

Focus on Delivery Prohibition or “Red Tagging”

Toxics Cleanup Program

November 2012

In 2007, the Washington State Legislature amended the state Underground Storage Tank (UST) law (Chapter 90.76 RCW) to include requirements of the federal Energy Policy Act of 2005. In August 2012, the Department of Ecology (Ecology) revised the UST rule (Chapter 173-360 WAC) to implement delivery prohibition of regulated substances to facilities that are not in compliance with state and federal UST laws and rules. **The delivery prohibition rule is effective October 1, 2012.**

What is Delivery Prohibition, also known as Red Tagging?

Delivery prohibition makes it illegal to deliver, deposit, or accept petroleum or hazardous substances to regulated UST systems that dispense fuel, OR withdraw waste oil from a waste oil tank, when those regulated tanks have been determined by Ecology to be ineligible.

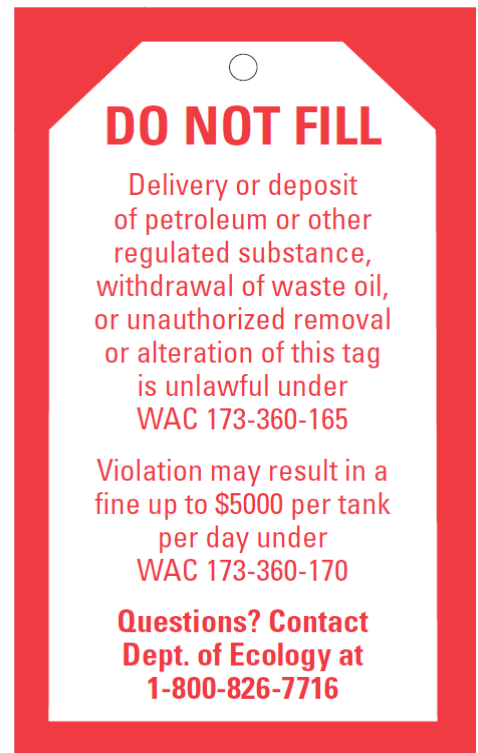
Ecology will use a red-colored tag to identify each tank that is prohibited from receiving regulated product or having waste oil removed. The red tag will be placed on the fill pipe so that the UST is clearly identified as ineligible and is easily visible to anyone delivering product or withdrawing waste oil.

Under what circumstances will Ecology Red Tag an UST system?

Ecology will red tag any UST system that does not have required spill prevention, overfill prevention, leak detection, or corrosion protection equipment. However, Ecology may authorize delivery to such systems if doing so is in the best interest of the public.

Ecology may also red tag other non-compliant UST systems. Ecology will consider site-specific circumstances when deciding whether to red tag such systems. Circumstances that may warrant a red tag include, but are not limited to, the following:

- Failure to properly operate or maintain UST systems.
- Failure to have and maintain corrosion protection on metal components in contact with soil.
- Failure to install secondary containment as required.
- Failure to investigate a release, or suspected release as required.
- Failure to comply with notification requirements as required.
- Failure to maintain appropriate and sufficient financial responsibility.
- Failure to maintain a current business license with tank endorsement.



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How will owners and operators be notified that an UST may be Red Tagged?

When an Ecology inspector observes significant violations of the UST regulations, Ecology may issue a Notice of Non-Compliance (NONC) to the UST owner/operator. The NONC will identify the specific regulatory violations, their remedies, and a compliance schedule to resolve them.

In addition to the NONC, the inspector may also issue a **Notification of Delivery Prohibition** at the time of inspection or by mail following the inspection.

Issuance of the Notification of Delivery Prohibition begins a 30-day period during which an owner may file an appeal to the Pollution Control Hearings Board. If the Notice of Delivery Prohibition is not appealed or is upheld by the Pollution Control Hearings Board, Ecology will attach a Red Tag to the tank(s) identified on the Notification of Delivery Prohibition.

How can an owner/operator get the prohibition lifted and the Red Tag removed?

The owner/operator should complete the actions listed on the NONC as quickly as possible. Ecology will review evidence and documentation demonstrating the violations have been resolved, as required. An Ecology UST inspector may visit the facility before reclassifying an ineligible tank as eligible and removing the Red Tag. Ecology inspectors will work closely with owner/operators to return tanks to eligible status.

Will there be penalties if fuel is delivered or waste oil is removed from a Red-Tagged UST?

YES. An owner or operator is subject to a civil penalty of up to \$5,000 per day per tank if a regulated substance is delivered or waste oil is removed from an ineligible (Red-Tagged) tank. Persons delivering product to a Red-Tagged tank, or removing waste oil from a Red-Tagged tank, are also subject to a civil penalty.

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