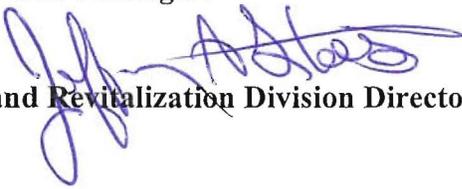


COMMONWEALTH OF VIRGINIA
Department of Environmental Quality

Subject: Land Protection and Revitalization Guidance Memo No. 01-2010A
Delivery Prohibition and the Compliance Process in the UST Program

To: **Regional Groundwater Managers**

From: **Jeffery A. Steers** 
Land Protection and Revitalization Division Director

Date: **May 17, 2011**

Copies: **Regional Directors, Deputy Regional Directors, OSRR Director, Enforcement Director**

Summary:

This guidance provides a process for regional petroleum tank compliance and enforcement staff to follow to impose fuel delivery prohibition on owners and operators of noncompliant underground storage tanks. This guidance also provides a recommended timeline for staff to follow to obtain compliance for violations that do not warrant expedited implementation of delivery prohibition.

Electronic Copy:

An electronic copy of this guidance is available on DEQ's website at <http://www.deq.virginia.gov/waste/guidance.html>.

Contact information:

Please contact Renee Hooper at (804) 698-4018 or Lisa Dewey at (804) 698-4216 with any questions about this guidance.

Disclaimer:

Guidance documents do not establish or affect legal rights or obligations, do not establish a binding norm, and are not determinative of the issues addressed. Decisions in individual cases will be made by applying the laws, regulations, and policies of the Commonwealth to case-specific facts.

COMMONWEALTH OF VIRGINIA

Department of Environmental Quality

**GUIDANCE FOR DELIVERY PROHIBITION AND
THE COMPLIANCE PROCESS IN THE UST
PROGRAM UNDER PART IX OF THE VIRGINIA
UST TECHNICAL REGULATION (9VAC25-580-370).**

Revised May 17, 2011

Delivery Prohibition and the Compliance Process in the UST Program

INTRODUCTION

This document provides guidance to regional petroleum tank compliance and enforcement staff on the process for imposing fuel delivery prohibition (issuing a “red tag”) on noncompliant underground storage tanks (USTs). The guidance differentiates between expedited implementation of the delivery prohibition process and implementation of delivery prohibition through the traditional compliance and enforcement process. This guidance also provides a recommended timeline for staff to follow to obtain compliance for violations that do not warrant expedited implementation of delivery prohibition.

BACKGROUND

The Federal Energy Policy Act of 2005 (EPACT) makes it unlawful for anyone to deliver a regulated substance into or accept delivery of a regulated substance into certain noncompliant USTs. EPACT also requires states to promulgate regulations to develop processes and procedures to implement the delivery prohibition requirement. In 2008, EPA developed guidance to the states on how to implement the delivery prohibition process. Part IX of the Virginia UST Technical Regulation (9VAC25-580-370) was promulgated to comply with the requirements imposed by EPACT, as well as EPA guidance, and provides criteria to identify USTs subject to delivery prohibition. The Regulation also describes, in general, the process to “tag” an UST that is subject to delivery prohibition. This guidance provides DEQ regional staff with additional detail on how to identify an UST subject to delivery prohibition and the procedures for moving through the delivery prohibition process.

GUIDANCE

The Regulation, as adopted, identifies two broad classes of violations and differentiates between the response appropriate for each of the two classes. The first class of violations encompasses instances where a tank is not installed with the necessary pollution prevention equipment. These types of violations are referred to as “not equipped to comply” violations and warrant implementation of an expedited delivery prohibition process. In this expedited process, staff identify a violation and move directly into the delivery prohibition process. The second class of violations, with a couple of exceptions, falls into the category of operation and maintenance. These violations are first addressed using traditional compliance and enforcement mechanisms before staff begin the delivery prohibition process. A recommended timeline for pursuing compliance prior to delivery prohibition for this second class of violations is discussed in this guidance document. [Appendix A](#) provides the general matrix staff should use to differentiate between violations that warrant the expedited delivery prohibition process and violations that warrant the regular track.

THE PROCESS

The following discussion describes an “expedited” process track and a “regular” process track for implementing delivery prohibition. There are two major differences between the two tracks. The first difference is that staff **must** initiate delivery prohibition if they discover a potential expedited violation. For regular track violations, the regional office has the option to pursue delivery prohibition as part of the enforcement process.

The second difference lies in how quickly staff initiate delivery prohibition. On the expedited track, staff initiate delivery prohibition immediately after the inspection. On the regular track, staff first use traditional compliance and enforcement mechanisms to resolve the alleged violations before moving to delivery prohibition. The track taken is dependent upon the type of potential violations discovered during the inspection. Once delivery prohibition proceedings have begun, the steps in the process are essentially the same for both tracks.

Expedited Process

Inspection

During an inspection, if the UST inspector identifies a potential violation warranting expedited delivery prohibition (See [Appendix A](#) for potential violations warranting expedited delivery prohibition), the inspector must provide a Request for Compliance Action (RCA) form that specifies the potential delivery prohibition violation(s) and contains language explaining the delivery prohibition process. This RCA may be left at the facility and/or provided after the inspection via first class mail or email with delivery confirmation to the owner/operator.

Post-Inspection

The inspector and regional office groundwater manager should review the inspection report and decide whether the alleged violations merit expedited delivery prohibition. If they decide that there is a potential violation that falls into the expedited category, staff **must** mail a Notice of Delivery Prohibition Proceedings (Notice) to the owner and operator, if they are different entities, identifying the violation(s) ([Attachment 1](#)). The Notice should be mailed using delivery confirmation or delivery receipt within 3 to 10 business days of the inspection and should include a copy of the inspection report. Staff may also hand deliver the Notice to the employee in charge at the facility in lieu of mailing it. If the owner/operator is a corporation or limited liability company and there is any question about the reliability of the address used to mail the Notice, staff must mail a copy of the Notice using delivery confirmation or delivery receipt to the owner/operator’s registered agent.¹ If ownership is disputed, staff must mail a copy of the Notice

¹ See <http://www.scc.virginia.gov/clk/bussrch.aspx>. Staff can access the State Corporation Commission’s Clerk’s Information System database to identify an entity’s registered agent. Click on Clerk’s Information System and then the link for the relevant type of entity (e.g., corporation, limited liability company). Type some or all of the entity name in the blank provided and click Enter. Scroll through the list of names provided, select the correct entity, and click Enter. Select Registered Agent from the list of options provided.

using delivery confirmation or delivery receipt to all potential owners.² Staff may also fax or email the Notice to the owner and operator in addition to mailing the Notice.



Although the regulation allows staff to give notice of the impending delivery prohibition process by leaving a copy of the Notice with the employee in charge at the facility, staff must make every effort to mail the Notice to the owner and the operator (and/or the registered agent as discussed in footnote 1) if there is a reliable contact name and address in the file.

The Notice should only contain alleged expedited violations. All other alleged violations should be pursued through the regular compliance/enforcement process. This is referred to as the “dual track” or “parallel track” process.

Central Office Coordination

Central office will collaborate with the regional office regarding use of delivery prohibition for expedited cases. Regional office staff **must** provide a draft copy of the Notice to the OSRR Legal Coordinator and the Central Office Tank Enforcement Manager in the Division of Enforcement for review and consultation prior to mailing the Notice to the owner and operator.³ OSRR will communicate any concerns to regional staff promptly. Regional office staff may contact OSRR or DE at any time before drafting the Notice to discuss the suitability of a candidate.

Notice of Delivery Prohibition Proceedings

The Notice will inform the owner and operator that DEQ intends to hold an Informal Fact Finding Proceeding (IFF) to determine whether the issues identified during the inspection are violations of the regulation that warrant delivery prohibition. Staff must use the boilerplate Notice to notify the owner and operator of DEQ’s intent to begin delivery prohibition proceedings. The Notice is designed to provide the owner and operator with all the information required by the Administrative Process Act (§§2.2-3700 *et seq.*) and any changes to the Notice must be approved beforehand by OSRR and the Division of Enforcement.

Staff may choose to contact the owner and operator before sending the Notice to notify them that the IFF is forthcoming and offer a choice of meeting dates. The date should be between 21 and 60 calendar days from the date of the inspection. If the owner and operator cannot agree on a date, staff will choose a date. Every effort should be made to schedule the IFF for one of the pre-scheduled monthly regional and central office dates described below. The date for the IFF should be chosen before the Notice is sent and prominently displayed in the Notice.

² Staff may choose to notify the property owner, as well.

³ Regional office staff should develop a Notice distribution list within their region to ensure that any staff who may be involved in the delivery prohibition process are copied.

Return to Compliance Prior to IFF

The Notice will clearly state that the owner/operator may correct the alleged violations prior to the IFF. The Notice will provide that the owner/operator must submit any documentation at least 3 business days prior to the meeting if he/she intends to demonstrate compliance before the IFF. If the owner/operator submits documentation to demonstrate compliance by the deadline, staff should review the documents promptly and if the documentation sufficiently demonstrates that the alleged violations are corrected, then staff should cancel the IFF and notify the owner/operator of the cancellation in writing ([Attachment 2](#)). If the documentation does not demonstrate compliance then staff should promptly communicate in writing any deficiencies to the owner/operator ([Attachment 3](#)). (These communications can be sent via mail, fax or email.)

Delivery Prohibition IFF:

Each regional office will reserve one day a month to hold the Delivery Prohibition IFFs. In most cases, the owners/operators will be given the choice of two dates during the month to schedule their IFF: the regular regional office day and a “makeup” day in central office. Absent extenuating circumstances, if the owner/operator cannot make one of those two days or does not show up on the day of the meeting, the meeting will be held in their absence.

One designated individual will act as the presiding officer for delivery prohibition IFFs held in PRO, TRO and VRO. Another designated individual will act as presiding officer for delivery prohibition IFFs held in NRO, SWRO and BRRO⁴. The presiding officer will handle communication with the owners/operators once the Notice has been sent and will make decisions regarding rescheduling. The presiding officer, in conjunction with central office, will be responsible for maintaining the red tags for the regions and providing them to regional staff at the IFF, if necessary.

The proceeding should be informal in tone. Regional program staff will advocate at the meeting on behalf of DEQ. At the region’s discretion, the job of advocate can be handled by the inspector, an enforcement specialist or manager, or the groundwater manager. An Advocate Checklist is available for regional staff to use to prepare for the proceeding ([Attachment 4](#)). Staff should record the proceedings via audio recorder.

In most cases, the presiding officer’s goal will be to issue the decision orally and in writing during the meeting. To facilitate this goal, a boilerplate decision document has been created for use in each individual delivery prohibition decision ([Attachment 5](#)). If a decision is not rendered at the meeting, the presiding officer will follow up with a written decision using delivery confirmation or delivery receipt to the parties within a reasonable time. If neither the owner nor operator is present at the IFF or if one of them is not present, then the presiding officer should mail the decision to the absent party(s). Facsimile or email transmission with receipt confirmation can be used in lieu of mail. If the presiding officer finds that no violation exists, he or she will state that in the decision and state that the delivery prohibition process is concluded.

⁴ Central office will maintain a pool of volunteers to act as backup for these individuals.

If the presiding officer makes a finding of delivery prohibition, the presiding officer must immediately notify the OSRR webmaster to update the DEQ webpage. Copies of this notice must also be provided to the OSRR Director, the OSRR Legal Coordinator and the OSRR Training Coordinator. The OSRR Training Coordinator will use this information to update the delivery prohibition email notification list.

Attaching the Delivery Prohibition Tag

If the owner or operator is present at the IFF and the presiding officer determines that a delivery prohibition violation exists, the regional office inspector or other staff should return to the facility no later than 5 business days from the date of the decision and attach a delivery prohibition tag to the fill pipe for each designated tank. If none of the potential responsible parties are present for the IFF, staff should wait 3 business days from the date the decision is mailed to the responsible parties before tagging, unless the parties have confirmed receipt before the 3 days have elapsed. Regional staff may tag immediately if any of the potential responsible parties are present at the IFF. The inspector should make an attempt to notify the owner/operator by telephone or email of the anticipated date that the tag will be applied. Staff should also contact OSRR's Legal Coordinator with the proposed tag date.

Before attempting to affix the tag, the inspector may take any precautions necessary to protect his or her safety, which may include requesting a police escort or other protection, or leaving the site at any time if conditions appear hostile.

When the tag is attached to the fill pipe, staff must match the tag number to the designated tank as specified during the IFF and in the delivery prohibition decision. The inspector must photograph the UST(s) fill pipe before and after the tag is in place. The inspector may also check the volume of fuel in the UST(s) and take a dispenser totalizer reading; however, this is not required.

Regional staff should make every effort to attach the delivery prohibition tag to the tank's fill pipe and must use DEQ issued zip ties.⁵ If the spill bucket around the fill pipe is full of water or product and the tag cannot be applied, then the inspector should request that the owner/operator empty the spill bucket in accordance with proper disposal requirements. If the owner/operator refuses to empty the spill bucket, the inspector should, at the least, attach the tag to the manhole cover, or other available location. Regional staff must photograph the full spill bucket and the tag, and document the owner/operator's refusal before leaving the facility. Regional staff should document all observations, actions and conversations while at the site in a memo to the file. As soon as possible after the tag(s) have been attached, staff should notify OSRR's Legal Coordinator with the date the tag was attached and any issues that arose during the tagging process.

⁵ In general, the zip tie should be placed around the fill pipe. In some cases the diameter of the fill pipe may require staff to use two zip ties to ensure that the tag is secure. If the zip tie cannot be placed around the fill pipe, then it can be placed through the fill cap. Note that if the tie is placed through the cap, then the tank likely cannot be filled for testing without breaking the zip tie.

The presence of the tag on the fill pipe of an UST shall be sufficient to notify any person that the UST is ineligible for delivery or deposit.

Delivery Company Notification

Central office staff will maintain a website identifying the Virginia facilities with active red tags along with an email list of delivery companies interested in receiving notifications of delivery prohibition. Central office staff will send an email to the list members each time a new facility has been added to the active delivery prohibition list. The list will provide the name and location of the facility where the tag(s) has been applied. In addition, if central office or regional staff knows the identity of the delivery company for that facility, they may notify the delivery company directly as a courtesy.

Future Deliveries Prohibited

If staff discovers or suspects that a delivery has been made to a tagged tank, or that a tag has been altered, defaced or removed then staff should notify the Regional Groundwater Manager and central office immediately.

Temporary Removal of the Tag

If an owner/operator wishes to conduct repairs, upgrades, testing or remove or add product that requires the temporary removal of a red tag, the owner/operator must provide a written request (email is sufficient) explaining the testing parameters, the tank systems affected and the amount and type of fuel involved. The request should also include the proposed time and date for the event. Upon written approval by DEQ (email is sufficient), the tag may be temporarily removed to conduct repairs, upgrades, testing or to add or remove product. If approval involves accepting product into the tank to conduct testing, the approval letter must set out the conditions under which the delivery can be made, including the amount of regulated substance that can be delivered into the tank system, the timing of the test and whether the fuel must be removed from the tank after the test. Regional staff may choose to be on site to remove the tag or may authorize the owner/operator in the approval correspondence to remove and replace the tag for the limited testing period. If regional staff choose to allow the owner/operator to replace the tag, then staff must supply DEQ approved zip ties along with the approval correspondence. In any event, regional staff must ensure that the tag is reattached after the event is concluded.

Return to Compliance Post IFF:

Regional staff should review any document submittals from the owner/operator supporting a return to compliance and contact the owner/operator within 5 business days of receipt to communicate whether the documentation is sufficient to confirm a return to compliance. If the documentation is insufficient, staff should outline the deficiencies in writing (email or fax is sufficient) and request the necessary documents to verify return to compliance ([Attachment 6](#)).

Staff should direct the letter to the party who submitted the documents but should copy all other parties as well. For example, if the owner sent in the documents, staff should address the letter to the owner and copy the operator.

If the documentation is sufficient to verify a return to compliance for any of the USTs at the facility, then the delivery prohibition tag must be removed for those specific USTs that have returned to compliance.

Delivery Prohibition Tag Removal

Upon concluding that the owner/operator has returned one or all tagged USTs at the facility to compliance, regional staff must return to the facility **within 2 business days** to remove the delivery prohibition tag from the compliant tank(s). Staff should make every effort to remove the tag in person. However, if circumstances prohibit returning to the facility within this time frame (e.g., insufficient staff resources), staff may send a letter to the owner and operator authorizing removal of the delivery prohibition tag ([Attachment 7](#)). Staff may fax or email the letter but should follow up by mailing the authorization letter by first class mail. Staff should also notify OSRR's Legal Coordinator, who will request that the OSRR webmaster remove the facility or tank from DEQ's Delivery Prohibition web page. OSRR will also send out an email to subscribing delivery companies notifying them that the tag(s) have been removed from the facility's tank(s).

Once a tag is removed, it should be returned to the presiding officer responsible for that region.

Non-expedited Implementation

For all non-expedited, potential violations of Parts II, III, IV or VI of the UST Technical Regulation or the requirements of the UST Financial Responsibility Regulation, staff must give the owner or operator a reasonable amount of time to correct the deficiency(s) before moving into the delivery prohibition process (see [Appendix A](#) for a matrix of violations warranting delivery prohibition on the non-expedited track).



Delivery prohibition cannot be used to address violations of Part VII of the Regulation (failure to close). However, tanks that are not properly closed are subject to the regulatory requirements pertaining to active tanks, such as release detection and corrosion protection requirements, and these potential violations should be included on the inspection report and RCA.

Initiating the Compliance Process

For "Regular Process Violations" in Appendix A that warrant delivery prohibition on the non-expedited track, regional staff should follow the approved UST enforcement timeline to provide the owner or operator with an opportunity to come into compliance before initiating delivery prohibition.

Step 1: Day 1 to 89 – Issue RCA. Staff should initiate all compliance activities with an RCA (either a paper form or electronic version) to the owner.⁶ All owners of noncompliant UST facilities should receive this RCA, regardless of the estimated time to return to compliance or past history.⁷ The RCA should require the owner to complete corrective actions as soon as practicable, but no more than 90 days from the date of inspection. For most violations, 30 days is allowed with extensions possible. Staff should document extensions in writing; email or fax approvals are sufficient. Staff is encouraged to provide informal compliance assistance to encourage return to compliance.

If the initial period for compliance has elapsed (minimum 30 days) and the owner has not achieved compliance with the RCA, staff may choose to issue the Warning Letter. In a small number of cases, the Warning Letter may be skipped in favor of issuing an NOV.⁸

Agreements with cooperative owners who plan to return to compliance in up to one year may be formalized in a Tanks Compliance Agreement (TCA) (formerly tanks LOA).

Step 2: Staff should evaluate whether the owner has signed a TCA or returned to compliance. If not, staff should move to step 3 (Note: this step may take some time to complete depending on the evaluation cycle).

Step 3: Day 90 to 179 –Issue Warning Letter. By Day 90, if the owner has not returned to compliance or signed a TCA, and a Warning Letter has not yet been issued, staff should issue a Warning Letter requiring return to compliance. Staff should continue to provide informal compliance assistance to encourage return to compliance. Staff may also skip the Warning Letter and go directly to an NOV under certain circumstances.⁸

Agreements with cooperative owners who plan to return to compliance in up to one year may be formalized in a TCA. (If an owner fails to comply with the TCA, then the region may go directly to an NOV and initiate the delivery prohibition process. See footnote 7.)

Step 4: Staff should evaluate whether the facility owner has signed a TCA or returned to compliance. If not, staff should move to step 5 (Note: this step may take some time to complete depending on the evaluation cycle).

⁶ In the UST program, tank owners are traditionally pursued first for compliance because owners are the more identifiable party due to DEQ's registration program. However, the Regulation holds both the owner and operator equally responsible for compliance; therefore, staff should be prepared to pursue the operator for compliance if circumstances warrant.

⁷ Generally an RCA will begin the compliance process. In the case of a re-inspection that takes place after an apparent violation of compliance deadlines or milestones laid out in a signed Tank Compliance Agreement, Letter of Agreement, Consent Order or unilateral administrative order, a new RCA need not be issued. This is also true if staff pursue an apparent violation of compliance deadlines or milestones without a re-inspection. In these cases, staff can issue a NOV and pursue delivery prohibition proceedings or an Order, if desired.

⁸ For example, staff may want to skip the Warning Letter in a case where the owner is already in enforcement negotiations due to other noncompliant facilities, the owner is a repeat offender, the owner has not responded to repeated communication from DEQ or staff have identified the same substantive violations at the same facility for the same owner as in the previous inspection.

Step 5: Day 180 – Issue Notice of Violation (NOV). By Day 180, staff should issue a NOV and refer the owner to enforcement if (1) the owner has not returned to compliance or signed a TCA, and (2) a NOV has not yet been issued.

Initiating the Delivery Prohibition Process

By the time the NOV has been issued, regional staff generally will have moved through the steps discussed above and will have been unsuccessful in obtaining compliance. It is important to document that the owner has been provided ample time and opportunity to return to compliance before proceeding to the delivery prohibition process. After the NOV has been issued, depending on the circumstances, staff may choose to go directly to the delivery prohibition process. In other circumstances, staff may pursue a consent order before utilizing delivery prohibition. If attempts to obtain a consent order fail, it is appropriate to begin delivery prohibition proceedings. Staff may also choose to pursue both delivery prohibition and a consent order at the same time.

Integrating Delivery Prohibition into the NOV /Consent Order Process

In a typical enforcement action, regional staff generally issue the NOV and hold a meeting within a short time period to discuss the violations and the owner's plan to return to compliance. At this time, staff often present a draft consent order for discussion. Depending on the circumstances of the case, DEQ's goals, and the most effective means to meet those goals, staff may choose to pursue either the consent order or the delivery prohibition process, or staff may pursue both concurrently.

If staff pursue a consent order first, staff should explain to the owner that delivery prohibition is a tool that could be pursued at a later date if the alleged violations remain unresolved. If staff decide to pursue delivery prohibition before entering the consent order process, then it is also appropriate to explain to the owner that the delivery prohibition process does not prevent a consent order at a later date.

If staff pursue delivery prohibition first, staff may streamline the process, by providing a Notice of Delivery Prohibition Proceedings to the owner and operator⁹ during the NOV meeting and then hold the delivery prohibition IFF at a later date. Staff may also provide the Notice by mail after holding the NOV meeting. Under some limited¹⁰ circumstances, staff may wish to provide the Notice prior to the NOV meeting and hold the Delivery Prohibition IFF during the NOV meeting. If staff chooses this approach, staff must be sure to provide both the owner and operator with the Notice before the meeting.

⁹ Owners are generally pursued first for compliance in the UST program (see footnote 6 *supra*). However, once delivery prohibition proceedings are initiated, the operator must be included in all correspondence and become a party to all delivery prohibition proceedings.

¹⁰ This option is appropriate when the owner has a history of non-compliance, has multiple non-compliant facilities or has been unresponsive.



In some cases (see footnote 8), staff may chose to move directly to a Notice of Violation without first issuing a Warning Letter. In this circumstance, it is not appropriate to move directly into the delivery prohibition process, as described above. The owner and operator should be given a reasonable opportunity to comply before initiating delivery prohibition proceedings.

If staff have issued a NOV and the owner has failed to respond within the time prescribed in the NOV, either to propose a schedule for returning to compliance or set a meeting date, staff can initiate the delivery prohibition process. This applies regardless of whether a Warning Letter was issued before the NOV.

Central Office Coordination

On the regular process track, the regional staff **must** email candidates to the OSRR Legal Coordinator and the Central Office Tank Enforcement Manager for review and consultation. Staff may submit an Enforcement Recommendation and Plan if one has been drafted or staff may send an email that identifies the facility name and ID number, the inspection date, the alleged violations, the identity of the owner and operator, and a brief summary of the case with a chronology. Regional office staff should obtain any required regional concurrence/approval before proposing the candidate to OSRR. Central office will review and confer on whether to proceed with the delivery prohibition process. If central office concurs that delivery prohibition is suitable, OSRR will communicate this to the region via email. If central office disagrees, OSRR will communicate that decision along with the rationale for disagreement. In such cases, delivery prohibition will not proceed. OSRR will copy DE on all decisions and the Land Division Director on decisions that concur with pursuit of delivery prohibition.

Delivery Prohibition Process

Once staff have mailed or hand delivered the Notice of Delivery Prohibition Proceedings to the owner and operator identifying the potential delivery prohibition violation(s) and scheduled the meeting, the delivery prohibition process will follow the steps outlined in the Expedited Process section above.



In most, if not all, cases where staff identify “not equipped to comply” violations during an inspection, staff will also find other violations. This means that staff generally will be proceeding down two separate tracks to address all the violations identified at the facility, i.e., expedited delivery prohibition to address the “not equipped to comply” type violations and the normal compliance/enforcement process to address other violations identified at the same inspection.

Other provisions

Facility-wide Delivery Prohibition

9VAC25-580-370(F) provides that the board, after Notice and a Delivery Prohibition IFF, may classify all USTs at a facility as ineligible for delivery if one or more tanks has been so classified for more than 90 days. Staff should consider utilizing this provision when the owner/operator has made no attempt to return the tagged tank(s) to compliance for more than 90 days and the tagged tank(s) poses an imminent risk to the environment. What constitutes an imminent risk is fact specific and will be handled on a case-by-case basis in consultation with central office.

Emergency, Rural or Remote Exception

9VAC25-580-370(I) provides that if the board determines that a delivery prohibition violation exists it can consider whether the threat posed by the violation is outweighed by the need for fuel from those USTs to meet an emergency situation or to meet the needs of a rural and remote area. If the board finds that such a condition outweighs the immediate risk of the violation, the board may defer imposition of delivery prohibition for up to 180 days. In every such case the director shall consider (i) issuing a special order under the authority of subdivision 10 of § 10.1-1186 of the Code of Virginia prescribing a prompt schedule for abating the violation and (ii) imposing a civil penalty.

If staff suspects that these circumstances exist, staff should consult with central office before proceeding. In addition, the boilerplate Notice ([Attachment 1](#)) will require any owners/operator who seeks to request this exception to raise it during the Delivery Prohibition IFF.

APPENDIX A

Underground Storage Tank Delivery Prohibition Decision Matrix¹¹

Regulatory Requirement	<u>Expedited</u> Process Violations (to be interpreted narrowly)	<u>Regular</u> Process Violations (to be interpreted broadly – read “All other violations, for example...”)
Spill Prevention		
Spill Buckets/Spill Containment	<ul style="list-style-type: none"> ▪ Not installed 	<ul style="list-style-type: none"> ▪ Collar not seated around fill port ▪ Cracked or damaged ▪ Spill bucket <u>full</u> of water/regulated substance
Overfill Prevention		
Ball Float	<ul style="list-style-type: none"> ▪ Not installed (i.e., not able to be observed or verified via owner certification on 7530 or installation records by inspector) 	<ul style="list-style-type: none"> ▪ Not functioning (broken ball/cage)
Automatic Shutoff	<ul style="list-style-type: none"> ▪ Not installed 	<ul style="list-style-type: none"> ▪ Improperly installed ▪ Not functioning (flapper works but bent, etc.)
Alarm	<ul style="list-style-type: none"> ▪ Not installed 	<ul style="list-style-type: none"> ▪ Installed in a manner that impedes proper functionality ▪ Not functioning (alarm is not audible to delivery driver, does not always work, needs repair)
Corrosion Protection		
Galvanized or Bare Steel Tank/Piping (including Sti-P3 tanks)	<ul style="list-style-type: none"> ▪ No Cathodic Protection installed ▪ CP (impressed current) verified to have been turned off more than 180 days AND no recent integrity assessment has been performed. 	<ul style="list-style-type: none"> ▪ 3-yr. testing not documented/failed test ▪ Flex connectors buried in soil and/or gravel (i.e. need to be unburied, CP or boot) ▪ Impressed current CP 60 day rectifier reading records missing ▪ No CP on tank manifold siphon bar

¹¹This Matrix is based on a narrow interpretation of Section 370 of the Regulation to identify a manageable subset of circumstances that would benefit most from immediate action. As the agency and the regulated community gain experience with the delivery prohibition process and its application, the Matrix may be modified to expand the list of violations which warrant the expedited process. Nothing in this Table is intended to conflict with the information contained in the DEQ Petroleum Storage Tank Compliance Manual (2001).

Regulatory Requirement	<u>Expedited Process Violations</u> (to be interpreted narrowly)	<u>Regular Process Violations</u> (to be interpreted broadly – read “All other violations, for example...”)
		<ul style="list-style-type: none"> ▪ CP (impressed current) turned off for less than 180 days ▪ Violations of tank lining reqts
Release Detection (Tank)		
Inventory Control + TTT	<ul style="list-style-type: none"> ▪ No data collected AND no precision tank tightness test AND no stick or measuring device 	<ul style="list-style-type: none"> ▪ Equipment not calibrated, damaged or not functional (e.g., stick too short or damaged) ▪ Not reconciled to 1%+130 gallons ▪ Method expired (e.g., > 10 years) ▪ Weekly stick readings only
Manual Tank Gauging	<ul style="list-style-type: none"> ▪ No data collected AND no precision tank tightness test (if applicable) AND no stick or measuring device 	<ul style="list-style-type: none"> ▪ Criteria for method not followed (e.g. incorrect math) ▪ Tank >2,000 gallons (invalid method) ▪ Method expired (e.g., > 10 years) ▪ Conducted only once per month
ATG	<ul style="list-style-type: none"> ▪ No console control box OR no probe 	<ul style="list-style-type: none"> ▪ Unplugged ▪ Not programmed correctly ▪ Damaged or malfunctioning probe ▪ Broken printer
Vapor Monitoring	<ul style="list-style-type: none"> ▪ No monitoring well OR no vapor detecting or measuring device 	<ul style="list-style-type: none"> ▪ Criteria for method not followed (e.g., site assessment not performed) ▪ Equipment damaged
Groundwater Monitoring	<ul style="list-style-type: none"> ▪ No monitoring well OR no detecting or measuring device 	<ul style="list-style-type: none"> ▪ Criteria for method not followed (e.g., site assessment not performed) ▪ Equipment damaged
Interstitial Monitoring	<ul style="list-style-type: none"> ▪ Interstitial Monitoring has no control box, sensor, or measuring device 	<ul style="list-style-type: none"> ▪ Criteria for method not followed ▪ Equipment damaged ▪ Unplugged device
Statistical Inventory Reconciliation (SIR)	<ul style="list-style-type: none"> ▪ No measuring device (stick/probe) AND no paid vendor contract AND no data collected 	<ul style="list-style-type: none"> ▪ Criteria for method not followed ▪ Records missing ▪ Failed results

Regulatory Requirement	Expedited Process Violations (to be interpreted narrowly)	Regular Process Violations (to be interpreted broadly – read “All other violations, for example...”)
Release Detection - Pressurized and Gravity Fed Piping		
Automatic Line Leak Detector (ALLD) + Annual Line Test	<ul style="list-style-type: none"> ▪ No ALLD present 	<ul style="list-style-type: none"> ▪ Line test not documented ▪ ALLD not programmed correctly ▪ ALLD (mechanical) not tested ▪ Mechanical ALLD vent tube (if applicable) missing from tank test port ▪ No records
ALLD + ATG/LLD	<ul style="list-style-type: none"> ▪ No ALLD present 	<ul style="list-style-type: none"> ▪ ATG unplugged or not programmed correctly ▪ ALLD (electronic) not tested in accordance with manufacturer’s requirements ▪ No records
ALLD + Vapor Monitoring	<ul style="list-style-type: none"> ▪ No ALLD present OR no monitoring well 	<ul style="list-style-type: none"> ▪ Criteria for method not followed (e.g., site assessment not performed) or no records ▪ ALLD (mechanical) not tested
ALLD + Groundwater Monitoring	<ul style="list-style-type: none"> ▪ No ALLD present OR no monitoring well 	<ul style="list-style-type: none"> ▪ Criteria for method not followed (e.g., site assessment not performed) or no records ▪ ALLD (mechanical) not tested
ALLD + Interstitial Monitoring	<ul style="list-style-type: none"> ▪ No ALLD present OR no sump sensors (and visual monitoring is not an option) 	<ul style="list-style-type: none"> ▪ Criteria for method not followed or no records ▪ ALLD (mechanical) not tested
ALLD + SIR	<ul style="list-style-type: none"> ▪ No ALLD present ▪ No measuring device (stick/probe) AND no paid vendor contract AND no data 	<ul style="list-style-type: none"> ▪ Criteria for method not followed ▪ Records missing ▪ ALLD (mechanical) not tested

Release Detection Unsafe Suction Piping – Regulated		
Line Tightness Testing	<ul style="list-style-type: none"> ▪ No record that precision line tightness test was ever performed 	<ul style="list-style-type: none"> ▪ Criteria for method not followed ▪ Precision line tightness test exceeds 3 years
Vapor Monitoring	<ul style="list-style-type: none"> ▪ No monitoring well OR no records 	<ul style="list-style-type: none"> ▪ Criteria for method not followed (e.g., site assessment not performed) ▪ Equipment damaged
Groundwater Monitoring	<ul style="list-style-type: none"> ▪ No monitoring well OR no records 	<ul style="list-style-type: none"> ▪ Criteria for method not followed (e.g., site assessment not performed) ▪ Equipment damaged
Interstitial Monitoring	<ul style="list-style-type: none"> ▪ No line/sump sensors OR (and visual monitoring is not an option) 	<ul style="list-style-type: none"> ▪ Criteria for method not followed ▪ Results recorded greater than every 30 days
SIR	<ul style="list-style-type: none"> ▪ No measuring device AND no paid vendor contract AND no data 	<ul style="list-style-type: none"> ▪ Criteria for method not followed ▪ Records missing
Suspected Release Confirmation	<ul style="list-style-type: none"> ▪ Failure to investigate or confirm 	<ul style="list-style-type: none"> ▪ Improper investigation or low risk area

ATTACHMENTS

Templates

ATTACHMENT 1 - Notice of Delivery Prohibition Fact Finding Proceeding

**NOTICE OF DELIVERY PROHIBITION PROCEEDINGS
(INFORMAL FACT FINDING PROCEEDING)**

[Date]

[Owner Name and Address]

[Operator Name and Address]

Re: [Facility name, address, VA.]
[Facility ID]

Dear [xxxxx]:

You are hereby notified that, pursuant to § 2.2-4019 of the Code of Virginia (“Va. Code”), the State Water Control Board, (the Board) acting through the Department of Environmental Quality (DEQ or the Department), will conduct an Informal Fact Finding Proceeding on [xxxxx at xxx a.m./p.m.]. The purpose of the Proceeding is to determine whether the underground storage tank(s) (USTs) located at this facility and listed in this Notice are ineligible for delivery, deposit, or acceptance of a regulated substance based on violation(s) of the Underground Storage Tanks: Technical Standards and Corrective Action Requirements Regulation,¹² (the Regulation) as described below.

This letter notifies you of information upon which DEQ may rely to make a case decision in this matter. In addition to the information provided with this Notice, DEQ may rely on any documents and information in the Department’s file on this matter, along with the applicable law and agency precedent. The files are public documents and are available for your inspection at the DEQ’s [xxx] Regional Office located at [address] or you may request a copy of the file be sent to you via email or regular mail.

¹² 9 VAC 25-580-10 *et seq.* The Regulation can be found at:
<http://www.deq.virginia.gov/export/sites/default/tanks/pdf/usttech.pdf>

OBSERVATIONS AND LEGAL REQUIREMENTS

On [date], DEQ staff conducted an inspection of the UST(s) at [facility address]. File and UST registration documents were also reviewed. A copy of the Request for Corrective Action [and/or Inspection Report] is enclosed, which describes the staff's factual observations and identifies the applicable legal requirements.

These potential violations remain unresolved and will be the subject of the Proceeding:

[Use the Observations and Legal Requirements format used for Warning Letters and Notices of Violation to list potential violations and identify which UST(s) are implicated]

PROCEDURES

DEQ will conduct the Informal Fact Finding Proceeding before [Name of Presiding Officer], an employee of DEQ. You may appear in person or by counsel or other qualified representative to present factual data, argument, or proof in connection with this case. DEQ may rely on the enclosed documents to substantiate the alleged violations, as well as other documents in its files.

[Name] will represent DEQ at this Proceeding. Based upon DEQ's file and the record of this Proceeding, DEQ will be requesting that the Presiding Officer find that the referenced UST(s) at [facility name] are in violation of the Regulation and ineligible for delivery, deposit or acceptance of a regulated substance based on 9VAC 25-580-370 of the Regulation.¹³

RESOLUTION

Please contact [Inspector] at [(xxx) xxx-xxxx] if you wish to resolve the potential violations prior to the Informal Fact Finding Proceeding. If you complete the necessary work to resolve the potential violations prior to the date of the Proceeding, contact [Inspector name] immediately so that compliance can be verified. You must provide a written report and appropriate documentation demonstrating that compliance has been achieved 3 business days prior to the Proceeding. If compliance is verified, the Proceeding will be cancelled and the UST(s) will be eligible for receipt of a regulated substance. If compliance is not verified, the Proceeding will go forward as scheduled.

¹³ You may request to be heard on the Emergency, Rural or Remote Exception. 9VAC25-580-370(I) provides that if the Presiding Officer, acting on behalf of the Board, determines that a delivery prohibition violation exists he or she can consider whether the threat posed by the violation is outweighed by the need for fuel from the UST(s) to meet an emergency situation or to meet the needs of a rural and remote area. If it is determined that such a condition outweighs the immediate risk of the violation, the Presiding Officer may defer imposition of delivery prohibition for up to 180 days. In every such case the director shall consider (i) issuing a special order under the authority of subdivision 10 of § 10.1-1186 of the Code of Virginia prescribing a prompt schedule for abating the violation and (ii) imposing a civil penalty.

FUTURE ACTIONS

If these tanks are determined to be in violation of 9 VAC 25-580-10 *et seq.* and ineligible for delivery, a delivery prohibition notice (“red tag”) will be placed on the fill port of the ineligible UST(s) and delivery, deposit or acceptance of a regulated substance into the UST(s) will be prohibited until such time as the UST(s) are returned to compliance. Please be advised that removal of the red tag is prohibited by 9 VAC 25-580-370 unless authorized, in writing, by DEQ. In addition, for each alleged violation, DEQ is authorized to pursue enforcement actions, seek civil penalties and seek compliance with its rules and regulations in any manner allowed by law.

Please contact [Name of Presiding Officer] within 5 business days of the date of this letter to confirm whether you and/or a representative will attend the Proceeding or with any questions relating to this Proceeding. [He/she] can be reached at [(xxx) xxx- xxxx].

Please note that the Informal Fact Finding Proceeding will be held regardless of whether you or your representative chooses to attend.

Sincerely,

Regional office

Enclosures

cc: Presiding Officer
RO Agency Advocate
OSRR Director
RO Groundwater Manager
Tank Enforcement Manager

ATTACHMENT 2 - Return to Compliance Letter (pre-Informal Fact Finding)

[Date]

[Owner Name and Address]

[Operator Name and Address]

Re: [Facility Name and ID#]
Termination of Delivery Prohibition Proceedings

Dear [owner and operator]:

On [DATE], the Department of Environmental Quality (DEQ), staff conducted an inspection of the underground storage tank(s) (USTs) at [FACILITY ADDRESS]. Staff also reviewed file and UST registration documents. Staff's factual observations and the applicable legal requirements were identified in the Notice of Delivery Prohibition Proceedings that was issued on [DATE].

On [DATE], the [name of owner or operator] submitted a written report and supporting documentation to demonstrate that the alleged violation(s) rendering the UST(s) ineligible for delivery have been resolved. Based on a review of the documentation [insert if applicable "and subsequent site visit"] staff agrees that the alleged violation(s), has/have been resolved.

Accordingly, the delivery prohibition proceeding initiated to address these alleged violations is terminated and the Informal Fact Finding Proceeding scheduled for [insert date of IFF] is cancelled.

Please note that if DEQ discovers violations at this facility as a result of a future inspection or site visit, the UST(s) may again be subject to the delivery prohibition process at that time. Further, this letter has no bearing on any other enforcement actions that may be pending at this facility.

Please contact me at XXX-XXX-XXXX if you have further questions.

Sincerely,

Regional Groundwater Manager

cc: Presiding officer

OSRR Director
Inspector
Webmaster
E-mail list

ATTACHMENT 3 - Insufficient Documentation Letter (pre Informal Fact Finding)

[Date]

[Owner Name and Address]

[Operator Name and Address]

Re: [Facility Name and ID#]
Insufficient Documentation Notice

Dear [owner and operator]:

On [DATE], the Department of Environmental Quality (DEQ), staff conducted an inspection of the underground storage tank(s) (USTs) at [FACILITY ADDRESS]. Staff also reviewed file and UST registration documents. Staff's factual observations and the applicable legal requirements were identified in the Notice of Delivery Prohibition Proceedings that was issued on [DATE].

On [DATE], the [name of owner or operator] submitted a written report and supporting documentation to demonstrate that the alleged violation(s) rendering the UST(s) ineligible for delivery have been resolved. Based on a review of the documentation [insert if applicable "and subsequent site visit"] staff does not agree that the alleged violation(s) has/have been resolved. The following items remain unresolved:

Note: include list of work to be done.

Please submit additional documentation demonstrating that this work has been completed to [inspector name and address] [staff can specify what documentation is necessary, if preferred]. If you wish to resolve the potential violations prior to the Informal Fact Finding Proceeding, contact [Inspector name] immediately so that compliance can be verified. You must provide a written report and appropriate documentation demonstrating that compliance has been achieved 3 business days prior to the Proceeding. If compliance is verified, the Proceeding will be cancelled and the UST(s) will be eligible for receipt of a regulated substance. If compliance is not verified, the Proceeding will go forward as scheduled.

Please contact [inspector name] at XXX-XXX-XXXX if you have further questions.

Sincerely,

Regional Groundwater Manager

cc: Presiding officer
OSRR Director
Inspector
Webmaster
E-mail list

ATTACHMENT 4 – Delivery Prohibition Advocate Checklist

Exhibits to submit at the Informal Fact Finding (IFF):

Inspection Report(s) (along with inspector's explanation/observations and photos if violations are unclear). Photos should be numbered to match observations.

Any compliance documentation that confirms/refutes violations or compliance (test reports, job invoices, contracts to perform work, certifications, etc.)

Any compliance letters/notices from DEQ to the Responsible Person(s) (RP) (Deficiency Letter, RCA, Warning Letter, NOV, TCA/LOA, etc.)

Copies of any responses from the RP to DEQ (including phone logs, emails, etc.)

Copies of the Notice for referral for Delivery Prohibition Hearing (including any delivery confirmation if tank owner is not present)

Number all submittals and place in an Exhibit Book with a copy for the presiding officer and a copy for the owner and/or operator for ease of reference during the IFF.

Advocate Presentation:

First: Opening Statement: The advocate should introduce himself or herself, state his or her position, and indicate that they are presenting on behalf of the Department. The advocate should provide a brief history of delivery prohibition. Provide Federal law requirements supporting VA's UST regulation and include references to the recent Federal law requiring delivery prohibition for non-compliant USTs. Also refer to the APA, 2.2-4019, as authority to hold the IFF.

Sample Opening Statement:

Personal Introduction.

The Energy Policy Act of 2005 makes it unlawful to deliver to, deposit into, or accept a regulated substance into an underground storage tank that has been determined by the US Environmental Protection Agency or a state implementing agency to be ineligible. State Water Control Law defines petroleum as a regulated substance. EPA promulgated guidance in 2008 defining the criteria used to identify an ineligible underground storage tank. In September of 2010, Virginia's amendments to its Underground Storage Tank Regulation, 9 VAC 25-580-370, became effective. Pursuant to the amended regulation, tanks that are in violation of certain pollution prevention and corrective action requirements are ineligible for delivery of regulated substances. The purpose of this informal fact finding proceeding is to determine whether any USTs at this facility are non-compliant and thus ineligible for delivery, deposit, or acceptance of petroleum or

other regulated substance. If the UST(s) are determined to be ineligible for delivery, then a red tag will be placed on the fill pipe of the tank to identify it as ineligible for delivery. Once DEQ finds that the tank has returned to compliance, the red tag will be removed.

Second: Describe the inspection(s) at the facility and provide the following info:

- the non-compliant UST(s) (substance stored, whether it is compartmentalized, tank number(s), tank capacity, etc.),
- the address of the UST facility,
- the tank owner and operator for the UST facility,
- the landowner,
- if the tanks are currently being used in operation of the facility or if the tanks are not currently in use, and
- if the tank owner and/or operator is not present, describe what actions were taken to provide notice to the owner/operator.

Third: Describe the compliance and enforcement history at the site. This will be especially relevant in the case of “Regular process” violations.

Fourth: Recite the alleged violation(s) and regulatory citations noted for each UST(s) and provide the supporting observations and/or documentation for each alleged violation. If more than one UST is included, review the alleged violations for each tank separately because a determination regarding the application of a red tag will be made individually for each tank identified in the Notice. Identify and discuss only the alleged violations specified in the Notice during the presentation.

Identify corresponding exhibits in the Exhibit Book when providing the supporting observations.

Note: You may choose to merge the third and fourth steps during your presentation.

Fifth: **Ask the Presiding officer to accept all documents into the records and to authorize use of delivery prohibition for each non-compliant UST.**

Owner/Operator makes presentation

Presiding Officer Asks Questions

Advocate's Sample Closing Statement:

DEQ has presented facts that prove that certain violations of the UST Regulation exist at this facility: [cite regulatory section and applicable tank numbers for each alleged violation].

Furthermore, it is DEQ's position that the described violations render tanks #[] ineligible for delivery of regulated substances, including petroleum. I request that you find that these tanks are subject to delivery prohibition and are ineligible for delivery of petroleum due to their non-compliance and that you require a tag to be placed on the ineligible tank(s).

Optional addition to the presentation regarding the Emergency, Rural or Remote Exception (if applicable):

9VAC25-580-370(I) provides that if the Presiding Officer determines that a delivery prohibition violation exists it can consider whether the threat posed by the violation is outweighed by the need for fuel from the UST(s) to meet an emergency situation or to meet the needs of a rural and remote area. In this case such an exception should be granted because...

If the Presiding Officer finds that this condition outweighs the immediate risk of the violation, the Presiding Officer may defer imposition of delivery prohibition for up to 180 days.

ATTACHMENT 5 - Decision and Notice of Delivery Prohibition (2-sided version available from OSRR)



DEPARTMENT OF ENVIRONMENTAL QUALITY

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

DECISION AND NOTICE OF UNDERGROUND STORAGE TANK (UST) DELIVERY PROHIBITION

Date: _____

Certified Mail or Delivery Conf. #: _____ Facility ID No.: _____

Facility Name: _____

Facility Address: _____

UST Owner: _____

UST Owner Address: _____

UST Owner Phone No.: Fax No.: _____

UST Operator: _____

UST Operator Address: _____

UST Operator Phone No.: Fax No.: _____

On or about (date) , the State Water Control Board (SWCB), acting through the Virginia Department of Environmental Quality (DEQ), held an informal fact finding proceeding (IFF) to review the potential violations observed during an inspection of this facility on (date) . The Proceeding was held to determine whether any of the USTs at the facility, which are owned by (owner name) and operated by (operator name) are in violation of any regulatory requirements contained in the Underground Storage Tanks: Technical Standards and Corrective Action Requirements Regulation (the Regulation) that would trigger delivery prohibition pursuant to section 25-580-370 of the Regulation. I, [Presiding Officer], have been appointed to make this determination.

Having reviewed the evidence presented at the Proceeding, I find that the following violation{s} noted during the inspection subject the USTs identified below to delivery prohibition status as specified in 9 VAC 25-580-370:

- Spill prevention equipment is not installed on the UST system properly, or is disabled, in violation of 9VAC25-580-50 or 9VAC25-580-60; DEQ Tank # _____; Tank Size: _____ Product Stored: _____;
- Overfill prevention equipment is not installed on the UST system properly, or is disabled, in violation of 9VAC25-580-50 or 9VAC25-580-60; DEQ Tank # _____; Tank Size: _____ Product Stored: _____;
- Release detection equipment is not installed on the UST system properly or is disabled or a release detection method is not being performed in violation of 9VAC25-580-50 or 9VAC25-580-60;

- DEQ Tank # _____; Tank Size: _____ Product Stored: _____;
- Corrosion protection equipment is not installed on the UST system properly, or is disabled, in violation of 9VAC25-580-50 or 9VAC25-580-60; ; DEQ Tank # _____; Tank Size: _____ Product Stored: _____;
- Secondary containment is not installed on the UST system properly, or is disabled, in violation of 9VAC25-580-50, 9VAC25-580-60 or 9VAC25-580-150; ; DEQ Tank # _____; Tank Size: _____ Product Stored: _____;
- The UST system is leaking and the owner or operator has failed to initiate and complete the investigation and confirmation requirements in violation of 9VAC25-580-190 through 9VAC25-580-210.
- DEQ Tank # _____; Tank Size: _____ Product Stored: _____;

(Intentionally left blank to add more tanks above if necessary)

You are hereby notified that no later than 5 business days from the date of this decision, DEQ staff will affix a tag to the fill pipe of the UST(s) listed below which will specify that the UST(s) are ineligible for delivery, deposit, or acceptance of a regulated substance.

Depositing or allowing deposit of a regulated substance into any of the tanks listed below or removing the delivery prohibition tag without prior DEQ approval constitutes a violation of 9 VAC 25-580-370 and may subject the violator to enforcement action.

Red Tag #	DEQ Tank #	Tank Size (Gal)	Product Stored	Red Tag #	DEQ Tank #	Tank Size (Gal)	Product Stored
_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____

You are further notified that the delivery prohibition tag will not be removed until the owner or operator of this facility makes the appropriate system repairs or upgrades, or remedies the stated noncompliance and provides a written report and appropriate documentation demonstrating that compliance has been achieved. Please provide your written report and documentation to (Inspector name, address and phone) _____ . Staff will review the documents within 5 business days; if the documentation is insufficient, staff will outline the deficiencies in writing. Within 2 business days of confirming that one or more of the tagged USTs at the facility has been returned to compliance, DEQ staff, or the owner or operator if authorized in writing by DEQ, will remove the delivery prohibition tag and restore the status of the UST as acceptable for delivery of regulated substances.

DEQ may temporarily authorize an owner or operator to accept a limited amount of fuel into an ineligible UST if such activity is necessary to test or calibrate the UST(s) or dispenser system. Please contact _____
(Inspector name, phone) to submit this request.

For each violation described herein, or any other violation discovered during this inspection, DEQ reserves the right to issue enforcement actions and seek civil charges and the right to seek compliance with its rules and regulations in any manner allowed by law, and nothing herein shall be construed to preclude the right to seek such civil charges and compliance.

TIME FOR FILING A NOTICE OF APPEAL

This is a final case decision of the SWCB. If you wish to file a judicial appeal of this decision, Virginia Supreme Court Rule 2A:2 requires that you file a Notice of Appeal with the Director of the Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219 within 30 days of the date the final case decision was served upon you (33 days if service was accomplished by mail). This Notice of Appeal does not constitute an appeal to the Director; rather, it provides the legally required notice to the agency secretary that you intend to file an appeal in court. The Administrative Process Act and the Rules of the Supreme Court of Virginia contain other requirements that apply to such a judicial appeal.

Presiding Officer Signature

Phone No.

Date

If hand-delivered:

Received By: Signature

Print Name

Received By: Signature

Print Name

ATTACHMENT 6 - Insufficient Documentation Letter (post decision)

[Date]

[Owner Name and Address]

[Operator Name and Address]

Re: [Facility Name and ID#]
Insufficient Documentation Notice

Dear [owner and operator]:

On [DATE], the Department of Environmental Quality (DEQ), acting on behalf of the State Water Control Board, held an Informal Fact Finding Proceeding in accordance with 9 VAC 25-580-370. The purpose of the Proceeding was to determine whether the underground storage tank(s) (USTs) at this facility were ineligible for delivery, deposit, or acceptance of a regulated substance based on violation(s) of the Underground Storage Tanks: Technical Standards and Corrective Action Requirements Regulation¹⁴ 9 VAC 25-580-10 *et seq.* By decision dated [DATE], the DEQ determined that the following UST(s) at the referenced facility were in violation of [insert sections of regulation violated per UST] and ineligible to accept delivery or deposit of a regulated substance:

[Insert identifying tank information in grid below]

DP Tag #	DEQ Tank #	Tank Size (Gal)	Product Stored	DP Tag #	DEQ Tank #	Tank Size (Gal)	Product Stored
_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____

On [DATE] DEQ personnel attached a delivery prohibition tag to the ineligible UST(s) in accordance with 9 VAC 25-580-370.

On [DATE], the facility submitted a written report and supporting documentation to demonstrate that the violation(s) rendering the UST(s) ineligible for delivery has/have been resolved. Based on a review of the documentation [insert if applicable “and subsequent site visit”] staff does not agree that the following violation(s) has/have been resolved.

[Note: include list of work to be performed.]

¹⁴ The Underground Storage Tanks: Technical Standards and Corrective Action Requirements Regulation can be found at <http://www.deq.virginia.gov/export/sites/default/tanks/pdf/usttech.pdf>

Please submit additional documentation demonstrating that this work has been completed to [inspector name and address].

Please contact [inspector name] at XXX-XXX-XXXX if you have further questions.

Sincerely,

Regional Groundwater Manager

cc: Presiding officer
OSRR Director
Inspector
Webmaster
E-mail list

ATTACHMENT 7 - Return to Compliance/Tag Removal Letter

[Date]

[Owner Name and Address]

[Operator Name and Address]

Re: [Facility Name and ID#]
Delivery Prohibition Tag Removal

Dear [owner and operator]:

On [DATE], the Department of Environmental Quality (DEQ), acting on behalf of the State Water Control Board, held an Informal Fact Finding Proceeding in accordance with 9 VAC 25-580-370. The purpose of the Proceeding was to determine whether the underground storage tank(s) (USTs) at this facility were ineligible for delivery, deposit, or acceptance of a regulated substance based on violation(s) of the Underground Storage Tanks: Technical Standards and Corrective Action Requirements Regulation¹⁵ 9 VAC 25-580-10 *et seq.* By decision dated [DATE], the DEQ determined that the following UST(s) at the referenced facility were in violation of [insert sections of regulation violated] and ineligible to accept delivery or deposit of a regulated substance:

[Insert identifying tank information in the grid below]

DP Tag #	DEQ Tank #	Tank Size (Gal)	Product Stored	DP Tag #	DEQ Tank #	Tank Size (Gal)	Product Stored

On [DATE] DEQ personnel attached a delivery prohibition tag to the ineligible UST(s) in accordance with 9 VAC 25-580-370.

On [DATE], the facility submitted a written report and supporting documentation to demonstrate that the violation(s) rendering the UST(s) ineligible for delivery have been resolved. Based on a review of the documentation [insert if applicable “and subsequent site visit”] staff agrees that the violation(s), determined on [insert decision date] has/have been resolved.

[Within 2 business days of the date of this letter, DEQ staff, in accordance with 9 VAC 25-580-370, will remove the delivery prohibition tag(s) from the above referenced USTs. Upon

¹⁵ The Underground Storage Tanks: Technical Standards and Corrective Action Requirements Regulation can be found at <http://www.deq.virginia.gov/export/sites/default/tanks/pdf/usttech.pdf>

removal of the delivery prohibition tags, the USTs will be eligible for delivery, deposit or acceptance of a regulated substance.]

OR

[By this letter, you are authorized, pursuant to 9 VAC 25-580-370, to remove the delivery prohibition tag immediately. Upon removal of the delivery prohibition tag, the USTs are eligible for delivery, deposit, or acceptance of a regulated substance. You must return the delivery prohibition tags to DEQ at the following address: **[insert regional office address]**].

Please note that if DEQ discovers violations at this facility as a result of a future inspection or site visit, the USTs may again be subject to the delivery prohibition process at that time. Further, this letter has no bearing on any other enforcement actions that may be pending at this facility.

Please contact me at **XXX-XXX-XXXX** if you have further questions.

Sincerely,

Regional Groundwater Manager

cc: Presiding officer
OSRR Director
Inspector
Webmaster
E-mail list