the inspection results on the “Underground Storage Tank Facility Operations Inspection” form (Appendix H, 2630-FM-BECB0501a) to DEP’s central office and appropriate regional office, and to the storage tank owner within 60 days of the inspection date. Under Section 245.106 (relating to conflict of interest), the DEP-certified inspector may not be an employee of the owner of the facility to be inspected. DEP has provided instructions to assist in completion of the inspection form (Appendix H, 2630-FM-BECB0501) and a technical guidance document “Guidelines for Conducting Underground Storage Tank (UST) Facility Operations Inspections (FOI) (Appendix H, 263-3120-003).” The technical guidance specifically describes the procedures that DEP-certified inspectors should follow when completing a UST Facility Operations Inspection. The guidance provides for complete inspections and consistent documentation and reporting of the results of the inspections. This guidance is also useful to UST owners and operators who can check their inspection report results for conformity with program standards. This guidance is used by DEP staff during inspections of UST facilities to establish consistency in inspection completeness, results, and reporting.

Operator Training Course Approval: Section 245.436 (relating to operator training) requires all regulated UST facilities to have trained and designated Class A, B and C operators. To meet this requirement, individuals and companies wishing to obtain approval from the program to provide Class A and Class B operator training must submit a “Storage Tank Training Course Approval Application.” The training course application form ensures that the program receives all the appropriate information to determine if the proposed training course meets the requirements of Sections 245.141-142 and 245.436. DEP provides instructions with the form and provides a “Storage Tank Training Course Approval” fact sheet which provides an overview of the training course approval process to assist individuals and companies interested in administering an approved training course. Technical guidance document “Underground Storage Tank Class A

and Class B Operator Training Courses” (Appendix I, 263-2300-001) describes the circumstances under which Class A and Class B operators of USTs are required to be trained or retrained and the training course approval process for training providers. Program staff use this guidance to ensure consistent application of the operator training requirements and requirements for the approval of operator training courses.

Variance Requests: In the event a unique or peculiar circumstance exists at a storage tank facility which make compliance with storage tank program requirements technically infeasible or unsafe, facility owners may submit a request for a variance to the program in accordance with Section 245.404 (relating to variances). Technical guidance document “UST/AST System Variances” (Appendix J, 263-0900-001) provides the qualifying conditions for a variance; variance request criteria; application process; and DEP’s review and approval process.

Periodic Testing: In accordance with Subsection 245.132(a)(5), certified companies, certified installers and certified inspectors must report to DEP failed tests of spill prevention equipment, containment sumps, and overfill prevention equipment conducted as required by Section 245.437 (relating to periodic testing). In accordance with Subsection 245.132(a)(6), the notification to DEP must be in writing within 48 hours of performing the failed test on a form provided by DEP. A copy of the test results must also be provided to DEP with the notification report. DEP provides the following forms (Appendix K) to assist certified companies and individuals with compliance:

- Underground Storage Tank Groundwater/Vapor Monitoring System Functionality Testing Form
- Underground Storage Tank Sensor Functionality Testing Form
- Underground Storage Tank Automatic Line Leak Detector Functionality Testing Form
- Underground Storage Tank Pressure/Vacuum Monitoring Functionality Testing Form
- Underground Storage Tank Spill Prevention Equipment/Containment Sump Integrity Testing Form
- Underground Storage Tank Automatic Tank Gauge Functionality Testing Form
- Underground Storage Tank Overfill Prevention Evaluation Form

In addition, the fact sheet “Containment Testing for Underground Storage Tanks (USTs)” (Appendix K, 2630-FS-DEP4176) provides DEP-certified individuals and UST owners/operators with a description of the methods for meeting the minimum requirements of the storage tank program regulations for spill prevention equipment and containment sumps. The fact sheet is used by DEP-certified individuals and program staff, in conjunction with the storage tank program regulations, to ensure uniform application of the containment testing requirements.

Notification of Installation, Change-in-Service or Permanent Closure: Section 245.452 (relating to permanent closure and changes-in-service) requires owners and operators of USTs to submit an “Underground Storage Tank System Installation/Closure Notification” form (Appendix L, 2630-FM-BECB0127) to the appropriate regional office of DEP at least 30 days prior to commencement of UST installation, change-in-service or permanent closure activities. Submission of this form ensures that program staff is aware of these proposed activities and

allows regional DEP staff to schedule performance evaluations of DEP-certified installers or to observe installation, change-in-service or permanent closure activities.

Change-in-Service or Permanent Closure: Section 245.453 (relating to assessing the site at closure or change-in-service) requires that owners and operators measure for the presence of a release where contamination is most likely to be present before a regulated UST system can be permanently closed or have a change-in-service completed. This measurement is to be performed in a manner acceptable to DEP by following the technical guidance document titled “Closure Requirements for Underground Storage Tank Systems” (Appendix M, 263-4500-601). This document establishes the minimum standards that must be met to comply with the closure requirements for regulated USTs in the storage tank program regulations. The guidance includes required procedures for closure notification, tank handling, waste management and disposal, site assessment, sampling requirements, analytical requirements, release reporting, and recordkeeping. Program staff use this document to ensure that the minimum requirements are met during the closure of a UST.

DEP has developed a standardized reporting format designed to fulfill the reporting requirements under Section 245.435 (relating to reporting and recordkeeping). This form is titled “Underground Storage Tank System Closure Report Form” (Appendix M, 2630-FM-BECB0159). Owners and operators are required to submit closure reports to the appropriate regional office of DEP only if they cannot be maintained at the closed facility (Section 245.455 (relating to closure records)). To assist UST owners and operators with the change-in-service and permanent closure process, DEP has prepared a “Planning for Permanent Closure Checklist” (Appendix M, 2630-FM-BECB0126).

“LUST Activities”

Corrective Action: The reporting requirements of the Corrective Action Process (CAP) are found in Chapter 245, Subchapter D (relating to corrective action process for owners and operators of storage tanks and storage tank facilities and other responsible parties).

Section 245.305 (relating to reporting releases) requires the owner or operator of a regulated UST or UST facility to notify the appropriate regional office of DEP as soon as practicable, but no later than 24 hours after the confirmation of a release. This notification is to be accomplished by telephone. The notice must describe, to the extent information is available:

- the regulated substance involved;
- the quantity of the regulated substance involved;
- when the release occurred;
- where the release occurred;
- the cause of the release;
- affected environmental media;
- information concerning impacts to water supplies, buildings or to sewer or other utility lines; and
- interim remedial actions planned, initiated, or completed.

Within 15 calendar days of the telephone notice, the owner or operator must follow up with a written notification to the appropriate regional office of DEP, to each municipality in which the release occurred, and to each municipality where that release has impacted environmental media or water supplies, buildings or sewer or other utility lines. This written notice must include the same information as provided in the telephone notification and any new information obtained within the 15 days since the release. Finally, the owner or operator must provide written notification to DEP and each impacted municipality of new impacts to environmental media or water supplies, buildings, or sewer or other utility lines discovered after the initial written notification within 15 days of the discovery of the new impact.

The form “Notification of Release/Notification of Contamination” (Appendix N, 2620-FM-BECB0082) is to be used to satisfy the written notification requirement. DEP-certified installers and inspectors can also use this form to satisfy their reporting obligations under Subsection 245.132(a)(4). Under this standard of performance, DEP-certified installers and inspectors are required to report to DEP a release of a regulated substance, suspected or confirmed contamination of soil, surface water or groundwater from regulated substances, or a regulated substance observed in a containment structure or facility while performing tank handling activities.

If DEP determines that a release poses an immediate threat to public health and safety, DEP may evaluate and implement reasonable procedures to provide the public with appropriate information about the situation which may, at a minimum, include a summary of the details surrounding the release and its impacts in a newspaper of general circulation serving the area in which the impacts are occurring.

In accordance with Section 245.306 (relating to interim remedial actions), a responsible party must immediately initiate interim remedial actions necessary to prevent or address an immediate threat to human health or the environment from a release. A responsible party must notify DEP by telephone or electronic mail as soon as practicable, but no later than 24 hours, after the initiation of interim remedial actions. If it is determined that a water supply has been affected or diminished, the responsible party must restore or replace the affected or diminished water supply in accordance with Section 245.307 (relating to affected or diminished water supplies). The responsible party must provide a copy of the sample results to the water supply owner and DEP within 5 days of receipt of the sample results from the laboratory. In accordance with Section 245.307, the responsible party must notify DEP, by telephone or electronic mail, within 24 hours of providing an alternate source of water to the owner of the affected or diminished water supply.

Depending on the severity and extent of the release, a responsible party may need to conduct further corrective action, notify DEP and submit additional corrective action reports. It may be necessary for a responsible party to perform a site characterization in accordance with Section 245.309 (relating to site characterization). If this is the case, the responsible party must notify DEP by telephone or electronic mail as soon as practicable, but no later than 24 hours, after the initiation of site characterization activities. In accordance with Section 245.310 (relating to site characterization report), a responsible party must prepare and submit to DEP within 180 days of reporting a release, or within an alternative time frame as determined by DEP,

a site characterization report which describes the activities undertaken in accordance with Section 245.309.

A responsible party must prepare and submit to DEP a remedial action plan (Section 245.311 (relating to remedial action plan)) within 45 days of submission of a site characterization report selecting the background or statewide health standard, within 45 days of a deemed approval or receipt of a written approval of a site characterization report selecting the site-specific standard, or within an alternative time frame as determined by DEP.

Upon implementation of the remedial action plan, a responsible party must submit remedial action progress reports in accordance with Section 245.312 (relating to remedial action) providing the data generated during the reporting period and showing the progress to date toward attainment of the selected remediation standard. The first remedial action progress report must be received by DEP 3 months following the date of remedial action plan implementation or at an alternative interval as determined by DEP. The final remedial action progress report must be submitted to DEP as part of the remedial action completion report.

When the selected remediation standard has been attained, the responsible party must submit a remedial action completion report (Section 245.313) to DEP.

B. Evaluation of Submitted Forms and Reports

“UST Activities”

Registration/Permitting of UST Systems: DEP receives all registration/permitting forms and required supplemental information. Each form is logged in by DEP staff and reviewed to determine and assure administrative completeness and compliance with the UST regulations. Information from the registration/permitting form is entered in eFACTS. Each storage tank facility is assigned a unique Facility Identification Number. Data tracked includes ownership, contact, geographic, and permit information. Each storage tank at a facility is assigned an identification number. Data tracked includes tank system capacity and construction, installation information, repair and modification information, and inspection due dates. Standard operating procedures have been developed and are utilized to assist staff with the processing of registration/permitting forms.

A UST system will not be permitted to operate unless all required information has been provided, the UST system has been determined to be compliant with all administrative and technical requirements, and the appropriate registration fees have been paid.

Upon receipt of applications for a Site-Specific Installation Permit, DEP staff review applications for completeness, technical accuracy, and compliance with the storage tank program regulations. As part of the application for a Site-Specific Installation Permit, a Spill Prevention Response Plan must be submitted to DEP. DEP provides the regulated community with guidelines for developing a Spill Prevention Response Plan in a fact sheet titled “Developing a Spill Prevention Response Plan” (Appendix O, 2630-FS-DEP1471). Spill Prevention Response Plans are also reviewed for completeness, technical accuracy, and compliance with storage tank

program regulations. Program staff utilize the standard operating procedure “Handling and Reviewing Site-Specific Installation Permit Applications” (Appendix D). This standard operating procedure documents the procedures for handling Site-Specific Installation Permit applications. These procedures include document review, entry of information into eFACTS, coordination with regional offices and notification to the applicant concerning application deficiencies, and the final decision on the application. Upon review of the permit application and Spill Prevention Response Plan, and after the applicant has had the opportunity to address any deficiencies, DEP either issues the Site-Specific Installation Permit or denies the application for a Site-Specific Installation Permit.

Installer, Inspector and Company Certification: DEP receives all certification application forms, reviews the forms for administrative completeness, and reviews the applicant’s documented experience, education and qualifications to assure compliance with Section 245.102 (relating to requirement for certification). Information from the certification applications is entered in eFACTS. Each certified individual and company is assigned a unique certification identification number. Staff utilize the document “Standard Operating Procedure For Handling and Reviewing Certification Applications, Amendment Forms and Training Reports” (Appendix E) to guide them with the evaluation process. This standard operating procedure documents the procedures for handling certification applications, amendments and training results. These procedures include document review, entry of information into eFACTS, notification to the applicant concerning application deficiencies, and the final decision on the application.

Technical Training Course Approval: DEP staff review training course applications for completeness. Staff utilize the standard operating procedure “Processing the Training Course Approval Application Form” (Appendix F) to guide them with the evaluation process. Only training providers approved by the program may be used to meet the training requirements for installer and inspector certification.

Tank Handling Activity Modification Reports: DEP receives all UST Modification Reports. Staff review these reports for administrative and technical completeness. The completeness check includes review of the certified installer information from eFACTS for the installer who signed the report, to include verifying that the installer currently holds the proper certification for the work performed. Reports are reviewed for compliance with the Storage Tank and Spill Prevention Act (Storage Tank Act) and storage tank program regulations. Information from the reports is entered in eFACTS. Potential issues identified resulting from the review of UST modification reports are referred to regional office staff for follow up. Staff utilize the standard operating procedure “Modification Report Entry” (Appendix G) which describes the steps necessary to enter the data reported on an Underground Storage Tank Modification Report form into eFACTS. During review of Tank Handling Activity Modification Reports, if the reviewer identifies failures of the DEP-certified installer to meet standards of performance for certified individuals as set forth in the storage tank program regulations, the reviewer refers the violation to DEP compliance and enforcement staff for follow-up and/or enforcement action.

Inspection Reports: Within 10 days of receipt of UST Facility Operations Inspection reports from DEP-certified inspectors, DEP headquarters staff review the reports for compliance with

Chapter 245 and “Significant Operational Compliance (SOC) for PA DEP UST Facilities” guidelines (Appendix H) and enter the inspection findings into eFACTS. Staff utilize standard operating procedures “Third-Party UST Inspection Report Handling and UST Technical Review” (Appendix H) and “Underground Storage Tanks Inspection Report Review Procedure Guide” (Appendix H), which describe the procedures for reviewing and processing inspection reports to include technical review, identifying violations and determining compliance, resolving questionable issues identified on the reports, entry into eFACTS, referral for follow up, and filing of the inspection reports. Review staff notifies the appropriate regional staff weekly via e-mail of any significant or environmental violation findings requiring prioritized follow-up. During review of inspection reports, if the reviewer identifies failures of the DEP-certified inspector to meet standards of performance for certified individuals as set forth in the storage tank program regulations, the reviewer refers the violation to DEP compliance and enforcement staff for follow-up and/or enforcement action.

Operator Training Course Approval: Application for initial course approval is submitted to DEP for review. DEP staff review the training course for completeness and accuracy, and issues approval after correspondence with the course developer regarding any missing or inaccurate information. Staff utilize the standard operating procedure “Processing the Training Course Approval Application Form” to guide them with the evaluation process. Only training providers approved by the program may be used to meet the operator training requirements.

Course approval is valid for 3 years, after which the course developer must apply for renewal. Any changes to the training course since initial approval must be submitted for review.

Variance Requests: Variance proposals are submitted to DEP. Variances may only be approved if they are at least as protective of human health and the environment as the regulatory requirement, and are no less stringent than any other applicable regulations.

DEP reviews variance requests and approves or denies them as appropriate. DEP staff enters variance information into eFACTS. Technical guidance document “UST/AST System Variances” provides the qualifying conditions for a UST/AST variance; variance request criteria; application process; and DEP’s review and approval process. Program staff use this guidance in conjunction with the Storage Tank Act and storage tank program regulations to ensure consistent review and approval/disapproval of variance requests.

Periodic Testing: Certified companies, certified installers and certified inspectors must report to DEP failed tests of spill prevention equipment, containment sumps, and overfill prevention equipment. A copy of the test results must also be provided to DEP with the notification report. DEP staff will review each form and utilize the information to ensure that appropriate follow-up is being taken by the UST system owner and operator.

Notification of Installation, Change-in-Service or Permanent Closure: Owners and operators are required to submit these forms to the appropriate regional office of DEP. Regional staff review the forms and will contact the owner and operator if there are any questions or issues. Regional staff may schedule to attend any UST installation, change-in-service or permanent closure.

Change-in-Service or Permanent Closure: Owners and operators are required to submit closure reports to the appropriate regional office of DEP only if they cannot be maintained at the closed facility. Closure reports are not reviewed unless they are submitted as a sole corrective action report or part of a corrective action report.

“LUST Activities”

Corrective Action: Regional office staff are required to review most corrective action report submittals. The “Notification of Release/Notification of Contamination” form and the remedial action progress reports are reviewed, but do not require any action on the part of the reviewer. DEP staff will review site characterization reports selecting the site-specific cleanup standard, and site characterization reports where interim remedial actions have remediated all soil contamination (Subsection 245.310(b)), and will do one or more of the following:

- Review and approve the site characterization report as submitted.
- Review and approve the site characterization report with modifications made by DEP.
- Review and disapprove the site characterization report, citing deficiencies.
- Review and disapprove the site characterization report and direct, require, or order the responsible party to perform other tasks or make modifications as prescribed by DEP.
- Review and disapprove the site characterization report, perform the site characterization in whole or in part, and recover, in accordance with Subsection 245.303(b) (relating to general requirements), DEP’s costs and expenses involved in performing the site characterization.

DEP must act within 60 days of receipt of a site characterization report meeting the requirements of 245.310(b) or within 60 days of receipt of a site characterization report selecting the site-specific cleanup standard. If DEP does not respond, in writing, within the allotted time, the report shall be deemed approved, unless the responsible party and DEP agree, in writing, to an alternative time frame.

With regards to site characterization reports submitted in accordance with 245.310(b), DEP can also review the site characterization report and waive the requirements to complete a remedial action plan in accordance with Section 245.311.

Following submission of a complete remedial action plan selecting the background or statewide health cleanup standard, DEP staff will publish an acknowledgment of receipt of the remedial action plan in the *Pennsylvania Bulletin* and do one or more of the following:

- Review and approve the site characterization report and remedial action plan as submitted.
- Review and approve the site characterization report and remedial action plan with modifications made by DEP.

- Review and disapprove the site characterization report and remedial action plan, citing deficiencies.
- Review and disapprove the site characterization report and remedial action plan and direct, require, or order the responsible party to perform other tasks or make modifications as prescribed by DEP.
- Review and disapprove the site characterization report and remedial action plan, prepare a remedial action plan or perform the remedial action in whole or in part, and recover, in accordance with Subsection 245.303(b) (relating to general requirements), DEP's costs and expenses involved in preparing the remedial action plan or performing the remedial action.
- Publish a notice of its final action in the *Pennsylvania Bulletin*.

Following submission of a complete remedial action plan selecting the site-specific standard, DEP will publish an acknowledgment of receipt of the remedial action plan in the *Pennsylvania Bulletin* and do one or more of the following:

- Review and approve the remedial action plan as submitted.
- Review and approve the remedial action plan with modifications made by the DEP.
- Review and disapprove the remedial action plan, citing deficiencies;
- Review and disapprove the remedial action plan and direct, require, or order the responsible party to perform other tasks or make modifications as prescribed by DEP.
- Review and disapprove the remedial action plan, prepare a remedial action plan or perform the remedial action in whole or in part, and recover, in accordance with Subsection 245.303(b) (relating to general requirements), DEP's costs and expenses involved in preparing the remedial action plan or performing the remedial action.
- Publish a notice of its final action in the *Pennsylvania Bulletin*.

DEP must act within 60 days of receipt of a remedial action plan to attain the background or statewide health cleanup standard, or within 90 days of receipt of a remedial action plan to attain the site-specific cleanup standard. If DEP does not respond, in writing, within the allotted time, the report and plan or plan shall be deemed approved, unless the responsible party and DEP agree, in writing, to an alternative time frame.

If the site characterization report and remedial action plan are submitted to DEP at the same time, DEP must act within 60 days of receipt of a report and plan to attain the background or statewide health cleanup standard, or within 90 days of receipt of a report and plan to attain the site-specific cleanup standard. If DEP does not respond, in writing, within the allotted time, the report and plan or plan shall be deemed approved, unless the responsible party and DEP agree, in writing, to an alternative time frame.

Following submission of the remedial action completion report, DEP will publish an acknowledgment of receipt of the remedial action completion report in the *Pennsylvania Bulletin* and do one or more of the following:

- Review and approve the remedial action completion report as submitted.
- Review and approve the remedial action completion report with modifications made by DEP.
- Review and disapprove the remedial action completion report, citing Deficiencies.
- Review and disapprove the remedial action completion report and direct, require, or order the responsible party to perform other tasks or make modifications as prescribed by DEP.
- Review and disapprove the remedial action completion report, perform the site characterization or remedial action and recover, in accordance with Subsection 245.303(b) (relating to general requirements), DEP's costs and expenses involved in preparing the remedial action completion report.
- Publish a notice of its final action in the *Pennsylvania Bulletin*.

DEP must act within 60 days of receipt of a remedial action completion report demonstrating attainment of the background or statewide health cleanup standard, or within 90 days of receipt of a remedial action completion report demonstrating attainment of the site-specific cleanup standard. If DEP does not respond, in writing, within the allotted time, the report shall be deemed approved, unless the responsible party and DEP agree, in writing, to an alternative time frame.

Regional office staff enter corrective action case information into eFACTS. A project officer is assigned to each release incident and the project officer is responsible for entering basic site (name, address, city, zip code, region, county and municipality) and release information, along with keeping the status of the cleanup up-to-date.

C. Retention of Submitted Forms and Reports:

All the forms and reports received by DEP and identified in Section B are retained in accordance with DEP's "Agency File Plan/Retention and Disposition Schedule" found in Appendix P. Submitted forms and reports are stored electronically within DEP's Electronic Content Management (ECM) system (OnBase). OnBase serves as a document repository containing digitized versions of existing DEP paper document in one centralized, secure location. These documents are retained for a set number of years based upon the retention schedule in Appendix P.

D. Investigation of Submitted Forms and Reports:

"UST Activities"

If a notification form, reporting form or an application listed above is not properly completed, or is missing required information, DEP staff will work with the individual who submitted the form or application to address the deficiencies. A UST system will not be permitted unless all required information has been provided, the UST system has been determined to be compliant with all administrative and technical requirements, and the appropriate registration fees have been paid. An individual may not sit for a certification exam unless they demonstrate that they have met the minimum qualification requirements.

Owners of USTs are required by Section 502 of the Storage Tank Act and § 245.42 (relating to tank registration fees) to pay an annual registration fee to DEP for each UST. In addition, owners of USTs are required by Section 701 of the Storage Tank Act and Subchapter H of Chapter 245 (relating to financial responsibility requirements for owners and operators of USTs and storage tank facilities) to continuously participate in the Underground Storage Tank Indemnification Fund (USTIF) as the primary method to maintain financial responsibility. DEP-certified companies are also required to participate in USTIF under the Tank Installers Indemnification Program. Fees to be paid to USTIF by storage tank owners and operators and DEP-certified companies are set by the Underground Storage Tank Indemnification Board and established in USTIF regulations.

Regional program staff follow-up on outstanding registration fees and delinquent USTIF fees to ensure compliance with the Storage Tank Act and storage tank program regulations. Program staff utilize the fact sheet “Financial Responsibility for Underground Storage Tanks” (Appendix Q, 2630-FS-DEP1640) to explain the fee requirements to UST owners. Delinquent registration fees are deposited in DEP’s Storage Tank Fund which supports administration of the storage tank program. Storage tank owners and DEP-certified companies who are delinquent in the payment of USTIF fees are referred to USTIF staff in the Pennsylvania Department of Insurance. DEP program staff follow-up with USTIF staff to ensure that all delinquent fees are paid.

Potential issues identified resulting from the review of UST modification reports and significant operational compliance violations identified as a result of the review of UST facility operations inspections are referred to regional office staff for follow up.

Regional office staff conduct inspections as follow-up to facility operations inspections at non-compliant UST facilities to verify conditions at the facility, determine the extent of violations, provide the owner and operator with options to resolve the violations, and refer violations to compliance staff for enforcement, where appropriate. Inspection procedures are found in the technical guidance document “Guidelines for Conducting Underground Storage Tank (UST) Facility Operations Inspections (FOI).” Regional staff also utilize standard operating procedure “Personal Safety During UST/AST Facility Inspections and Site Visits” (Appendix R), which describes the procedures for ensuring safety of DEP staff during on-site inspections at regulated storage tank facilities. It includes reference to safety regulations and policies and specific steps to remain safe during on-site inspections. Program staff are also required to adhere to technical guidance document “Storage Tank Program Internal Policy on Inspections and On-Site Visits (Appendix R, 263-3120-002).” This guidance establishes uniform procedures for program staff

involved in conducting storage tank inspections and follow-up to third-party inspections. This policy document includes procedures for program staff to follow in identifying, tracking, and resolving violations and related enforcement actions. This policy was prepared to meet the requirements of DEP’s policy document titled “Standards and Guidelines for Identifying, Tracking, and Resolving Violations.”

DEP staff also conducts periodic performance evaluations of DEP-certified installers and inspectors in accordance with standard operating procedure “Installer Inspector Oversight (Appendix S).” This standard operating procedure describes the steps required to document the results of an installer or inspector performance evaluation by DEP staff in a written narrative report and in eFACTS. If a DEP inspector identifies failures of the DEP-certified installer or inspector in meeting standards of performance for certified individuals as set forth in the storage tank program regulations, the DEP inspector refers the violation to compliance staff for follow-up and enforcement action. DEP determines the appropriate action based upon the number of violations, severity of violations, and the DEP-certified installer or inspector’s compliance history. An enforcement action may include a civil penalty, suspension or revocation of an individual’s certification, or mandatory training.

DEP staff will ensure that appropriate follow-up is taken by the UST system owner and operator where failed tests of spill prevention equipment, containment sumps, and overfill prevention equipment are reported to DEP.

Regional office staff may schedule to attend any UST installation, change-in-service or permanent closure upon notification of DEP by the UST owner or operator.

“LUST Activities”

Storage tank release incidents are investigated in the field by regional office staff on a case-by-case basis. Regional staff select sites for field investigation based on the extent and severity of the release, the number of complaints received, and impacts to third parties and the environment. This information is garnered from the corrective action reports submitted by the responsible party and complaints received from impacted third parties. Most release incidents are overseen by DEP project officers through communications with the consultant working on behalf of the responsible party.

E. Public Reporting of Violations and Environmental Complaints

DEP receives thousands of environmental complaints each year. These complaints come in the form of phone calls, emails, letters, and face-to-face interactions. Each complaint received is a request for assistance from a fellow citizen to uncover, investigate, and correct an alleged wrongdoing or perceived threat to the complainant's health and safety in their environment. Any DEP employee contacted by a complainant alleging violations of any environmental law and/or

regulations will ensure that the complainant's information is properly documented and given to a DEP Service Representative for entry into the Complaint Tracking System (CTS). DEP Service Representatives will assign the complaint to the appropriate Program(s) based on the information and allegations made in the complaint as well as instructions from their DEP Management personnel. Complaints regarding facilities that are a regulated facility under Department permit are assigned to the program(s) that have issued the permits and hold the compliance authority for that facility.

DEP provides several mechanisms to encourage public notification and reporting of violations:

1. A toll-free telephone number (1-800-42TANKS) maintained by the Division of Storage Tanks is available to use from any location in Pennsylvania. The toll-free number appears on all storage tank program correspondence and fact sheets, and on the Division of Storage Tanks web page. The web page contains outreach and technical requirements pertaining to the storage tank program. The public is encouraged to contact DEP by telephone and electronically thru e-mail.

2. DEP maintains telephone lines in each regional office that are monitored 24/7/365 for dispatching response personnel to emergencies and incidents within DEP's purview.

(<http://www.dep.pa.gov/About/ReportanIncident/Pages/default.aspx>)

3. DEP maintains a toll-free telephone line available for Pennsylvanians to report environmental problems in their community. Citizens can report any environmental complaint by calling 1-888-723-3721 or by calling their regional office. Citizens may also submit a complaint via an online Environmental Complaint Form.

(<https://www.dep.pa.gov/About/ReportanIncident/Pages/EnvironmentalComplaints.aspx>)

Citizen-filed complaints are confidential.

F. Compliance Assistance

DEP's UST staff use a "Storage Tank Program Compliance Assistance Strategy" (Appendix T, 263-4180-002) to carry out the provisions of the Storage Tank Act and related regulations contained in Chapter 245. This strategy describes DEP's use of compliance tools for implementing the storage tank program, including outreach, training, technical assistance, oversight, inspection, financial assistance, and enforcement actions. Each one of these compliance tools is defined as follows:

- **Outreach** - Providing of information to the regulated community, which assures that the community is aware of the regulations and are receiving guidance for coming into or remaining in compliance. Outreach may include: mass mailings of informational letters, publications, fact sheets, speaking engagements, exhibits, news releases and individual attention to tank owners/operators by the Storage Tank staff.
- **Training** - Formalized and structured presentation of administrative and technical information to a group of individuals with common interests. Training may be set up

either statewide or regionally depending on needs and resource availability. Training sessions not only provide information but also the opportunity for questions and answers and allow for the exchange of ideas.

- **Technical Assistance** - Explaining and clarifying technical issues and/or administrative procedures on a one-to-one basis. Technical assistance may be given during a telephone conversation, site visit or in written correspondence.
- **Oversight** - Review and evaluation by the DEP of submitted material and site activity to determine compliance with rules, regulations, and Acts. Oversight may include reviewing applications, tank handling activity forms, and inspection reports for completeness, accuracy and compliance. Site visits may evaluate the activities conducted at a facility during the operation of the tank system, remediation efforts, the activities of certified installers/inspectors, or respond to complaints or investigations.
- **Inspection** - An on-site activity to gather information for determining if a storage tank facility is in compliance with the regulations. Routine inspections usually are performed by DEP certified inspectors. DEP staff inspections are used for oversight activity, enforcement follow-up, and complaints.
- **Financial Assurance** - The securing of monetary resources in meeting the financial requirements for corrective action and third-party liability. The Underground Storage Tank Indemnification Fund (USTIF) is administered by the Insurance Department and makes claim payments to, or on behalf of, owners/operators of underground storage tanks for corrective action and third-party liability.
- **Enforcement Action** – DEP’s response to continued noncompliance, if voluntary compliance efforts are not successful. An enforcement action identifies specific violations and requires specific actions within specific timeframes to be taken by the responsible party to correct the violation. Enforcement action is generally the last tool used to obtain compliance.

G. Sharing of Information

In accordance with section IV. of the Memorandum of Agreement between EPA and the Commonwealth submitted with this authorization package, and with 40 CFR 281.43(a), DEP will:

- (a) Furnish to EPA, upon request, any information in DEP files obtained or used in the administration of the state program. This information includes:
 - (1) Any information submitted to the state under a claim of confidentiality. The state will submit that claim to EPA when providing such information. Any information obtained from a state and subject to a claim of confidentiality will be treated in accordance with federal regulations in 40 CFR part 2; and

(2) Any information that is submitted to the state without a claim of confidentiality.

III. Enforcement Process

Compliance and enforcement is an integral part of DEP's organizational structure. In both headquarters and the regional offices, there are specific individuals whose duties include compliance and enforcement.

The Division of Storage Tanks in headquarters has a Compliance and Enforcement Section that oversees, coordinates, and provides direction regarding the UST program enforcement activities that are carried out in the six regional offices. The Site Remediation Division in headquarters has a Storage Tanks and Hazardous Sites Corrective Action Section that oversees, coordinates and provides direction regarding the LUST program enforcement activities that are carried out in the six regional offices.

Violations come to the attention of DEP staff through inspections, citizens' complaints, record reviews, and investigations. The most frequent method of detecting violations at a UST facility is through review of facility operations inspection reports submitted by DEP-certified inspectors. Violations also are commonly identified through DEP inspections, investigations, and review of reports and data, all of which are part of the regulatory oversight process. DEP technical staff evaluates facility information and facility operations against the applicable statutes, regulations, standards, permits and orders. Deviation from the statutes, regulations, standards, permits or orders constitutes a violation under Section 1310 of the Storage Tank Act (35 P.S. § 6021.1310). DEP has met the requirements of 40 CFR 281.41(b) in that the burden of proof and degree of knowledge or intent required under the Storage Tank Act for establishing violations is no greater than the burden of proof and degree of knowledge or intent that EPA provides when it brings an action under Subtitle I of the Solid Waste Disposal Act. Title 25 Chapter 1021 25 Pa. Code § 1021.122, (relating to burden of proceeding and burden of proof) specifies what DEP must show to meet the "burden of proof" criteria. To be found civilly liable for violating environmental laws the standard of proof is based upon "the preponderance of the evidence." This means that the evidence presented is convincing and more likely to be true than not true.

When a facility inspection or investigation reveals violations, the owner/operator is verbally notified of observed violations by the DEP-certified inspector or DEP inspector at the time of the visit. These violations are also noted on the Underground Storage Tank Facility Operations Inspection form (third-party inspection) or Field Inspection Report (DEP inspection). A copy of the form or report is provided to the owner and operator at the time of inspection. Citizen complainants are made aware of the results of DEP inspections or investigations and their identity is held in confidence.

In the office, DEP technical staff, compliance and enforcement staff, and the Storage Tank Section Chief discuss the violations. In most regional offices, there is a field supervisor that is

also involved in these discussions. Currently, the decision regarding the use of an enforcement follow-up action is made by the field supervisor and Storage Tank Section Chief. In some cases, these discussions will involve the regional Environmental Cleanup and Brownfields Program Manager or Chief of the Division of Storage Tanks. In determining the course of action to take, DEP staff will consider the technical guidance document titled “Storage Tank Program Compliance Assistance Strategy” which provides an overview of the compliance tools which are available to DEP for use in the implementation and enforcement of DEP’s UST regulations. This guidance provides DEP staff with predefined methods for assisting UST owners/operators in bringing their facilities into compliance and ensuring future compliance with the UST regulations. Also, DEP staff may consider a “Delivery Prohibition” in accordance with the technical guidance document “Storage Tank Product Delivery Prohibition (Appendix U, 263-4000-001).” This document describes the circumstances under which DEP may impose storage tank product delivery prohibition in conjunction with suspension, revocation or denial of an operating permit, and the procedure DEP staff will follow to notify the UST owner/operator and product suppliers. DEP staff use this guidance to ensure uniform application of the authority to impose product delivery prohibition.

DEP may, immediately upon discovery, request voluntary cessation of product delivery or issue a unilateral order (most commonly a Field Order) prohibiting delivery when the following conditions are found at an operating storage tank system or facility:

- Required spill prevention equipment is not installed;
- Required overfill protection equipment is not installed;
- Required release detection equipment is not installed; or
- Required corrosion protection equipment for the tank or a major portion of underground piping is not installed or has been disabled.

In addition, delivery prohibition may be requested or ordered if, an owner and operator has been notified in writing that a violation of the storage tank regulations exists, and they fail to take corrective action after a reasonable timeframe. The written notice may be in the form of a Field Order, NOV, or DEP Inspection. The time allowed to correct the violation(s) may include the already elapsed time since a third-party inspector recorded a corresponding violation. Under these circumstances, delivery prohibition is appropriate if one of the following conditions exists:

- Failure to properly operate and/or maintain release detection equipment;
- Failure to properly operate and/or maintain spill, overfill, or corrosion protection equipment;
- Failure to install required corrosion protection on small portions of underground piping, e.g., a steel flexible connector;

- Failure to have a required inspection;
- Failure to maintain financial responsibility for an underground storage tank or facility;
- Failure to pay registration fees or failure to have a regulated storage tank properly registered.
- Required emergency containment is not installed;
- Required secondary containment is not installed;
- There is evidence of an ongoing release at an operating facility; or
- Other noncompliant conditions DEP deems appropriate.

Technical and compliance and enforcement staff prepare and issue informal enforcement actions (e.g. a Notice of Violation) under the oversight of their immediate supervisor. Compliance and enforcement staff prepare civil penalty assessments, consent order and agreements, and administrative orders where they are necessary. These formal enforcement documents are issued with the involvement of and review by DEP program attorneys.

Civil penalty assessments are subject to appeal by the affected party to the Environmental Hearing Board (EHB). DEP staff utilize a “Penalty Assessment Matrix” (Appendix V, Guidance Document 263-4180-001) for assessing a civil penalty under Section 1307 of the Storage Tank Act (35 P.S. § 6021.1307) and shall consider the willfulness; damage to air, water, land or other natural resources; cost of restoration and abatement; savings; deterrence of future violations and duration. DEP meets the requirements of 40 CFR 281.41(c) as the civil penalty assessed, sought, or agreed upon is appropriate to the violation(s). Failure to appeal within thirty days after receipt of notice of the action renders the action final and enforceable. Under Section 1307(b) of the Storage Tank Act (35 P.S. § 6021.1307(b)), an appellant must “pre-pay” the proposed penalty amount to DEP in order to appeal the penalty.

Administrative orders that are issued by DEP are immediately enforceable subject to the right of an affected party to apply to the EHB for a supersedeas (to stay the effect of the order pending appeal). Appeals of administrative orders to the EHB may take up to 1.5 years from the date of filing of an appeal to the adjudication by the EHB. However, this does not relieve the party from complying with the order unless a supersedeas is obtained. During an administrative appeal, pre-hearing discovery is often conducted, pre-hearing memoranda are filed and argued, hearings are held, transcripts are then filed followed by briefs, and finally the adjudication by the EHB occurs.

DEP may employ several enforcement tools to ensure that a defendant complies with an administrative order during the time that it may be under appeal (provided that a supersedeas has

not been granted). In these cases, DEP has available all administrative measures provided for by law, including summary actions, civil penalty assessments, administrative orders, complaints in equity, etc. DEP may petition the Commonwealth Court or a County Court of Common Pleas to enforce the terms of an order. This results in a court order, which is enforceable by state or local authorities.

Litigation is utilized in the enforcement process after an initial attempt by DEP has been unsuccessful in achieving compliance or establishing an enforceable schedule for compliance (e.g., through a consent order and agreement). Under Commonwealth law, administrative orders issued pursuant to the Storage Tank Act, the Clean Streams Law and the Administrative Code constitute final appealable actions of DEP. The violator has a right to appeal these final actions to the EHB and DEP can independently enforce them in a civil proceeding in Commonwealth Court.

DEP staff make the request for legal action to the Office of Chief Counsel. The case is then assigned to an attorney who consults with DEP staff. The litigation attorney and DEP staff make a joint decision as to the nature of the litigation. Factors considered include the seriousness of the violation, the likelihood of success in the forum, complexity of the factual and legal issues, and the likely speed of a result. Often, an administrative order is followed by a civil action to enforce the order.

The Office of General Counsel represents the Governor and several Commonwealth agencies, including DEP. The Office of General Counsel attorneys that represent DEP work in DEP's Office of Chief Counsel. DEP's attorneys are organized within the Office of Chief Counsel, an office independent of the Office of Attorney General, as established by the Commonwealth Attorney Act (71 P.S. §§ 732-101 – 732-506). The Office of Attorney General has delegated to the Office of General Counsel (and therefore to DEP's Office of Chief Counsel) authority to institute certain civil cases, including all Commonwealth Court equity actions. The Commonwealth Attorney Act provides that, even without delegation, DEP's attorneys have responsibility for handling initial appeals brought by an affected party or citizen to the EHB. The EHB is an independent, quasi-judicial body consisting of up to five positions, as members/administrative law judges who adjudicate appeals of all DEP actions and hear civil penalty cases. DEP attorneys have also been delegated the authority to represent DEP in any appeal of any adjudication of the EHB that is brought in Commonwealth Court (the first appellate review level above the EHB).

The responsibilities of the legal staff include litigation as described above, as well as counseling DEP on various program issues pursuant to the Storage Tank Act and regulations promulgated thereunder. Attorneys in the Bureau of Regulatory Counsel, Office of Chief Counsel, assist in the drafting and review of regulations and provide legal opinions for DEP staff. Consultation with DEP's legal staff occurs in headquarters and the regional offices.

Criminal Penalties

In addition to civil actions, the Storage Tank Act provides for criminal penalties, including summary offenses, misdemeanors and felonies. DEP staff bring summary criminal proceedings after a DEP attorney reviews the form of the citation and the evidence supporting the charges.

DEP staff are authorized to issue summary citations under Section 1306(a) of the Storage Tank Act (35 P.S. § 6021.1306(a)). Any violation of any provision of the Storage Tank Act, the rules and regulations, an order of DEP, or any term or condition of any permit or certification issued pursuant to the Storage Tank Act is considered a summary violation. Citations can include relatively small fines of \$100 to \$1000 for each separate offense. In the Commonwealth, summary citations are reviewed by District Justices. At this review level, DEP staff present the case for the violation with the assistance of the Office of Chief Counsel. A District Justice's decision regarding a summary citation may be appealed de novo to the Court of Common Pleas for the county where the violation occurred.

The Office of Attorney General's Environmental Crimes Unit brings misdemeanor and felony actions. The Office of Attorney General's involvement in enforcement actions varies based on the nature of the action. The Office of Attorney General also delegates to DEP attorneys on a case-by-case basis the right to represent the Commonwealth in criminal actions. The Office of Attorney General has also given the Office of General Counsel, and therefore DEP's attorneys, a general delegation for civil actions and bankruptcy actions involving environmental problems. DEP's litigation attorneys bring all such actions.

Court Actions

Court actions and their appeals can be either criminal or civil. Criminal actions are brought forth beginning with charges filed before a District Justice. A preliminary hearing is then held within 3 to 10 days after the charges are filed, except for a corporation. The District Justice determines at the preliminary hearing whether probable cause exists to bind the defendant over for court. If the District Justice determines probable cause exists, the case is transferred to the Court of Common Pleas where the case is assigned a number. The DEP attorney then files information with the Court concerning the charges. The judge will hold an arraignment where the defendant is advised of their rights, a plea is taken, and a trial date is set. The defendant can waive the arraignment and the parties can proceed directly to trial, pleas, or sentencing. If a trial is held, and after a verdict is reached, but prior to sentencing, post-trial motions may be filed. After sentencing, appeals may be filed. The Commonwealth is required, unless waived by the defendant, to bring the matter to trial within 180 days of the filing of charges.

The Commonwealth also has the Investigating Grand Jury Act (42 Pa. C.S.A. §§ 4541 *et seq.*), which provides for the Attorney General to petition the Supreme Court to appoint a multi-county Grand Jury to investigate organized crime and public corruption. The Supreme Court may then convene the Grand Jury and appoint a supervising judge. After the Grand Jury is convened, a Grand Jury notice is issued, which would empower the Grand Jury to hold proceedings, hear evidence of specific cases, compel attendance of persons, and document the receipt of evidence through its power of subpoena. The Attorney General may also request immunity to testify. The judge is empowered to punish the refusal to appear, the failure to produce documents and the

failure to testify by finding a party in contempt. At the termination of an investigation, the Grand Jury may issue a presentment that amounts to a recommendation to the Attorney General to file charges. The presentment itself has no legal significance. Upon acceptance, charges are prepared and filed, and the above procedure is followed. This investigative Grand Jury has been used by the Environmental Crimes Unit of the Office of Attorney General for investigation of cases and to bring charges.

Civil action can take the form of equity actions where DEP is seeking to restrain or prevent any violation of the act, regulations, or orders issued thereunder, or to restrain the maintenance and threat of public nuisance under Section 1305 of the Storage Tank Act (35 P.S. § 6021.1305). These actions can be brought in either the Court of Common Pleas of the county where the violation occurred or the Commonwealth Court. In most instances, the action is brought in the Commonwealth Court, which has statewide jurisdiction.

Hearings are often scheduled quickly on a motion for Preliminary Injunction or a Petition for Contempt. An equity action for a Permanent Injunction takes much longer to come to trial. Usually, the defendant has 20 days after receipt of Service of Complaint to file a response. A hearing is often scheduled rapidly in Preliminary Injunction matters. A defendant can file preliminary objections prior to proceeding on the merits of DEP's action. Courts often dispose of the preliminary objections quickly to hear the Preliminary Injunction action. Otherwise, a court en banc (panel of judges) hears the preliminary objections, which causes further delays. After discovery, pre-trial motions and stipulations may be filed and a hearing will follow. It is often impossible to ascertain how long after the complaint is filed that a final court order will be forthcoming. The court's calendar is yet another constraint on the time frame for achieving a result. Appeals may also complicate the process, especially if an Appellate Court grants a stay.

Litigation is often used as the first enforcement response where the merits of the case, the extent of the environmental or health hazard, and the nature of the violation necessitate that response. While formal litigation reports are not prepared, the decisions with respect to litigation, as well as certain draft pleadings, are submitted to the regional Environmental Cleanup and Brownfields Program Manager or Chief of the Division of Storage Tanks, DEP attorney assigned to the case, and the Chief Counsel for review. A report, when accompanied by a copy of a complaint, does not require significant time to prepare and review. The report identifies the factual situation, the possible effects of the problem, the need for action, and the anticipation of the legal issues that may arise in the litigation.

The responsibilities of the legal staff include the litigation described above, as well as counseling DEP staff on various programs that DEP regulates pursuant to various state statutes, including the Storage Tank Act. Attorneys in the Bureau of Regulatory Counsel, Office of Chief Counsel, draft and review regulations and provide legal opinions for DEP staff. Consultation with DEP's legal staff occurs in headquarters and the regional offices.

APPENDICES

- A - “Storage Tanks Registration/Permitting Application Form” (2630-PM-BECB0514)
“Storage Tank Registration” fact sheet (2630-FS-DEP1457)
“Storage Tank Registration Amendment Form” (2630-FM-BECB0607)
- B - “Underground Storage Tank Operator Training Documentation Form” (2630-PM-BECB0514a)
- C - “Alternative Fuel Storage Tank Installation-Conversion Form” (2630-FM-BECB0608)
“Underground Storage Tank (UST) Equipment Compatibility & Storage of Biofuels and Biofuel Blends” fact sheet (2630-FS-DEP4447)
- D - Site-Specific Installation Permit Application Package (2630-PM-BECB0002)
“Handling and Reviewing Site-Specific Installation Permit Applications” standard operating procedure
- E - “Storage Tank Installer and Inspector Certification Application” (2630-PM-BECB0506)
“Storage Tank Installer and Inspector Certification – Attachment A” (2630-PM-BECB0506c)
“Company Certification Application” (2630-PM-BECB0510)
“Storage Tank Installer and Inspector Certification Amendment” (2630-PM-BECB0506a)
“Certification of Storage Tank Installers and Inspectors” fact sheet (2630-FS-DEP1612)
“Understanding the Certification Categories” fact sheet (2630-FS-DEP1647)
“Storage Tank Company Certification” fact sheet (2630-FS-DEP1573)
“Initial Qualifications – Applicants Requesting Storage Tank Installer and Inspector Certification” (2630-PM-BECB0506b)
“Renewal Qualifications - Storage Tank Applicants Requesting Storage Tank Installer and Inspector Certification” (2630-PM-BECB0506c)
“Standard Operating Procedure For Handling and Reviewing Certification Applications, Amendment Forms and Training Reports”
- F - “Storage Tank Training Course Approval Application” (2630-PM-BECB0402)
“Storage Tank Training Course Approval” fact sheet (2630-FS-DEP1574)
“Processing the Training Course Approval Application Form” standard operating procedure
- G - “Underground Storage Tank Modification Report” (2630-FM-BECB0575)
“Storage Tank Modification and Maintenance Issues” technical guidance (263-0900-011)
“Modification Report Entry” standard operating procedure
- H - “Underground Storage Tank Facility Operations Inspection” form (2630-FM-BECB0501a) and instructions (2630-FM-BECB0501)
“Guidelines for Conducting Underground Storage Tank (UST) Facility Operations Inspections” technical guidance (263-3120-003)
“Significant Operational Compliance (SOC) for PA DEP UST Facilities” guidelines

- “Third-Party UST Inspection Report Handling and UST Technical Review” standard operating procedure
- “Underground Storage Tanks Inspection Report Review Procedure Guide” standard operating procedure
- I - “Underground Storage Tank Class A and Class B Operator Training Courses” technical guidance (263-2300-001)
- J - “UST/AST System Variances” technical guidance (263-0900-001)
- K - “Underground Storage Tank Groundwater/Vapor Monitoring System Functionality Testing Form”
 “Underground Storage Tank Sensor Functionality Testing Form”
 “Underground Storage Tank Automatic Line Leak Detector Functionality Testing Form”
 “Underground Storage Tank Pressure/Vacuum Monitoring Functionality Testing Form”
 “Underground Storage Tank Spill Prevention Equipment/Containment Sump Integrity Testing Form”
 “Underground Storage Tank Automatic Tank Gauge Functionality Testing Form”
 “Underground Storage Tank Overfill Prevention Evaluation Form”
 “Containment Testing for Underground Storage Tanks (USTs)” fact sheet (2630-FS-DEP4176)
- L - “Underground Storage Tank System Installation/Closure Notification” form (2630-FM-BECB0127)
- M - “Closure Requirements for Underground Storage Tank Systems” technical guidance (263-4500-601)
 “Underground Storage Tank System Closure Report Form” (2630-FM-BECB0159)
 “Planning for Permanent Closure Checklist” (2630-FM-BECB0126)
- N - “Notification of Release/Notification of Contamination” (2620-FM-BECB0082)
- O - “Developing a Spill Prevention Response Plan” fact sheet (2630-FS-DEP1471)
- P - “Agency File Plan/Retention and Disposition Schedule”
- Q - “Financial Responsibility for Underground Storage Tanks” fact sheet (2630-FS-DEP1640)
- R - “Personal Safety During UST/AST Facility Inspections and Site Visits” standard operating procedure
 “Storage Tank Program Internal Policy on Inspections and On-Site Visits” technical guidance (263-3120-002)
- S - “Installer Inspector Oversight” standard operating procedure

T - “Storage Tank Program Compliance Assistance Strategy” (263-4180-002)

U - “Storage Tank Product Delivery Prohibition” technical guidance (263-4000-001)

V - “Penalty Assessment Matrix” (263-4180-001)

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

APPENDIX G

APPENDIX H

APPENDIX I

APPENDIX J

APPENDIX K

APPENDIX L

APPENDIX M

APPENDIX N

APPENDIX O

APPENDIX P

APPENDIX Q

APPENDIX R

APPENDIX S

APPENDIX T

APPENDIX U

APPENDIX V