

Rhode Island UST ERP Development

MEETING MINUTES

April 15, 2003

UST Steering Committee

MEETING #2

April 15, 2003, 4:00 - 6:00 p.m.

RI Department of Environmental Management

Room 300

235 Promenade Street

Providence, RI 02908

Meeting began at approximately 4:05 pm.

IN ATTENDANCE

(see Attendance Sheet for Meeting #2, provided on the RIDEM UST ERP Webpage)

WELCOME

Ron Gagnon, RIDEM, Chief, Office of Technical and Customer Assistance

Ron gave a quick review of the initial meeting which focused on providing all of the stakeholders with a better understanding of the ERP process. He then introduced the focus for the day's meeting, which was ERP Certification. As a means of providing examples, Ron presented the stakeholders with slides depicting a draft section of the Federal UST ERP Workbook, *Section 4.1: Spill Protection* and a slide depicting the Certification Statement that is included within the RIDEM ERP Autobody Workbook. To supplement these slides, paper copies of *Section 4.1* and the RI Certification Statement, as well as the Hazardous Waste Compliance Workbook for Rhode Island Generators was distributed to the stakeholders. The gist of the discussions regarding the education materials followed as such:

Section 4.1: Spill Protection (Discussion led by Chris Rascher, EPA)

- Example provided is a Federal draft. Chris relayed the importance of not citing or quoting the document, as the Federal Workbook is currently being developed and no sections of the Workbook have been finalized.
- Chris stressed that the draft section was only being provided as an example to the stakeholders to help them understand what they may be certifying and to provide an example of a checklist.

RIDEM ERP Autobody Workbook Certification Statement (Discussion led by Ron Gagnon)

- Autobody sector does not require owner signature on ERP Certification Statement; signatory is determined by facility.
- Ron stated that the goal of these meetings is to develop a UST ERP Workbook that combines the best aspects of both the Federal UST ERP Workbook and the RI Autobody ERP Workbook; the stakeholders will have direct input on the content of the UST ERP Workbook.
- Certification Statement attests to the fact that compliance checks are in place for a facility and that everything in the submittal is true and accurate. The submittal includes the checklists with the facility's conclusions regarding their compliance. If the facility is not in compliance, they use the Return to Compliance (RTC) forms to indicate that they will get back into compliance while certifying that they will return to compliance within a stated time period.

Hazardous Waste Compliance Workbook for Rhode Island Generators (Ron Gagnon)

- Ron presented and explained Page 39 of the Autobody Workbook as an example of a Self-Audit Checklist similar to what could be included within the UST Workbook.
- Ron expressed his desire that the stakeholders review this Workbook, for possible future use or simply as an example of what form the UST Workbook may take.

At this point, Kevin Gillen of RIDEM gave a brief presentation regarding Rhode Island's current inspection process and provided examples of liability issues:

- RI Inspection Process is structured as follows:
 - Perform on-site inspection
 - Note deficiencies
 - Speak with facility representatives about deficiencies
 - Send letter to facility outlining deficiencies
 - Allow for timely response by facility (Problem(s) should be addressed by this point)
- In the event that problem(s) is/are not rectified, RI will administer a Notice of Violation (NOV) to the facility. The average penalty issued with a NOV in Rhode Island is approximately \$13,600. This average was derived from ten (10) NOV's that were issued over the past eight (8) months, with penalties ranging from \$6,000 to \$35,000.

At this point, the slide presentation was complete and the discussion was turned over to the stakeholders for questions/comments. The overriding theme of the discussion centered upon the issues of **who should ultimately be held responsible for compliance at a facility** and **who should sign the compliance certificate** that would be included with the UST ERP Workbook?

Who should ultimately be held responsible for compliance at a facility?

- RIDEM raised the issue of “Who is responsible for completing/signing Certification Checklist/Forms?”
- A question arose as to the definition of an “owner” under Rhode Island law. Kevin Gillen cited the definition given within the RI UST Regulations as “OWNER means any person who holds exclusive or joint title to or lawful possession of a facility or part of a facility.”
- This definition raised the issue of leases within Rhode Island and the complexity of the Owner/Operator relationships within the state. How do leases affect liability?
- Point was raised that tank ownership and facility/land ownership are often separate within Rhode Island.
- The need to consider property transfers within the Certification timetable was posited; no resolution to this issue was reached.
- RIDEM pointed out that there is currently no distinction under RCRA between Owner/Operator in liability cases.
- Rhode Island’s stance is that the owner of tanks hold primary responsibility for their maintenance. Although any owner, operator, lessee, equipment owner etc. is also liable.
- EPA and RIDEM stressed the fact that liability issues do not change upon Certification. By signing the Certificate of Compliance, one is swearing to compliance on the day of inspection, with the signatory promising to maintain compliance for a set amount of time (possibly two years).
- Should a facility choose to employ a Third-Party Certifier, liability is not removed from the Owner/Operator (the example of having an outside party prepare your tax returns for you was given as an example).

Who should sign the compliance certificate?

- One commenter noted that under Massachusetts’ current ERP processes, dual certification (Owner and whomever is conducting Compliance check) is required.
- Suggestions for who should sign Compliance Certificate were as follows:
 - Third-Party Certifier along with Owner/Operator
 - Operator alone
 - Owner alone
 - Owner and Operator
- The possibility of developing separate Compliance Certificates for Owners and Operators

to sign was suggested.

- The possibility of assigning primary responsibility on the Certification Statement for UST maintenance was suggested.
- One commenter questioned what RIDEM was trying to achieve with the certification. If it's compliance at the site, DEM should look to the person identified in the registration.
- From Paula Therrien's (RIDEM) perspective, both UST Owners and UST Operators should sign the Compliance Certificate.
- It was suggested that a sub-committee be created to further discuss ownership /operator issues (i.e., leased properties, separate tank and land owners, etc.)

Results/Issues to be addressed next Meeting

- A subcommittee will meet at 3:00 pm on Tuesday, April 22nd to discuss the development of Certification Form(s) that may cover all the possible scenarios within Rhode Island.
- Meeting #3 will continue addressing the issue of Compliance, with specific regard to who should be held responsible to sign the Compliance Certificates.

Meeting adjourned at approximately 5:45 pm.