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ACKNOWLEDGEMENT

OUST would like to thank those individuals who helped make these revisions to the original, March 1989 version of the State Program Approval Handbook. Since the initial publication of this manual, a number of Regional offices have reviewed State Program Approval applications submitted by their States. Their successes, but perhaps more importantly, the difficulties they encountered, have taught us much about the State Program Approval process. With the help of Regional and State UST program staff, as well as representatives of the Office of General Counsel, Offices of Regional Counsel, and the Office of Enforcement, we have been able to produce what we feel is a useful, accurate, and up-to-date document which draws on more than two years of Regional experience in proceeding with State Program Approval. OUST feels that the lessons that have been learned over the past two years are reflected in the current document and should lead to a greater number of States seeking and achieving program approval in the near future.

The policies and procedures set out in this document are intended solely for the guidance of Government personnel. They are not intended, nor can they be relied upon, to create any rights, substantive or procedural, enforceable by any party in litigation with the United States. The Agency reserves the right to act at variance with these policies and procedures and to change them at any time without public notice.

CHAPTER 1. INTRODUCTION

A. Purpose of This Handbook

This handbook was developed for State and EPA officials who are building and evaluating State UST programs to be approved to operate in lieu of the Federal UST program. As provided in Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. §§6991 - 6991 et seq., States may be approved by EPA to administer and enforce their UST programs in lieu of the Federal UST program if their technical requirements are no less stringent than the corresponding Federal requirements, and if they provide adequate enforcement of these requirements. [Note: Throughout this document, the word "States" generally includes both States and territories.] EPA has promulgated regulations for State program approval (40 CFR Part 281). This handbook provides further explanation and discussion to increase the States' understanding of how EPA intends to implement these regulations.

B. The Goals of This Handbook

The goals for this handbook are:

- To encourage State applications by making the application process as easy and straightforward as possible;
- To clearly describe EPA's expectations and criteria for an approvable State program. Clear expectations will help States with existing UST programs anticipate any legislative or regulatory changes that may be necessary for approval, and may help other States in designing approvable programs. Clear expectations will also promote consistency in the approach that EPA Regional offices use to review State programs; and
- To encourage a wide range of State UST programs. EPA recognizes that there are many different ways to design an UST program that can meet the basic environmental and public health goals of the Federal regulations, while also reflecting the unique environmental characteristics and governmental institutions of each State.

C. How This Handbook Can Help You

The handbook is written for two audiences: State agencies and EPA Regional offices. This document should assist States as they design their UST programs and assemble applications for program approval. In addition, it should assist EPA Regional offices as they work with States before applications for program approval are submitted, and as the Regional offices review the official State applications.

Because not all the material presented here will be useful for every situation, the reader need not feel obligated to read the handbook from cover to cover. The handbook is divided into seven chapters and Appendices as follows:

Chapter 2 discusses the State program approval process and defines EPA's goal of allowing approved State programs to operate "in lieu of" the Federal program. This chapter also describes the criteria that will be used to determine a State program's suitability for approval, and outlines the steps in the application process.

Chapter 3 provides a brief description and explanation of each component of the State program approval application. Sample letters and other forms are included in some sections of this chapter to aid States in developing their own application packages. More detailed discussions of some of these components are provided in the subsequent chapters.

Chapter 4 discusses the Attorney General's statement that the statutes and regulations of the State meet the "no less stringent" technical requirements and ensure adequate enforcement of the State's UST program. A table with spaces to cite relevant State statutes and regulations and examples are provided for each of the "no less stringent" objectives to help States interpret these Federal objectives.

Chapter 5 explains the requirements for compliance monitoring and enforcement procedures, and includes detailed discussions to aid States in describing how their own programs demonstrate "adequate enforcement" procedures.

Chapter 6 describes the purpose of the Memorandum of Agreement (MOA) that the State may provide to EPA. This MOA, to be negotiated with EPA, describes the coordination and shared responsibilities of the State and EPA. A sample MOA is also provided in this chapter to aid States in preparing their own applications.

Chapter 7 provides additional guidance for completing the Program Description section of the State program approval application. The guidance covers the five major areas of the Program Description including: general questions, program scope, organization and structure of the program, resource information, and State funds for financial responsibility.

The Appendices contain a sample program approval application, the applicable Federal statute and regulations, other regulatory and statutory tools, and a list of codes and standards written by nationally-recognized organizations and national independent testing laboratories.

D. EPA's Approach to Regulating UST Systems

EPA's approach to the regulation of underground storage tank systems on a national scale must be different from that undertaken by most of its other regulatory programs because the UST problem is significantly different. This difference is mainly a result of three factors: the large number of facilities to be regulated; the nature of the regulated community; and the nature of the regulatory work.

1. Large size of regulated community.

The most significant problem is the sheer size of the regulated community. Nationally, over 700,000 UST facilities account for about 2 million UST systems. Estimates indicate that roughly 48 percent of existing UST systems are unprotected from corrosion (and thus, present a serious environmental risk). A relatively high proportion of UST facilities (10-30 percent) have already had a leak, and soon others will leak unless measures are taken to upgrade them.

The amount of activity it takes to properly manage an UST system throughout its operating life has led EPA to conclude that the national UST program is most effectively carried out at State and local levels of government. For example, a small city with about 700 facilities and 2,000 UST systems within its jurisdiction can run a manageable regulatory program. If each of those 700 facilities installs one new tank during the next five years, that would be an average of 140 installations per year, or three per week. If that

small city requires a city inspector to be present at each installation, an inspector would have to be in the field three times a week just for installations of new USTs. This estimate does not include "spot" inspections that might be needed for periodic tank testings, closures, upgrading or retrofit and cleanups. This task would be challenging, but the city could probably manage to oversee at least its small percentage of the national regulated community. However, if the above figures are multiplied by the number of cities across the country, the idea of a Federally-implemented program that would oversee all of these facilities becomes practically and effectively impossible.

A consideration of the large numbers of UST owners and UST systems also led EPA to design the Federal UST regulations with a phase-in period for certain requirements on existing UST systems. While all Federal requirements are in effect immediately for new UST systems, owners have until December 22, 1998, or ten years, to upgrade existing UST systems to the corrosion protection standard for new UST systems, and 1 to 5 years to install release detection equipment for existing UST systems. These phased-in requirements are a recognition of the fact that there are some limitations on the capability of 700,000 UST owners and supporting service and manufacturing industries to respond immediately to new regulations. The experience of States that have been operating UST regulatory programs shows that it takes several years for most owners of existing UST systems to understand and respond to new regulations that require significant changes in the day-to-day management of their businesses.

2. Nature of the regulated community.
Many UST facilities are owned and operated as small local businesses: "Mom and Pop" gasoline service stations and convenience stores. These small entrepreneurs, who are used to operating their businesses with minimal environmental regulation, will be significantly affected by regulations for UST systems.

The experience of State and local agencies with UST programs shows that large businesses that own USTs are generally willing and have already begun to comply with UST requirements, but that small owners, with limited resources and knowledge of Federal regulations, often need more direct attention and immediate assistance to bring them into compliance and to maintain that compliance. Given the nature of this particular regulated community, EPA believes this regulatory program often will be most effectively carried out by the level of government nearest to the problem. State and local governments know their regulated communities and are best able to respond quickly and effectively to their individual problems.

3. Nature of the regulatory work.
The problem of releases from USTs is multi-faceted. There are three major sources of release incidents: product delivery piping failures; corrosion of unprotected tanks and piping; and spills and overfills. Environmental regulations for UST systems must be aimed at preventing these different types of petroleum and hazardous substance releases as well as increasing the ability to quickly detect and minimize the contamination of soil and ground water caused by such releases, and ensuring adequate cleanup of contamination. To do this, UST regulatory requirements must address every phase of the life cycle of a storage tank system: selection of the UST system, installation, operation and maintenance, closure, financial responsibility, and cleanup of the site where releases have occurred. Many State and local governments have found that a great deal of visible, on-site monitoring and a constant enforcement "presence" is needed to effectively ensure many owners' compliance with requirements at each stage of the life of the UST system. Therefore, a regulatory program will be most successful in achieving this

compliance (and thus preventing environmental contamination and ensuring cleanups of contamination) if it can be implemented by the level of government most capable of performing these close and constant checks on the regulated community.

4. State and local UST programs needed.
While the task of regulating USTs poses unique problems, it also presents opportunities that are not available to some other environmental regulatory programs. First, 40 States and territories already have final technical regulations for USTs, while an additional 11 have draft technical regulations. A number of local programs are also in operation. These State and local programs provide a range of existing program designs and experiences that can be useful models for the remaining States and localities as they design and implement their new programs. Second, in many instances, the large number of petroleum UST facilities to be regulated could provide an opportunity for States and localities to impose fees or taxes that may raise enough revenue to support a successful UST regulatory program. Finally, State and local governments may have a number of effective regulatory mechanisms and informal enforcement tools that can be applied to underground storage tank systems that are not available to the Federal government. For example, some State and local agencies may be able to require installation permits for UST systems and regulate petroleum distributors, while local enforcement actions may include the revocation of a facility's business license.

The task of regulating USTs presents EPA with both the need and the opportunity to work with States to encourage the development of State and local UST programs. The "national" UST program will continue to be primarily a network of State and local programs, with EPA providing leadership and assistance, and enforcement backup as necessary. This approach is based on substantial evidence that, in the long run, UST systems will be most successfully regulated by State and local governments. EPA's focus is on the achievement of long-range goals and the need to build a relationship with State and local governments so that we can work together to improve the implementation of the UST program over the next decade.

E. EPA's Approach for Implementing the UST Program

OUST has adopted the franchise model as its implementation approach in managing the national UST program. It should be noted here that the franchise approach is simply a model of organizing and administering a service organization. While the main goal of businesses is to make a profit, EPA's goal is to protect human health and the environment, and this difference is reflected in how the model is used. The State, as franchisee, operates independently, under a signed agreement with EPA, to operate the UST program. Regions serve as the field representatives or liaisons between EPA Headquarters and the States to relay ideas, needs, and information between the EPA and the States. This model permits both uniformity and distinction in management styles. Headquarters provides general operating guidelines to ensure that all of the States are achieving the same basic objectives in managing underground storage tanks. Simultaneously, the States run their programs using a management style that is tailored to meet the specific needs and demands of their own regulated community. The demand for service and support varies in each State, and is affected by such factors as UST population, ground-water usage, weather and climate conditions, and financial conditions of owners and operators. The aim of State program approval is to develop the State-Federal partnership that will allow both parties to focus on preventing leaking USTs from causing further environmental contamination.

CHAPTER 2. STATE PROGRAM APPROVAL PROCESS

As an important step toward achieving the long-range goal of developing a network of effective State and local programs, EPA is encouraging States to apply for formal approval of State UST programs to operate "in lieu of" the Federal program. EPA plans to approve acceptable State UST programs as quickly as possible, and follow up with activities that provide continual assistance to States and localities for improving their capability and performance.

A. Purpose of State Program Approval

Subtitle I of RCRA allows State UST programs approved by EPA to operate in lieu of the Federal program if such programs contain requirements for UST systems that are "no less stringent" than the Federal requirements and for which there is "adequate enforcement" of compliance. The requirements and procedures for approval of State programs are contained in the Federal regulations at 40 CFR Part 281 and are described in further detail elsewhere in this handbook.

Approval by EPA of a State program means that the requirements in the State's laws and regulations will be in effect rather than the Federal requirements. Program approval ensures that a single set of requirements (the State's) will be enforced in that State, thus eliminating the duplication and confusion that can result from having separate State and Federal requirements. Once a State program is approved, the State program will operate under an agreement with EPA that clearly delineates EPA's limited role in an approved State, and assures the State of its lead role in administering and enforcing the UST program.

It should be understood that State programs may operate under State law without Federal approval. There is nothing in Subtitle I which requires the States to receive EPA blessing before operating their own UST programs under State law. State program approval signifies Federal authorization of the State program to operate in lieu of the Federal program. In essence, the State becomes the implementing agency for the Federal UST program. One major impact of Federal approval is that the Federal regulations no longer apply in the authorized State; it is implementing an approved State program in lieu of the Federal program.

Approval of a State program also means that the basic environmental protection afforded by the Federal program is contained in the State program as well. The primary focus of EPA's approval review will be on basic State authorities (laws and regulations) needed to achieve the underlying objectives of the Federal regulations covering the prevention, detection, and cleanup of UST releases.

B. Approval Criteria

Subtitle I allows EPA to authorize States to operate their own program in lieu of the Federal program if certain conditions are met. Two major areas that are often confused with one another in the determination of program adequacy, and thus merit closer examination, are "scope" and "stringency." Scope refers to whether or not the State program addresses the same UST system universe and applies requirements to that universe for each of the elements in the Federal program. Stringency refers to whether or not those requirements are as demanding as the corresponding Federal requirements. For example, State programs must require release detection on all USTs no later than December 22, 1993. In addition to meeting the scope and stringency requirements, the State must provide for adequate enforcement of the requirements.

Most States have developed and begun to implement their own comprehensive UST programs. EPA has encouraged these developments and believes that States must continue to have the flexibility to develop and carry out "homegrown" initiatives. EPA wishes to allow States to develop UST programs that best suit their own needs; it does not want to create arbitrary requirements defining program size (for example, number of staff members), or the amount of detail to be included in an application's description of the roles of State and local governments. EPA simply wants to be sure that all States have a complete program. For example, if States demonstrate that local governments and agencies contribute to a complete State UST program, then that level of detail will be appropriate for inclusion in the application, and will be judged accordingly. States should gauge their own needs and use their own judgment in developing their individual UST programs. EPA intends for its approval criteria to result in as little unnecessary disruption of these ongoing initiatives as possible. A State should not have to go back and make revisions to its program to receive EPA's approval unless those revisions are necessary to meet Federal objectives designed to protect human health and the environment.

EPA's determination of whether State programs are no less stringent will be based on a comparison of the State's technical requirements with the Federal objectives for each of these program elements. Chapter 4 of this handbook discusses the Federal objectives in detail. The specific Federal requirements in the Agency's technical regulations for UST systems do not provide the only definitive approach for protection of human health and the environment. In developing the Federal requirements, EPA recognized that there could be other approaches that would meet EPA's overall performance objectives. The Federal Technical Standards are by necessity more detailed and specific than the objectives they are designed to meet, because the Federal regulations must be complied with by the regulated community and must be enforceable in those States without approved State programs. The individual requirements set forth in the Federal regulations should not be interpreted as to preclude States from developing other approaches that will still achieve the overall objectives of performance specified for State program approval.

It is important to note that the approach used in reviewing State programs is a "no less stringent" approach and not a Subtitle C "equivalent and consistent" approach. Reviewers should especially note that the success of the UST program's flexibility approach requires that those reviewing State programs for stringency assess the overall efficacy of program components, rather than demand complete agreement in structure and content. States are expected to meet performance objectives and are allowed to differ from the Federal technical regulations. Nevertheless, the program does contain many clear-cut mandatory elements (such as the enforcement authorities spelled out in §281.41) that circumscribe the overall flexibility. Thus, each element of a proposed State program must be checked for completeness against all requirements of Part 281.

The Federal objectives presented in Chapter 4 represent the Agency's expectations of what will constitute an approvable State program. Federal objectives have been identified for the following program elements: (1) new UST system design, construction, installation and notification; (2) upgrading of existing UST systems; (3) general operating requirements; (4) release detection; (5) release reporting, investigation, and confirmation; (6) corrective action; (7) out-of-service or closed UST systems; and (8) financial responsibility. To satisfy the "no less stringent" requirements using this approach, the State must have requirements for all UST systems that meet these objectives.

EPA's criteria for "adequate enforcement" of compliance require that a State have in place adequate legal authorities for inspection and compliance monitoring, enforcement, and public participation, plus appropriate written procedures for implementing those authorities. Chapter 4 provides guidance on the enforcement authorities, and Chapter 5 contains guidance on these enforcement procedures. EPA seeks to maintain its flexibility to approve a variety of State programs, and to encourage States to use innovative as well as traditional approaches in achieving compliance.

C. Application Process for Approval

EPA has two goals for the approval process: to make the application process as simple and easy to understand as possible; and to develop a close working relationship between EPA Regional offices and the States long before official applications are received, so that all major problems can be resolved ahead of time.

Federal regulations require that a State application contain the following components:

1. A letter from the Governor requesting approval of the State program;
2. A certification and statement from the State Attorney General (or the attorney for those State or interstate agencies which have independent legal counsel) demonstrating that the laws of the State or compact achieve the "no less stringent" objectives of the Federal UST program, and provide legal authorities for adequate enforcement;
3. A description of the compliance monitoring and enforcement procedures that demonstrate the State's basis for adequate enforcement of compliance;
4. A draft Memorandum of Agreement (MOA) that outlines the responsibilities of EPA and the State's implementing agency (ies) (the MOA becomes final at the time the State's program takes effect);
5. A program description that provides background information on the State's organization and resources for implementing its program;
6. Copies of all applicable State statutes and regulations, including those governing State administrative procedures and compacts, if relied upon.

Detailed guidance on each of these elements is included in the following chapters. A suggested application form, that the State can tear out and fill in, is provided in Appendix A of this handbook.

Approval authority has been delegated to the Regional Administrators. Headquarters will be involved in this process only on a limited, consultative basis. Regions may choose to discuss approval issues with Headquarters, but will be required to do so only when a tentative determination is made to disapprove a program.

A great deal of informal contact should be occurring between the State and EPA's Regional offices well before the clock starts running on the 180-day period set by statute for the review of, and decision on, a State's application for approval. As the State begins developing its application, the State and the Region, working together, will identify as soon as possible any legislative modifications that need to be made in order to satisfy the "no less stringent" and "adequate enforcement" requirements in the regulations. The State Attorney General or other legal representative should also be consulted during these early statutory and regulatory reviews so that later conflicts may be avoided. The Regional UST Attorney should also be

in close and early contact with the State Attorney General for consultation on legal matters, if necessary. Many problems and delays can be avoided if the State and EPA attorney work closely together. In addition, the Region will work closely with the State to ensure the completeness of the various other components of the State's draft application (for example, the program description).

In general, the Region should relay comments back to the State as quickly as possible. This process will alert the State very early to issues that otherwise could cause a delay in the review and approval of the final application. OUST considers these pre-application reviews to be invaluable and stresses their importance because they will assure the State of being able to develop an official program approval application with confidence and timeliness.

Within two and one-half months following submission of the final application, and following consultations between State and Regional staff, the Regional Administrator will make a tentative determination of approval or disapproval and notify the State Agency Director. This tentative determination is then published in the **Federal Register** to provide an opportunity for public comment. A final determination on the State's program will be made by the Regional Administrator within 180 days of submission of the State's application. (These procedures are described in greater detail in a companion document entitled **Suggested Procedures for Review of State UST Applications**.)

After a State program is approved, it is codified for publication in the **Code of Federal Regulations** (CFR). EPA codifies the entire approved State UST program (including more stringent elements, but not those that are broader in scope) to identify the specific elements of the State program that are RCRA Subtitle I requirements. The codification of State programs also enables the public to discern the current status of the approved State program. This will be of particular importance as States adopt additional Federal requirements or revise their approved UST programs.

After a State program is approved, the State may need to submit certain program revisions to EPA for approval. Such a need may arise if: (1) Federal authorities or requirements are changed by new legislation or rule making; (2) State authorities or requirements are revised; or (3) local authorities or requirements that are part of the approved State program change. EPA will treat revised applications by reviewing those program areas specifically affected by the change. The process will be streamlined; instead of publishing a tentative determination in the **Federal Register**, EPA will publish a proposed determination that may become final immediately after 60 days. Additional discussion on the process of revising approved State programs may be found in the preamble to the September 23, 1988 State Program Approval Rule (53 FR 37239).

CHAPTER 3. COMPONENTS OF THE STATE PROGRAM APPROVAL APPLICATION

A. Introduction

In order to qualify for program approval, a State must submit an official application to its Regional office. This packet must contain various components, including letters and certifications, descriptions of relevant State regulations, descriptions of the program, a Memorandum of Agreement, and actual copies of State statutes and regulations. This chapter briefly describes each of these components, and in some cases, provides sample forms that may aid States in developing their own applications. More detailed discussions of the various sections of the program approval application appear in separate chapters of this handbook.

B. Components of the Application

1. Governor's Letter.
A letter from the Governor transmits the State's application for approval of its underground storage tank program and acts as a formal request for EPA approval. The letter to EPA should include a reference to the Federal statute, a request for approval of the State program, and the Governor's signature. The letter is a formal tool to designate the responsible lead State agency.

Sample Letter

Ms. Jane Jones
Regional Administrator
Region XI, U.S. Environmental Protection Agency
Street Address
City, State

Dear Ms. Jones:

In accordance with Section 9004 of Subtitle I of the Resource Conservation and Recovery Act as amended on November 8, 1984, I am forwarding an application for approval of the Underground Storage Tank Program of **(State)**. I believe you will find it contains the provisions necessary to implement an effective Underground Storage Tank Program.

Should you require further information, please contact **(Director)** of **(Lead Agency)**. Thank you for your assistance.

Sincerely,

Jane Smith

Governor

2. Attorney General's Certification and Statement.
States applying for program approval must submit an Attorney General's Statement that certifies that the statutes and regulations of the state provide adequate authority to carry out the technical requirements in a "no less stringent" manner and for "adequate enforcement" of these requirements. All statutes and regulations cited by the Attorney General must be fully effective by the time the program is approved. In addition, if the State has any authority over Indian lands, or agreements with a tribe or tribes to do so, this must be described here. The Attorney General's Statement certifies to State authorities only. The requirement that the State have the authority to carry out the technical requirements and enforce those requirements does not change if certain aspects of the State program are implemented by local government agencies. The Attorney General's Statement must be signed by the State Attorney General or the attorney for those State or interstate agencies that have independent legal counsel. This provision allows the following persons to sign the Attorney's General's Statement: (1) the State Attorney General or an attorney in his/her office who is authorized to sign for the Attorney General; or, (2) a Deputy or Assistant Attorney General if authorized to do so. Authorization should be in writing, case law, or statute. An independent counsel for the State may submit the "no less stringent" certification in place of the Attorney General, provided that the independent counsel has full authority to represent independently the State agency in court on all matters pertaining to the State program.

Where a State has incorporated by reference any Federal regulation, the Attorney General should demonstrate the authority to adopt State regulations in this manner. The Attorney General should cite the State statutes and regulations, listing the comparable CFR cite and date of incorporation. If the State's incorporation is intended to include any EPA revisions that may occur in the future, then the Attorney General should cite State authority both to promulgate and to enforce regulations in this manner. The State should note that the Attorney General's Statement includes a certification that State statutes and regulations shall be fully effective by the time the program is approved. When a State adopts the Federal regulations by reference, the following standard phrase can be included in the Attorney General's Statement to demonstrate that the State has no less stringent requirements: "The State has adopted the Federal regulations by reference and therefore meets the no less stringent criterion for Objective §281.___." This statement is sufficient for demonstrating adequate stringency and will save States from writing lengthy and unnecessary justifications of how the Federal regulations (adopted by reference) meet the Federal objectives.

Sample Attorney General's Certification. Following is a suggested format for the State Attorney General's certification. The certification consists of two parts: (1) the Attorney General's letter of certification and (2) the Attorney General's Statement. A form letter that certifies to the State's complete authorities is provided below.

Sample Letter

Ms. Jane Jones
Regional Administrator
Region XI, U.S. Environmental Protection Agency
Street Address
City, State, Zip code

Dear Ms. Jones:

I hereby certify pursuant to my authority as [insert official title] and in accordance with Section 9004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and the Superfund Amendments and Reauthorization Act of 1986, and 40 CFR Part 281 that in my opinion the laws of the **(State)** provide adequate authority to (1) carry out the "no less stringent" technical requirements submitted by the **(Lead Agency)** , (2) adequately enforce compliance with such program, and (3) regulate, at a minimum, the same UST universe as the Federal program. I hereby certify, to the best of my knowledge, that the application submitted by **(Lead Agency)** is legally accurate. The specific authorities provided are contained in statutes or regulations lawfully adopted at the time this Statement is signed and which will be effective by the time the program is approved, [or are provided by judicial decisions issued at the time this Statement is signed].

Seal of Office

Signature

In addition, a sample form of the Attorney General's Statement is presented in Appendix A, following the Governor's letter. The State may use this sample format to cite and explain its authorities for each objective. Please note that EPA personnel responsible for approving the State program will not be familiar with all the State's laws; therefore, the Attorney General's Statement should specify and analyze relevant State legal authority. Clarity is necessary because: (1) the Attorney General's Statement will be subject to review and comment by the public through its inclusion in the administrative record to the Federal State program approval process; (2) the Attorney General's Statement may be an important part of the administrative record for future lawsuits challenging the implementing agency's actions during an enforcement proceeding taken under the State program; (3) the laws and regulations submitted in the application will form the basis of the codified program. Finally, if EPA takes enforcement action in the State after the State program is approved, EPA uses the Attorney General's Statement to help interpret State law since EPA would be enforcing the State law in lieu of the Federal law. The approved State program operates "in lieu of" the Federal program under Section 9004(d). If the Attorney General's Statement fails to analyze a cited authority, and EPA's review of that cited authority indicates that the law or regulation is ambiguous or does not appear to meet Federal requirements, EPA may ask the Attorney General to supplement the statement. The Attorney General would be asked to address specific legal issues raised by the Agency's review of the cited State statutes and regulations. EPA may also ask that the Attorney General clarify or expand a prior narrative analysis.

Without further comment from the Attorney General on certain issues, EPA generally cannot evaluate the State's legal position that its laws and regulations meet the requirements of Federal law for State approval. For example, if the State Attorney General provides a general opinion that a State statute allows the State to regulate all UST systems, but the statute appears to exempt compressed oil tank systems, EPA would bring this issue to the Attorney General's attention and ask that it be addressed. EPA would ask the State Attorney General to reconcile the difference in coverage.

3. Demonstration of "Adequate Enforcement" Procedures.
To ensure that States have adequate enforcement, EPA requires that States have certain compliance monitoring and enforcement procedures, in addition to the legal authorities discussed above. These procedures are necessary to ensure compliance with the technical and financial responsibility requirements for underground storage tanks. The procedural requirements cover the following program areas:

- Compliance Monitoring;
- Enforcement Response; and
- UST Inventory.

Chapter 5 provides a detailed discussion of these procedural requirements.

4. Memorandum of Agreement.
The appropriate official of the State's lead agency must negotiate a Memorandum of Agreement (MOA) with the Regional Administrator before the State program is approved. The MOA describes the coordination and shared responsibilities between the State and EPA in areas including, but not limited to: implementation of partial State programs and other program scope issues; compliance monitoring and enforcement; EPA appraisal of State programs; and reporting of information. Chapter 6 provides a detailed discussion of the MOA requirement and includes a sample agreement.

5. Program Description.
This section provides an overview of the State's program for managing underground storage tanks. Information requested includes the scope of the State program, the organization and structure of the implementing agencies, and staff resources for implementation. This information will be used to inform the general public about the approved State program and will serve as a baseline for EPA to work with the State over the long term. Chapter 7 contains additional guidance on the questions in the Program Description.

6. State Statutes and Regulations.
Integral to the State program approval application are the copies of all applicable State statutes and regulations which must be submitted by a State. These include those statutes and regulation governing State administrative procedures and interstate compacts, if relied upon. These documents should also include any general statutes that are used by the State to establish UST program authorities. This information will help EPA to establish a record of the State laws and regulations regarding USTs in approved States. The Agency will codify State programs by incorporating State laws and regulations by reference as part of its final approval of the State program. If the Federal government were ever to pursue an enforcement action within a particular State, it would use that State's own EPA-approved UST statutes and regulations to do so. For that reason, the Federal government must be able to easily locate and implement all State UST standards and requirements that would be effective in that State for purposes of Federal enforcement. This section of the application is self-contained, and may be attached to the rest of the packet. This application requirement is not discussed elsewhere in this handbook.

CHAPTER 4. ATTORNEY GENERAL'S STATEMENT: DEMONSTRATION OF "NO LESS STRINGENT" OBJECTIVES AND "ADEQUATE ENFORCEMENT" AUTHORITIES

A. Introduction

Under Subtitle I, a State must demonstrate that its requirements and standards for existing and new USTs are "no less stringent" than the Federal requirements and standards in 40 CFR Part 281 and provide for adequate enforcement. The State's demonstration that its authorities are "no less stringent" and allow for adequate enforcement will be provided with the Attorney General's Statement. This chapter describes and explains the criteria States must meet in order to be "no less stringent" in the technical program areas and how the State Attorney General will certify their legal authority. Chapter 5 provides an explanation of the adequate enforcement procedures.

B. Objectives of the Federal Technical Requirements

Since an introduction to the purpose and requirements for the Attorney General's Statement is provided in the preamble to the State Program Approval Rule, it is not repeated here. If you are not familiar with this material, we recommend that you read it now before proceeding. It is important for all staff working on State Program Approval to read the preamble to the regulations at 40 CFR Part 281 in order to fully understand the relevant issues, especially the Agency's intent to move away from RCRA Subtitle C–type reviews to a "no less stringent" review based on performance objectives, which is one of the most distinguishing characteristics of the national UST program. (See Appendix B, page B–2, "Final State Program Approval Rule" and page B–3, "Preamble to Financial Responsibility Objective")

Reviewers are reminded, however, that the "element–by–element" approach using performance objectives applies only to the review of technical and financial responsibility regulations, and not to such things as the definitions that establish the scope of a State's program. Some parts of a State's program are reviewed to ensure that the same universe of UST systems is being addressed and that the minimum enforcement authorities mandated by 40 CFR Part 281, Subpart D are established. Thus, there are some portions of a State Program Approval application where the element–by–element approach is not appropriate.

This section is organized by objective. For each objective, there is a table with spaces to cite relevant State statutes and regulations, notes on fulfilling the objective, and some examples of State requirements that do or do not meet the objective. The table is organized so that citations can be written in where the State has a requirement that corresponds to each subsection of the objective. The State should cite all relevant statutes and regulations, if more than one is applicable. The tables are intended to be used by both the State and the EPA Regional Office, but only the Regional EPA Office can make the judgment of whether the State's requirement is no less stringent than the Federal objective. The State is strongly encouraged to provide additional explanation on the back of the tables or on extra pages to describe how their regulations meet the objective in cases when the State's regulations are organized differently from the Federal approach. The State should also consider attaching relevant policies and procedures that may influence the interpretation of statutes or regulations. The notes on fulfilling the objective provide some key data for interpreting the objective and the last note for each objective references the page in the September 23, 1988 **Federal Register** where further information may be found. Finally, Appendix C includes a section called Tools for Implementing State Regulations, which describes certain approaches

that several States have used to implement their laws and that other States might wish to consider in developing or improving their own programs.

It is important to note that the review process is facilitated when States cite **specific** references to State laws. This includes reference to specific chapters, subparts, or sections of statutes and regulations and, where appropriate, to "pocket part" updates to bound copies of State statutes and regulations. States also should include, as part of the Attorney General's Statement, written explanations of how the cited State laws meet each objective. These explanations should be as specific as possible, and should also provide a discussion of where the State program is "broader in scope" or "more stringent" than the Federal program.

Some State and Regional UST staff have indicated that they would like to see a checklist for each objective, outlining what is and is not acceptable; however, this would run contrary to the philosophy of the UST program. If EPA were to mandate what may or may not be incorporated into a State's program, the flexibility intended to be built into the process would be lost, and State programs would begin to look like clones of one another. Such a checklist would further encourage the perception that State Program Approval applications should be reviewed line–by–line against a set of pre–determined criteria, which is one of the barriers to State Program Approval that OUST has been working to overcome. Delineating what is and is not acceptable for each objective would remove the ability of States to tailor their programs to meet the objectives in the manner that best suits their needs and abilities.

Please note that great effort was expended to make these examples as "true to life" as possible. Readers are asked to remember that these examples are simply a means by which EPA can more clearly demonstrate how the States should examine their technical requirements in terms of the Federal objectives. Thus, States should not take the evaluations provided in the examples as the last word on State program approval for that given program element. Please remember that these examples also serve as samples of the type of thinking and documentation that should be included in the explanation sections that follow the regulatory citations in the Attorney General's Statement. EPA is concerned that some readers will infer from these examples that if their State regulations are not identical to the example given that their State program is not approvable. Such an inference would be mistaken. By providing these examples, EPA is suggesting simply one interpretation out of many possibilities. Regional EPA Offices will be making the actual decisions as to what is "no less stringent" when reviewing the State program application. If a State has specific questions on whether their regulations meet the objectives, they should ask the Regional EPA Office for assistance and advice. The regulatory citations provided by the State should be as precise as possible, in order to facilitate Regional review and the "no less stringent" determination.

As an alternative to developing new, or revising existing, State UST regulations, States may choose to adopt or incorporate by reference the Federal Technical Standards. Obviously those States that do so can be considered no less stringent. The Federal Technical Standards are written with the intention that some States will choose to adopt them. Therefore, some language was added to several sections to allow the State some flexibility to substitute their own procedural and administrative requirements for those set forth in the Federal requirements. A discussion of this additional decision–making authority for State agencies can be found in the preamble to the Federal Technical Standards (53 FR 37186). It is EPA's intent to allow States a significant amount of discretion in this matter, as long as States can demonstrate that overall program performance in each element will not be adversely affected by their use of differing

administrative practices and procedures. An example of the flexible language is §280.50 under Release Reporting, Investigation, and Confirmation: "Owners and operators of UST systems must report to the implementing agency within 24 hours, or another reasonable time period specified by the implementing agency..." The State should be aware that when adopting or copying this language, if the State does not specify another time period in the requirement, then the Federally–specified time period (the 24–hour time period in the example) is automatically in effect. An alternative time period must be specified in the State requirement in place of the Federally–specified time period in order for the State to exercise the decision–making flexibility allowed in the Federal Rule.

New UST Systems and Notification
Objective §281.30

The State must have requirements that ensure that all new UST systems conform with the following:	**Cite**	
	Regulation	**Statute**
(a) Be designed, constructed, and installed in a manner that will prevent releases for their operating life due to manufacturing defects, structural failure, or corrosion. [Note: Codes of practice developed by nationally–recognized organizations may be used to demonstrate that the State program requirements are no less stringent in this area.]		
(b) Be provided with equipment to prevent spills and tank overfills when new tanks are installed or existing tanks are upgraded, unless the tank does not receive more than 25 gallons at one time.		
(c) All UST system owners and operators must notify the implementing State agency of the existence of any new UST system using a form designated by the State agency.		

Notes on Fulfilling the Objective

1. Codes of practice developed by nationally–recognized organizations and national independent testing laboratories may be used to demonstrate that the State program requirements are no less stringent in the area of design, construction, installation, and corrosion protection.
2. Currently available equipment to provide spill and tank overfill protection includes small catchment basins for spills, alarms, automatic flow restrictors, or shut off devices for overfill prevention.
3. Under RCRA 9002, notification was required for existing UST systems nationwide. State programs that only require owners and operators of new UST systems to notify the State agency may be approved because notification by owners of existing UST's was already required after Subtitle I was enacted.
4. The Federal notification form has been revised to require updated notifications from owners and operators of new UST's; however, States may use their discretion as to whether or not they collect this information.
5. More discussion on new UST systems may be found in the preamble to the final State Program Approval Rule (53 FR 37224) and in the preamble to the final Federal Technical Standards Rule (53 FR 37125).

* * *

State Examples for New UST System Design, Construction, Installation, and Notification

Standards for Design and Installation. The following requirements of State A demonstrate one way to fulfill the design criteria of subsection (a) of this objective. In general, State A requires the use of national standards for the design, construction, and installation of all UST systems. For example, the State requires that tanks be built according to the following recognized engineering standards: UL 58 and API 650 for steel tanks, and UL 1316–83 and ASTM D4021–81 for fiberglass tanks. Steel tanks must be coated with a non–corrosive, impermeable material other than asphalt paint and be equipped with sacrificial anode or impressed current cathodic protection. Cathodic protection must be designed and installed using one or a combination of these 4 standards: API 1632, UL of Canada SG03.1M, STI–P3, or NACE RP–02–85. Both sacrificial anode and impressed current systems must be designed with test stations so that routine operation checks can be performed. Because EPA believes that the design, construction, and installation of a new UST system according to any code of practice of a nationally–recognized organization or testing laboratory will prevent releases during the operating life of an UST, these State requirements fulfill the proper tank design criteria of subsection (a) of this objective. State A could have met the criteria in subsection (a) by adopting just one of these codes of practice. Some aspects of the State's standards, while showing excellent forethought, are not necessary to meet the objective, such as the requirement that anode and current systems must be designed so routine checks can be performed.

This State's requirements also demonstrate one way to fulfill the proper tank installation criteria of subsection (a). The State mandates that installers follow practices outlined in PEI RP 100–86, API 1615, and the manufacturer's instructions that come with the tank. All fittings must be wrapped or coated using a manufacturer–approved method. The State also requires that defects in the tank's coating that occur during shipping must be repaired according to the manufacturer's instructions. The State lists the specifications for backfilling the UST system, which are derived from NFPA 30; additional requirements are specified by the State for anchoring UST's that are in areas with high water tables. Again not all of these requirements may be necessary to achieve subsection (a) of this objective.

Because piping is part of the UST system, the State's requirements for the design, construction, and installation of piping must also meet subsection (a) of this objective. State A demonstrates one way of meeting the objective, again by specifying the codes to be used for designing and installing new underground piping. All new underground pipes in this State must be made of fiberglass reinforced plastic or cathodically protected, coated, iron or steel and must be designed using one of the recognized standards such as NACE RP–02–85, UL, and API 1632. The use of galvanized piping for product lines is prohibited. State regulations specify how the piping must be installed in terms of backfill thickness, product line slope, and the strength of unions and fittings (250 pounds or 300 pounds with metal seats). On UST systems using sacrificial anodes where electrical isolation is essential for adequate corrosion protection, the State requires all underground piping to be isolated from the tanks and dispensing units by means of non–conductive bushings and fittings, which are to be designed and installed in accordance with NACE RP–0285, API 1632, or STI–P3. As part of the installation, all product piping must be tested for tightness. These State requirements for the design and installation of piping in combination with corresponding State requirements for tanks demonstrate one way that a State could fulfill subsection (a) of this objective.

Spill and Overfill Protection. State B allows two options for spill and overfill protection. The first option consists of an in–tank product level sensor that is equipped with an audible or visual alarm and is triggered when the tank is 95 percent full, and a spill catchment basin of at least 15 gallon capacity. The second option consists of a device designed to restrict the flow of the regulated substance into the tank when the tank is 95 percent full, and a spill catchment basin of at least 5 gallon capacity. The State's explanation for the difference in the capacity of the spill catchment basin is that the sensor only triggers an alarm in the first option as opposed to a flow restrictor in the second option. [EPA notes that the flow restrictor, unless it is an automatic shut–off device, does not actually shut off inflow completely, which means that both options require the operator to quickly shut off the hose used to fill the tank.] Although EPA believes the distinction the State makes between alarms and restrictors is somewhat artificial (because both approaches similarly rely on rapid action by the person filling the tank to avoid overfilling when the filling operation approaches the tank's capacity), the above State B requirements demonstrate one way to fulfill subsection (b) of this objective.

Although the Federal Technical Standards require that flow restrictors or alarms be triggered when the tank is 90 percent full, State B's requirements can still be considered no less stringent because they still accomplish the Agency's main goal: getting equipment and devices to prevent spills and overfills on all new and upgraded UST's.

Upgrading Existing UST Systems
Objective §281.31

	Cite	
	Regulation	**Statute**
The State must have requirements that ensure existing UST systems will be replaced or upgraded before December 22, 1998, to prevent releases for their operating life due to corrosion, and spills or overfills.		

Notes on Fulfilling the Objective

1. Within 10 years all existing UST systems must meet essentially the same standards of release prevention as new UST systems, which includes corrosion protection and spill and overfill equipment.
2. The 10–year schedule cannot include phase–in of leak detection requirements, which must be completed within 5 years (see Objective 281.33(b) on Release Detection).
3. The State may develop a phase–in schedule that will bring all existing UST's into compliance incrementally during the 10–year period or establish a deadline without specifying a schedule.
4. Commonly accepted practices for protecting a structurally sound existing steel tank from failure due to corrosion consist of internal lining, retrofitting with a cathodic protection system, or both. EPA believes all of these methods are protective of human health and environment.
5. The proposed objective for upgrading existing UST systems included a provision that allowed States to demonstrate in their application how other State requirements will achieve this Federal goal without an explicit 10–year deadline. This provision has been deleted in the final State Program Approval Rule. EPA was concerned that the provision in the proposed objective would lead States to believe that a time period greater than 10 years for upgrading was allowable. In

addition, it was unclear what information would provide an adequate demonstration. Therefore, States must require existing UST systems to be replaced or upgraded before December 22, 1998.

6. More discussion on upgrading existing UST systems may be found in the preamble to the final State Program Approval Rule (53 FR 37225) and in the preamble to the final Federal Technical Standards (53 FR 37130).

* * *

State Examples for Upgrading Existing UST Systems

Defining When a Tank Needs To Be Upgraded. The following example shows State requirements that do not meet the Federal objective for upgrading existing UST systems. State C requires owners and operators to explicitly determine how long each tank will last without developing a leak. This regulatorily–defined lifetime is considered to be the tank's life expectancy. When the end of the life expectancy is reached, the UST system must be replaced, upgraded, or closed, whether or not a leak has occurred. Life expectancy of the UST system is calculated using the tank's age, the tank manufacturer's guarantee, and the type of corrosion protection in use on the tank. If the tank's age is unknown, the calculation is more complicated and requires the assistance of a corrosion expert. Once the life expectancy of the tank is defined, the tank will fall into one of two groups as defined by the State. If the life expectancy ends **after** November 1, 1988, the UST system may be used for up to five years beyond the calculated life expectancy. If the life expectancy ends **before** November 1, 1988, the UST system may be used until November 1, 1988 or up to five years beyond the calculated life expectancy, whichever is later.

Under the State's current approach, State C's requirements cannot be approved as no less stringent for two reasons. First, to properly upgrade an UST system under this objective, spill and overfill equipment must be added. State C does not require that existing UST's be retrofitted with this equipment. Second, under this objective, **all** unprotected UST's in the State must be upgraded by 1998. While the State requirements for UST's with life expectancies that end before November 1, 1988, will fulfill the objective, the State's requirements will allow some UST's with life expectancies that end after that date to be upgraded sometime after 1998. Hypothetically, if a tank without corrosion protection was installed in April 1985 (before interim prohibition) and the life expectancy was determined to be 10 years (April 1995), the tank may be operated until April 2000 before it is upgraded, replaced or closed, according to State law. State C could meet the objective by revising their requirement so that all UST's must be brought into compliance by the time their life expectancy is reached or by December 22, 1998, whichever is earlier; and by requiring the addition of overfill and spill protection equipment on upgraded UST's.

Defining What Upgrade Consists Of. State E takes another approach to this objective by requiring scheduled closure of UST systems that are not corrosion resistant. The State prohibits the use and operation of all non–conforming UST systems (all bare steel tanks, asphalt coated steel tanks and other unprotected steel tanks and piping) after October 1, 1997. Replacement UST's are subject to the new UST system standards, and existing UST's cannot be upgraded. Thus, all non–conforming tanks and piping must be closed within the remaining 9 years of the State's mandatory closure period according to a phase–in schedule based on UST system age and location. If the tank's age is unknown, it is presumed to be 20 years old on October 1, 1989. The State requirements cannot be considered no less stringent because existing corrosion–protected UST's without spill and overfill equipment are not required to be retrofitted with that equipment.

State D fulfills the Federal upgrading objective of §281.31 by requiring both corrosion protection and overfill and spill protection systems to be present on existing UST systems by 1998. [State D, however, also considers the addition of leak detection equipment to be part of an UST system upgrade. In other words, release detection is also phased–in over a 10–year period, and therefore, the State program does not meet the release detection objective found at §281.33 (see examples pertaining to the release detection objective).]

General Operating Requirements
Objective §281.32

The State must have requirements that ensure all new and existing UST systems conform to the following:	**Cite**	
	Regulation	**Statute**
(a) Prevent spills and overfills by ensuring that the space in the tank is sufficient to receive the volume to be transferred and that the transfer operation is monitored constantly;		
(b) Where equipped with cathodic protection, be operated and maintained by a person with sufficient training and experience in preventing corrosion, and in a manner that ensures that no releases occur during the operating life of the UST system [Note: Codes of practice developed by nationally–recognized organizations and national independent testing laboratories may be used to demonstrate the State program requirements are no less stringent.];		
(c) Be made of or lined with materials that are compatible with the substance stored;		
(d) At the time of upgrade or repair, be structurally sound and upgraded or repaired in a manner that will prevent releases due to structural failure or corrosion during their operating lives;		
(e) Have records of monitoring, testing, repairs, and closure maintained that are sufficient to demonstrate recent facility compliance status, except that records demonstrating compliance with repair and upgrading requirements must be maintained for the remaining operating life of the facility. These records must be made readily available when requested by the implementing agency.		

Notes on Fulfilling the Objective

1. Codes of practice developed by nationally recognized organizations and national independent testing laboratories may be used to demonstrate that the State requirements are no less stringent in the areas of: repairing and relining tanks; operation and maintenance of corrosion protection; and compatibility.
2. Under the Federal Technical Standards, cathodic protection systems must be tested within 6 months of installation and every 3 years thereafter; and impressed current systems must be inspected every 60 days to ensure that the equipment is turned on. Each State must require that cathodic protection systems be periodically tested and that such tests include the checking of impressed current systems.
3. Compatibility is an issue for concern primarily when high–ethanol/methanol content fuels are stored in certain fiberglass tanks.
4. National codes of practices and warranties from tank lining companies generally require that internal inspections be conducted within 10 years after lining, and every 5 years after that.

5. The National Leak Prevention Association (NLPA) Standard 631 contains procedures for the repair of fiberglass reinforced plastic (FRP) tanks. In addition, manufacturers of FRP tanks and piping publish procedures for the repair of their systems. These standards and procedures may be used to fulfill the objective. More discussion on the repair of FRP tanks can be found in the preamble to the final State Program Approval rule, beginning on the bottom of the third column at 53 FR 37139.
6. More discussion on upgrading existing UST systems may be found in the preamble to the final State Program Approval Rule (53 FR 37225) and in the preamble to the final Federal Technical Standards (53 FR 37130).

* * *

State Examples for General Operating Requirements

Defining Product Transfer Practices. State F meets the first subsection of this objective because it requires that API–recommended practices concerning product deliveries to underground storage tanks be followed at all UST systems in the State. A different approach, which also fulfills this part of the objective, is used in State G. The State's regulations hold both the carrier (or transporter) and the operator responsible for employing practices to prevent spills and overfills. The carrier and the operator must be trained in the mechanics of proper transfer and emergency response procedures. Before transfer, the operator must determine that the tank has enough receiving capacity to accommodate the volume of petroleum to be transferred. During the transfer, the carrier must be at the controls to monitor the delivery operation.

Maintaining Corrosion Protection. State H's requirements demonstrate one way to satisfy subsection (b) of this objective concerning the operation and maintenance of corrosion protection by qualified people. The State requires that UST systems protected by galvanic cathodic protection systems (also known as sacrificial anodes) have an accurate structure–to–soil potential reading performed by a qualified person upon installation and annually thereafter. In addition, when underground work is performed at the site, the State requires the cathodic protection system to be monitored 6 to 12 weeks after the work has been completed to ensure that the system is still functioning properly. UST systems protected by impressed current systems are required by State regulations to have their rectifier meter inspected monthly and the readings recorded in a log book; and a person who is qualified (by training and experience) to measure the structure–to–soil and structure–to–structure potentials, the rectifier voltage, and current output must conduct an onsite test and inspection at least once a year. Finally, State H provides a list of procedures detailing how the cathodic protection system must be monitored, which includes following practices recommended by the National Association of Corrosion Engineers (Recommended Practice 0285).

Ensuring Proper Repairs and Upgrades. State I's regulations provide an example of requirements that satisfies subsection (d) of this objective, which concerns the repair and upgrade of UST systems. The State mandates that a determination must be made by fire department officials on whether the tank or its components may be repaired or must be removed and replaced. The only form of repair allowed by the State is lining the tank. Before a steel tank can be repaired by lining, the tank must be physically inspected and a local fire department official must determine whether the tank meets all of the following conditions:

- Has not experienced a leak as a result of corrosion;
- Possesses a minimum design shell thickness of 0.18 inch (7 gauge);
- Has no open seam or split;
- Contains less than 10 holes after removal of thin metal by reaming, with none larger than 1/2 inch in diameter and no more than 2 holes within a 1–foot radius; and
- Satisfies all standards of the lining manufacturer for structural soundness.

These requirements are no less stringent in the area of determining structural integrity before lining a tank. The State also requires that any tank replacement or repair as well as piping repairs must be performed: (1) by a State–approved tank lining company and in accordance with API 1631 (if the repair consists of tank lining), (2) by qualified technicians, and (3) in accordance with manufacturers' instructions.

EPA would recommend that the State consider a requirement specifying the design life of a lined tank. Unless a cathodic protection system is applied when the tank is lined or within 10 years, the tank must be internally inspected periodically after the initial 10 year life of the lining to make sure that tank's structural integrity will continue for the remainder of its operating life. Tank lining company warranties and the codes generally require that internal inspections be conducted after 10 years, and then every five years thereafter, because the tank lining is expected to prevent releases only for the first 10 years.

Defining Adequate Recordkeeping. State J has developed recordkeeping requirements that satisfy subsection (e) of this Federal objective. The State mandates the on–site maintenance of written records of all monitoring activities for at least 3 years from when the monitoring was performed. In addition, the State requirements enable local implementing agencies to mandate the owner or operator to provide the local agency with monitoring records or a monitoring summary on a routine basis. Monitoring records must include:

- Date and time of all monitoring and sampling;
- Monitoring equipment calibration and maintenance records;
- Results of any visual observations;
- Results of all sample analysis performed in the laboratory or in the field, including laboratory data sheets;
- Logs of all readings of gauges or other monitoring equipment, ground–water elevations, or other test results; and
- Results of inventory readings and reconciliations.

Another recordkeeping provision in this State program requires that UST system permits be renewed every five years. To get a permit renewed, an UST inspection must have been performed within the 3 previous years, and the UST system must have been found to be in compliance with applicable regulations for design, construction, and monitoring. Thus, the UST must be upgraded and have records that show the upgrade has taken place before the permit can be renewed. In this way, the State is aware of and can, if it chooses, maintain its own records relating to UST system repair, upgrade, and replacement. For UST closure by removal, State J requires the owner or operator to completely describe all disposal and recycling procedures used for all UST system components. When an UST system is closed, the owner

or operator must demonstrate to the satisfaction of the State that no release has occurred. These State requirements clearly fulfill subsection (e) of this objective.

Release Detection
Objective §281.33

(a) Release detection requirements for owners and operators must consist of a method, or combination of methods, that is:	Cite Regulation	Cite Statute
(1) capable of detecting a release of the regulated substance from any portion of the UST system that routinely contains regulated substances — as effectively as any of the methods allowed under the Federal Technical Standards — for as long as the UST system is in operation. In comparing methods, the implementing agency shall consider the size of release that the method can detect and the speed and reliability with which the release can be detected.		
(2) designed, installed, calibrated, operated and maintained so that releases will be detected in accordance with the capabilities of the method;		
(b) Release detection requirements must, at a minimum, be scheduled to be applied at all UST systems:	Cite Regulation	Cite Statute
(1) immediately when a new UST system is installed:		
(2) on an orderly schedule that completes a phase–in of release detection at all existing UST systems (or their closure) before December 22, 1993, except that release detection for the piping attached to any existing UST that conveys a regulated substance under greater than atmospheric pressure must be phased–in before December 22, 1990.		
(c) All petroleum tanks must be sampled, tested, or checked for releases at least monthly, except that:	Cite Regulation	Cite Statute
(1) new or upgraded tanks (that is, tanks and piping protected from releases due to corrosion and equipped with both spill and overfill prevention devices) may temporarily use monthly inventory control (or its equivalent) in combination with tightness testing (or its equivalent) conducted every 5 years for the first 10 years after the tank is installed or upgraded, or until December 22, 1998, whichever is later; and		
(2) existing tanks unprotected from releases due to corrosion or without spill and overfill prevention devices may use monthly inventory control (or its equivalent) in combination with annual tightness testing (or its equivalent) until December 22, 1998.		
(d) All underground piping attached to the tank that routinely conveys petroleum must conform to the following:	Cite Regulation	Cite Statute
(1) if the petroleum is conveyed under greater than atmospheric pressure: (i) the piping must be equipped with release detection that detects a release within an hour by restricting or shutting off flow or sounding an alarm; and (ii) the piping must have monthly monitoring applied or annual tightness tests conducted.		
(2) if suction lines are used: (i) tightness tests must be conducted at least once every 3 years, unless a monthly method of detection is applied to this piping; or (ii) the piping is designed to allow the contents of the pipe to drain back into the storage tank if the suction is released and is also designed to allow an inspector to immediately determine the integrity of the piping system.		

(e) All UST systems storing hazardous substances must meet the following:	Cite Regulation	Cite Statute
(1) all existing hazardous substance UST systems must comply with all the requirements for petroleum UST systems in sections 281.33(c) and (d) above, and after December 22, 1998, they must comply with the following subsection (e)(2).		
(2) all new hazardous substance UST systems must use interstitial monitoring within secondary containment of the tanks and the attached underground piping that conveys the regulated substance stored in the tank, unless the owner and operator can demonstrate to the State (or the State otherwise determines) that another method will detect a release of the regulated substance as effectively as other methods allowed under the State program for petroleum UST systems and that effective corrective action technology is available for the hazardous substance being stored that can be used to protect human health and the environment.		

Notes on Fulfilling the Objective

1. In comparing methods of release detection, the implementing agency must consider the size of release that the method can detect and the speed and reliability with which the release can be detected.
2. The Federal Technical Standards allow six specific methods of release detection. These are: in–tank monitors or tank gauging, interstitial monitoring within a secondary barrier, ground–water monitoring, vapor monitoring, and periodic tank tightness tests combined with monthly inventory control. The Federal Technical Standards also allow any method that achieves a release detection rate of 0.2 gallons per hour (280.43(h)(ii)). Finally, in a manner similar to the release detection objective in paragraph (a)(1), the Federal Technical Standards allow the use of a release detection method that the owner or operator demonstrates is as effective as any of the listed methods.
3. State requirements for release detection on piping do not have to address release detection for fill pipes and vent pipes to be considered no less stringent, as release detection is required only for piping that routinely conveys petroleum.
4. Discussion on European–style design of a suction piping system may be found in the preamble to the proposed Federal Technical Standards (52 FR 12744), in the preamble to the final Federal Technical Standards (53 FR 37154), and the preamble to the final State Program Approval Rule (53 FR 37227).
5. Discussion on release detection methods may be found in the preamble to the final Federal Technical Standards (53 FR 37145).

* * *

State Examples for Release Detection

Defining the General Methods. State K's regulations may fulfill subsection (a) of the release detection objective. Release detection has already been mandated for all UST sites in this State. State K has allowed owners and operators of existing UST systems containing petroleum to choose from among eight release detection alternatives (one is a three–year interim alternative):

- Monthly tank tightness testing;
- Daily/continuous vadose monitoring, semi–annual ground–water monitoring, and one–time soil testing;
- Weekly static inventory control and annual tank testing (which is limited to small tanks that do not have frequent inputs or withdrawals and where the liquid level in the tank can be measured to the accuracy of + or – 5 gallons); and
- Daily inventory reconciliation or daily or weekly gauging, and annual tank testing (three–year interim alternative).
- Daily inventory reconciliation, continuous pipeline release detection attached to either audible/visual alarm or automatic flow restrictor, and annual tank testing; or
- Same as above with less stringent accuracy limits and the addition of variable frequency vadose and ground–water monitoring that must be performed at least semi–annually.

As illustrated above, most of the methods involve a primary release detection system combined with at least one backup system, except that no backups are required for monthly tank tightness testing and monthly ground–water monitoring. To determine whether each alternative is acceptable it is necessary to decide if it can detect " a release...as effectively as any method allowed under the Federal Technical Standards (§280.40) ..." State K's first alternative, monthly tank testing, would be acceptable as long as tightness tests were required, at a minimum, to reliably detect a 0.2 gallon per hour release. This determination is based on the standard for "other methods" in §280.43(h). The second alternative is also acceptable as long as the vadose monitoring meets the standards for vapor monitoring described in §280.43(e). The third method would be acceptable for tanks under 2000 gallons until 1998 and for tanks under 550 gallons after 1998 as long as the static inventory control and tank testing methods were as effective as those described in §280.43(b) and (c) respectively. The fourth method is acceptable except that the weekly gauging alternative may only be applied to tanks under 2000 gallons. Once again, this assumes the methods described are as effective as the corresponding ones in the Federal standards. The fifth method will be good enough until 1998, but will not fulfill subsection (c) of this objective after 1998. The sixth alternative would also be acceptable until 1998. After 1998, the method would be acceptable only if the vadose or groundwater monitoring were performed at least monthly and that these methods were as effective as those in the Federal Standards. Any of the last five alternatives could also be approved if State K could demonstrate that the **combination** of methods met the performance standard for other methods in §280.43(h). In addition, most of these methods do not appear strict enough on piping to meet the objective.

Defining the Phase–In Schedule. State K's program requires that release detection systems be in place at all new and existing UST systems by July 1, 1985. Thus, the State program has already completed phase–in of release detection and is an example of one way to satisfy subsection (b) of this objective.

While State L's regulations show another approach to this objective, their regulations cannot be considered no less stringent. The State requires that release detection be phased–in at existing UST systems based on the following schedule:

- USTs with no corrosion control need to have release detection applied by September 1990;
- USTs with corrosion control need to have release detection applied by September 1991; and
- Federally–regulated agricultural USTs must have release detection applied by 1998.

(By the term, "Federally–regulated agricultural USTs", the State is referring to those farm tanks not exempted from the final EPA technical standards; that is, farms tanks with a capacity of more than 1,100 gallons used for storing motor fuel for commercial purposes.) These State criteria for phasing–in release detection are based on the presence of corrosion protection and on the type of UST owner (agricultural vs. non agricultural), whereas EPA's phase–in criteria are based on the age of the UST system. State L generally has an earlier phase–in deadline for release detection than that found in the objective, with the exception of the phase–in for "agricultural USTs". State L's phase–in for release detection will be completed for most USTs by September 1991, and for "agricultural USTs" by 1998. To meet the objective, however, release detection must be phased in at all existing UST systems by 1993. Because one segment of the tank universe (Federally–regulated agricultural tanks) will not have release detection until 1998, the State cannot be considered no less stringent for this category of USTs. However, if the State regulations did not single out agricultural USTs on a separate schedule and simply based its phase–in schedule on whether or not the UST system was protected from corrosion, they **could** be considered no less stringent, as they would achieve the goals of the release detection objective before the Federal deadline of 1993. While the Federal technical regulations require, and we would hope that most State regulations would also require a release detection schedule based upon tank age, the objective requires only that release detection be applied by 1993 in an orderly fashion. Thus, while State L's release detection requirement may not be the optimal approach for meeting the objective, it does meet the bottom line requirements and could be considered no less stringent for the purposes of State Program Approval application review.

Defining Release Detection for Piping. State K's regulations provide an example of requirements for piping that do not achieve subsection (d) of this objective. Owners and operators are required by the State to:

- Monitor all pressurized piping with an automatic on–line pressure loss detector and flow restriction device; the detector must be connected to an audible/visual alarm system unless it provides for at least a 50 percent reduction from the normal flow rates; and
- Monitor suction lines daily for indications of possible leaks.

These State requirements meet the first part of subsection (d), which addresses the problem of identifying major piping failures within an hour. These State requirements do not go far enough, however, because under the objective, pressurized piping must also have monthly monitoring or annual tightness tests performed to check for very small slow releases. The State's requirement for suction piping may or may not be sufficient to meet the objective and further clarification from the State probably would be needed for the EPA Regional Office to make a decision. If by "monitoring suction lines daily" the State means that the owner or operator must do a visual inspection every day, this requirement would not replace the need to do a pressurized line test every three years. However, if the State can produce evidence that the State's method is as reliable as monthly leak detection, then it probably would be acceptable as no less stringent. Alternatively, the State could demonstrate that the State's design standards for suction piping only allow the use of European style piping in which the contents of the pipe drain back into the storage tank if the suction is released and the check valve on the piping system can be inspected. In this case, the State's requirements for suction piping could be considered no less stringent than subsection (d) of this objective.

Defining Release Detection for Hazardous Substance USTs. State K's requirements demonstrate one way to address subsection (e) of this objective, but they do not fulfill the objective. The State requires that all new (petroleum and hazardous substance) USTs have secondary containment and interstitial monitoring. However, State K does not require existing hazardous substance USTs to be upgraded with secondary containment and interstitial monitoring. To fulfill subsection (e) of this objective, State K will need to require that within 10 years all existing hazardous substance USTs use interstitial monitoring within secondary containment of tanks and attached underground piping, unless the State chooses to allow variances. The State may allow variances only if the owner and operator demonstrates to the State (or the State otherwise determines) that (1) another method will detect a release of the regulated substance as effectively as other methods allowed under the state program for petroleum UST systems, and (2) effective corrective action technology is available for the hazardous substance being stored that can be used to protect human health and the environment.

Release Reporting, Investigation, and Confirmation
Objective §281.34

All owners and operators must conform with the following:	Cite Regulation	Statute
(a) Promptly investigate all suspected releases, including:		
(1) when unusual operating conditions, release detection signals and environmental conditions at the site suggest a release of regulated substances may have occurred; and		
(2) when required by the implementing agency to determine the source of a release having an impact in the surrounding area; and		
(b) Promptly report all confirmed underground releases and any spills and overfills that are not contained and cleaned up.		
(c) Ensure that all owners and operators contain and clean up unreported spills and overfills in a manner that will protect human health and the environment.		

Notes on Fulfilling the Objective

1. State requirements will need to establish how and when a suspected release is determined to be a confirmed release and corrective action must begin. It is important that State requirements for release investigation be clear on this point. Ambiguity on how a suspected release must be investigated and when it is confirmed may result in delays on the part of the owner and operator in initiating clean–up actions.
2. The Federal objective requires "prompt" investigation because EPA believes the precise definition of what constitutes a prompt investigation should be left to the discretion of the States within reason. The ability to investigate a site can depend on the site and on the availability of the existing service community. However, if a State program allows owners and operators to carry out the same or similar investigations as required by EPA significantly beyond 7 days, that State program is not likely to meet the objective.
3. A State with reporting levels for spills and overfills greater than 25 gallons can be considered no less stringent if two conditions are satisfied:
    1. The State mandates that the unreported spill be completely contained and cleaned up; and

2. The State has requirements that identify the specific steps an owner and operator must take to ensure unreported spills and overfills are contained and cleaned up in a manner that will protect human health and the environment.

4. A spill or overfill of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under CERCLA (40 CFR Part 302) must be reported IMMEDIATELY to the National Response Center and to appropriate State and local authorities.
5. More discussion on release reporting, investigation, and confirmation methodology may be found in the preamble to the final State Program Approval Rule (53 FR 37229) and in the preamble to the final Federal Technical Standards (53 FR 37169).

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State Examples for Release Reporting, Investigation, and Confirmation

Defining a "suspected" release and confirming it. State M's requirements demonstrate one way to fulfill subsection (a) of this objective for release investigation and confirmation. The State mandates that owners and operators complete an investigation within 7 days of identifying a "suspected" release. This requires prompt reporting of releases and is also the same as EPA's technical standards for investigation.

As part of the investigation process, State M requires the owner or operator to do some immediate double–checking of equipment and other site check activities at all sites where the owner or operator suspects a release may be occurring. The State, however, may need to clarify for the EPA Regional Office as to whether or not the State has the authority required in (a)(2) of this objective. The question that needs to be answered is: when the State has reason to believe that a release is having an impact in the surrounding area and that the source needs to be determined, can the State require a nearby owner or operator to investigate his tanks and site for the source of the release? Can a potential off–site impact be classified as a suspected release for which the State can require a nearby UST owner to investigate his site? The State must have this authority to fulfill subsection (a)(2) of this objective; however, such authority does not have to appear in the regulations and may instead be present under enforcement authorities. This is the reason a clarification might be necessary.

State Z had a statutory definition of "release" that was identical to the Federal definition, except that it excluded incidents involving less than 25 gallons of product. While States are allowed to establish administrative thresholds for reporting spills and overfills (e.g., report all spills and overfills greater than 25 gallons), the State must ensure that all spills and overfills that are unreported are completely contained and cleaned up. Thus, the State's requirements are less stringent than the Federal objective because no action would be required of owners and operators for incidents involving less than 25 gallons of product, as such incidents are not defined as "releases".

Defining a "confirmed" release and reporting it. The following example of State criteria for confirming and reporting a release demonstrates one way to fulfill subsection (b) of this objective. According to regulations in State M, a release is confirmed when any of the following conditions exists: (1) test, sampling or monitoring results from a leak or discharge detection method that indicate a release has occurred when the monitoring equipment has been checked and found to be operational; (2) test results from a precision test of the UST and piping, conducted separately, which is performed after the top of the tank is excavated and all loose fittings, vent pipes or other equipment is checked, replaced or

tightened, and which indicate that a release may have occurred; (3) results from a closure plan indicate the presence of contamination in excess of State standards and indicate that a release has occurred; and (4) any other method, including visual inspection, that confirms that a release has occurred. Once the release is confirmed, the State mandates that "any person" must **immediately** report the release to the State hotline and to any local agencies, if required by local regulations. The term "any person" includes but is not limited to, the owner or operator of an UST system or contractor hired to install, remove or test an UST system.

Reporting on Spills. State M's regulations illustrate one possible approach for reporting and cleaning up spills that will fulfill subsections (b) and (c) of this objective. State M, like many other States, does not distinguish between aboveground and belowground releases in their reporting and corrective action requirements. The State requires that all confirmed releases be reported, and that all confirmed releases be contained and cleaned up in a manner that protects human health and the environment. The State does not set a limit for reporting spills, which means all spills must be reported. The State chooses to direct owners and operators on how to contain and clean up all spills.

Release Response and Corrective Action
Objective §281.35

The State must have requirements that ensure:	Cite	
	Regulation	Statute
(a) All releases from UST systems are promptly assessed and further releases are stopped;		
(b) Actions are taken to identify, contain and mitigate any immediate health and safety threats that are posed by a release (such activities include investigation and initiation of free product removal, if present);		
(c) All releases from UST systems are investigated to determine if there are impacts on soil and ground water, and any nearby surface waters. The extent of soil and ground–water contamination must be delineated when a potential threat to human health and the environment exists.		
(d) All releases from UST systems are cleaned up through soil and ground water remediation and any other steps, as necessary to protect human health and the environment;		
(e) Adequate information is made available to the State to demonstrate that corrective actions are taken in accordance with the requirements of (a) through (d) of this section. This information must be submitted in a timely manner that demonstrates its technical adequacy to protect human health and the environment; and		
(f) In accordance with section 280.67, the State must notify the affected public of all confirmed releases requiring a plan for soil and ground water remediation, and upon request provide or make available information to inform the interested public of the nature of the release and the corrective measures planned or taken.		

Notes on Fulfilling the Objective

1. Actions appropriate to stop a release will vary depending on how the release was confirmed as well as the conditions at the site. If the confirmation of the release identifies the tank or piping

component responsible for the release, then actions to prevent future releases could include emptying the problem tank or not using the suspect piping until it is replaced or repaired.

2. The use of the word "promptly" in the objective is intended to mean that the State must require that owners and operators take such steps quickly to minimize future releases. To provide adequate enforcement of such a requirement, the State must clearly define, using a number, the time frame within which an owner or operator is expected to respond to this requirement.
3. The immediate threats to health and safety that normally are a concern at release sites include: explosive gas levels or vapor threats due to the exposure of contaminated soils; the off–site impacts of free product or resulting vapors on nearby water, sewer lines, or building basements; and the location of any nearby ground–water users who could be exposed to or threatened by dissolved contaminants in their drinking water.
4. Extent of cleanup of contaminated soil and ground water may be based on a site–specific risk analysis that includes potential human exposure or on State–wide numerical standards that establish clean–up levels at every site.
5. Reporting on corrective action plans must result in information being made available to the State quickly to ensure that steps are being taken to prevent further contamination, and so that technical direction can be provided by the State.
6. Information on the site and surrounding areas should be reported so that the corrective action can be tailored to the specific conditions of the site and nature of the release.
7. While it is permissible for States to satisfy the objective by requiring owners and operators to notify the interested public about anticipated or ongoing corrective action measures, a State that places the burden of notification on the owner or operator, should provide specific guidelines to notify the owner or operator of exactly what information must be provided to the public and the forum in which it must be set forth. For instance, if the State feels that reporting violations in a County or State newspaper of wide circulation will not be sufficient to reach the intended public audience, it may specify that publication of notice in a newspaper of more specific, local distribution is required.
8. Initial corrective action steps, results of investigation of soils and ground water, and plans and status reports on long–term remediation of contamination at the site are among the types of specific information that the State might require.
9. One possible model to use is the Federal Technical Standards (280.66(b)), in making a determination that a corrective action plan will adequately protect human health, safety, and the environment, the State implementing agency should consider the following factors as appropriate:
    - The physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;
    - The hydrogeologic characteristics of the facility and the surrounding area;
    - The proximity, quality, and current and future uses of nearby surface water and ground water;
    - The potential effects of residual contamination on nearby surface water and ground water;
    - An exposure assessment; and
    - Any information assembled in compliance with the State corrective action requirements.
10. States may use priority ranking systems to help define priorities for their corrective action workload. A priority ranking system is a good tool for States to ensure that the riskiest sites are

addressed quickly and that the implementing agency systematically addresses the total corrective action workload.

11. More discussion on release response and corrective action may be found in the preamble to the final State Program Approval Rule (53 FR 37230) and in the preamble to the final Federal Technical Standards (53 FR 37173).

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State Examples for Release Response and Corrective Action

Prompt Assessment and Stopping of Releases. State O requires that "where a confirmed tank failure has occurred," the owner or operator must empty the UST system within 5 days. The term "tank failure" in this State requirement may be too narrow to meet the objective because it could be interpreted to not include piping failures or spills and overfills. The regulation does not specify the circumstances for when this requirement applies. If this is the State's only requirement to ensure prompt action be taken to stop a confirmed release of a regulated substance, then this requirement will be considered less stringent than the objective because 5 days is not necessarily prompt enough for all circumstances. For example, action must be taken within a shorter period of time than in five days if a large release is suspected, and can only be stopped by rapid (if not immediate) removal of the product. EPA also notes that emptying the tank, as is required by this State, may not always be necessary. In the case of a piping failure, merely preventing continued use of the suspect piping run until it was repaired would be sufficient to stop further releases of regulated substances from the UST system.

Finally, State O does not require that the site of the "confirmed tank failure" be assessed to determine if and how cleanup should begin. The State will need to clarify how its regulations address this subject or revise its regulations in order to be considered no less stringent in meeting this aspect of the objective.

Defining the Steps Needed to Mitigate Hazards and Investigate Impacts. State P's regulations show one approach to satisfying subsection (b) of the Federal objective, which addresses mitigation of immediate health and safety hazards including the investigation and recovery of free product. The State requires that UST owners and operators: (1) mitigate any fire, safety, or health hazard, including hazards from combustible vapor or vapor inhalation and the removal of ignition sources; and (2) conduct a visual inspection to detect any above–ground discharge, and where any above–ground discharge is evident, mitigate the effects of the discharge. In addition, the State requires that the owner or operator must: (3) remove free product from the water table or any aquifer material; (4) remove or decontaminate contaminated soil, storing contaminated soil if necessary in such a manner that provides complete isolation of the soil from the environment, and any hazardous substances in the soil must be prevented from coming into contact with or being released into the environment; and (5) repair, replace, or close the UST system. These requirements satisfy aspect (b) of the objective.

Defining Investigative Actions. State P's regulations also demonstrate one way to fulfill subsection (c) of this objective. The State requires that every owner or operator collect the following information about the release: (1) the anticipated migration route of the regulated substance; (2) characteristics of the surrounding soil including composition, geology, and hydrogeology; (3) the results of any monitoring or sampling conducted in connection with the discharge that has been collected and analyzed in accordance with State procedures; (4) the proximity of the discharge to potable water supplies, surface water bodies,

and populated areas; (5) a detailed description of corrective actions taken and any planned; and (6) any other relevant information requested by the State. These State requirements fulfill subsection (c) of this Federal objective. It should be noted, however, that subsection (e) of this objective requires timely reporting of the activities completed in each phase of the cleanup in order to determine its technical adequacy. State P does not identify in its regulations when the information (collected during the investigations listed above) must be submitted. The EPA Regional Office may ask the State additional questions to make sure that subsection (e) of the objective is met. For example, can the State ask for the site assessment information at any time before the cleanup is completed? Does the State have access to enough information regarding each release site to determine that each cleanup operation will protect human health and the environment? In the site–specific approach to cleaning up UST releases, reporting is important because the consideration accorded to some factors, such as aquifer resource value and its current and potential use, is largely left to State (or local) policy. Given the number of releases that are expected to be detected in the near future, EPA acknowledges that there is potential for delayed cleanups under this approach if the State is unable to review all the reported information in a timely manner. The act of reporting information does not necessarily have to be formal, however, and the State may choose to accept information over the telephone or through personal interviews on site. Alternatively, the State may use previously collected information to categorize separately those releases that need to have more extensive reporting than others. In order to be no less stringent overall than this objective, State P may need to clarify the specifics as to when the information gathered under these State regulations must be reported to ensure that the need for prompt action and timely reporting is fulfilled.

Defining "Clean Up". State Q has requirements for corrective action that consist of requiring the owner or operator to repair damage caused by the release and restore the environment to a condition and quality acceptable to the State agency. This requirement is not sufficient to fulfill subsection (d) of this objective because the State does not define the criteria that will be used to determine what "acceptable to the State" is. The State must elaborate on what the criteria or basis will be for deciding when to continue and when to stop clean up. To make this requirement no less stringent, the State must at a minimum, require that the release be cleaned up as necessary to protect human health and the environment. Although this is a fairly general criterion, several States already have opted for such general requirements in their regulations because it gives them the authority to oversee all aspects of the corrective action effort while at the same time, providing them with flexibility to tailor State requirements for corrective action to each site. However, this type of regulatory language also places a greater burden on the State program because it must be prepared to individually oversee every action on every site. To avoid the tasks of such close oversight, a State that employs a general standard in its regulations (for example, "as necessary to protect human health and the environment") could issue basic guidelines for corrective action that would alleviate some of the responsibilities of such site–specific direction.

Reporting On Corrective Actions Taken. The following requirements of State P illustrate one approach to subsection (e) of the objective, which does not clearly fulfill the objective. The State may need to make some changes or provide some clarification to the EPA Regional Office. State P requires owners and operators, in an initial notification of a confirmed release, to provide information on the type and quantity of the substance released, the location of the release, and the actions being taken to clean up the release. In addition, the State requires owners and operators to submit a corrective action plan (with an implementation schedule) within 120 days of release confirmation date, and to implement the plan in accordance with the schedule. The implementation schedule must include target dates to carry out the

following: (1) soil, surface and ground water sampling; (2) monitor well installation; (3) the staging and/or disposal of soils; (4) the construction of soil or ground–water treatment systems; (5) the provision of alternate water supplies; and 6) the periodic re–evaluation of the effectiveness of clean–up measures instituted. The release confirmation notification and the corrective action plan submission make up the entire body of reporting requirements in this State; thus the reporting on the initial actions taken and the up–front release assessment steps, as well as the corrective action plan, must be provided at 120 days. To be considered no less stringent in subsection (e) of the objective, the State must require that the owner or operator provide information concerning the immediate corrective action steps required in subsections (b) and (c) (such as the abatement of fire hazards and the investigation and removal of free product) well before 120 days have passed. Provided that the owner and operator has mitigated any immediate health and environmental threats posed by the site and has provided this information to the State, the information required by State P in steps 3, 4, 5, and 6 focuses on long–term corrective actions, and reporting at 120 days is sufficient.

Using a different approach, State R shows another way to fulfill subsection (e) of this objective. State R provides a corrective action manual to owners and operators of leaking USTs that presents detailed technical instructions on reporting information in terms of: (1) investigating suspected or known leaks for underground fuel storage sites; (2) assessing risk to human health and the environment when leaks have occurred; (3) determining cleanup levels in soil, ground water, and air for contaminated sites; (4) screening out sites that represent an acceptable degree of risk from further study; and (5) taking remedial action. This manual is an example of procedures that are used to support relatively general State regulations; it provides specific direction to the regulated community on what is expected from them, what actions they must take and when they must report. As long as the procedures are enforceable, this approach can be considered no less stringent than subsection (e), as well as subsections (a), (b), (c), and (d) of this Federal objective.

Providing Public Notice. State S does not adequately fulfill subsection (f) of this objective. In major corrective action cases, where ground–water recovery and treatment are involved, State S issues a permit for treatment of contaminated water and discharge of the treated waters. Before a permit is issued, the public is notified. The Federal objective, however, requires that the public must be notified when any long–term cleanup is undertaken. Generally, issuing a water treatment permit requires a public hearing because of concerns about discharges into surface water, and this hearing or meeting serves an entirely different purpose than that of notifying the public of long–term cleanups of petroleum releases. EPA believes that this requirement is not an onerous burden, as a public hearing or meeting, or even formal response to comments, is not necessary to fulfill this objective. The problem with State S's approach is that not all long–term cleanups require a water treatment permit and so there will be instances under this State program when the affected public is not notified when they should be notified.

State T's policy, however, is a good example of a State approach that does meet subsection (f) of this objective. The State requires a press release to be issued for all releases affecting ground water and all other releases involving corrective action. The press release must describe the location, the nature of the release, and announce that cleanup will be performed. This State will hold a public meeting if it appears warranted and allows public access to its files.

Out-of-Service UST Systems and Closure
Objective §281.36

The State must have requirements that ensure UST systems conform with the following:	Cite Regulation	Cite Statute
(a) All new and existing UST systems temporarily closed must:		
(1) continue to comply with general operating requirements, release reporting and investigation, and release response and corrective action;		
(2) continue to comply with release detection requirements if regulated substances are stored in the tank;		
(3) be closed off to outside access; and		
(4) be permanently closed if the UST system has not been protected from corrosion and has not been used in one year, unless the State approves an extension after the owner and operator conducts a site assessment.		
(b) All tanks and piping must be cleaned and permanently closed in a manner that eliminates the potential for safety hazards and future releases. The owner or operator must notify the State of permanent UST system closures. The site must also be assessed to determine if there are any present or were past releases, and if so, release response and corrective action requirements must be complied with.		
(c) All UST systems taken out of service before December 22, 1988, must permanently close in accordance with paragraph (b) of this section when directed by the State.		

Notes on Fulfilling the Objective

1. The State program must specify when a tank system is considered to be temporarily out–of–service due to the fact that it has been removed from service.
2. The time limit for the temporary closure of UST systems has been set at one year to ensure that owners and operators of unprotected USTs that are unused are held responsible for protecting the UST system from corrosion or permanently closing it. (See part (4) in subsection (a)).
3. Assessing the site at closure is not necessary if an external release detection method was in operation at the time of closure and it indicates no release has occurred.
4. More discussion on out–of–service UST systems and closure may be found in the preamble to the final State Program Approval Rule (53 FR 37233) and in the preamble to the final Federal Technical Standards (53 FR 37181).

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State Examples For Out–of–Service USTs and Closure

Defining Temporarily Out–of–Service. State U's regulations do not fulfill the criteria for temporary closure set out in subsection (a) of this objective. State U requires owners and operators of UST systems containing regulated substances that are temporarily out of service for 90 days or less to continue to comply with all provisions of the State's regulations (for example, release detection and corrective action). UST systems containing regulated substances that are out of service for an extended period of time, that is 3 months to 2 years, are required to comply with the following additional requirements: (1)

leave vent lines open and functioning; and (2) cap and secure all other lines, pumps, manways, and ancillary equipment. Owners or operators of temporarily or extended out–of–service UST systems that have been emptied and do not contain a regulated substance are required by the State to maintain cathodic protection. Finally, the State requires UST systems that have been removed from service for a period of 2 years or more to be permanently closed. State U's requirements do fulfill the objective for USTs that are temporarily out–of–service one year or less. However, these requirements are less stringent concerning USTs closed for more than 1 year. To be considered no less stringent than aspect (a) of this objective, State U's requirement needs to be changed to mandate that an UST system that does not have corrosion protection and has been removed from service for one year or longer must permanently close, unless the State allows an extension based on the results of a site assessment.

Defining Permanent Closure. The following examples illustrate two different States' approaches to the issue of permanent tank closure. The first, State V, has regulations that do not fulfill subsection (b) of this objective. State V requires that all UST systems being permanently closed be removed (the State must be notified 10 days in advance). The State allows abandonment in place only if it is not physically possible or practicable to remove the UST system (the State lists instances of when this would be allowed). For both methods of closure, the State provides detailed lists of procedures that must be followed to avoid causing safety hazards and future releases, including emptying and cleaning out the tanks. These regulations, however, are less stringent than subsection (b) of EPA's closure objective only because they do not specify that a site assessment must be performed at permanent closure to identify any past or on–going releases. The State program must require a site assessment to satisfy this objective.

State W uses a different approach to permanent closure. In addition, the State's requirements do fulfill the objective. The State requires that procedures for permanent closure include: (1) removal of all residual liquid, solids, or sludges from the tank and appurtenant piping by draining, pumping, or in–tank cleaning; (2) discharging such material in accordance with all applicable Federal, State, and/or local regulations; and (3) purging all flammable vapors. The State further requires that closure be performed in accordance with the State's Uniform Construction Code; American Petroleum Institute Standard 1604, "Recommended Practices for Abandonment and Removal of Used Underground Storage Tanks;" and any standard or device that the State determines to be protective of human health and the environment. In addition, the State requires owners or operators to submit a closure plan to the State agency that includes provisions for performing a site assessment. This report triggers release response and corrective action requirements if it is determined that an on–going or past release has occurred at the site. The above State requirements fulfill subsection (b) of EPA's Federal objective.

Requiring Retroactive Closure. State Y's regulations illustrate one way to fulfill subsection (c) of this objective. State Y mandates that all USTs that have been taken out of service for more than 1 year be properly closed by the owner or operator of the UST system or, if the owner or operator is unknown, by the current owner of the property where the UST is located. Because no date is specified, this requirement allows the State to go far back in time, even prior to the effective date of the State regulations, and requires owners, operators, or property owners to properly close abandoned tanks. For example, State Y can require a property owner that has a 20–year–old abandoned UST system to close the tank properly. This requirement satisfies subsection (c) of this objective.

Financial Responsibility for USTs Containing Petroleum
Objective §281.37

(a) State requirements for financial responsibility must ensure that:	Cite Regulation	Cite Statute
(1) owners and operators have $1 million per occurrence for corrective action and third–party claims in a timely manner to protect human health and the environment;		
(2) owners and operators not engaged in petroleum production, refining, and marketing and who handle a throughput of 10,000 gallons of petroleum per month or less have $500,000 per occurrence for corrective action and third–party claims in a timely manner to protect human health and the environment;		
(3) owners and operators of 1 to 100 petroleum USTs must have an annual aggregate of $1 million; and		
(4) owners and operators of 101 or more petroleum USTs must have an annual aggregate of $2 million.		
(b) Phase–in requirements. Financial responsibility requirements for petroleum UST systems must, at a minimum, be scheduled to be applied at all UST systems on an orderly schedule that completes a phase–in of the financial responsibility requirements within the time allowed in the Federal regulations under 40 CFR §280.91.		
(c) States may allow the use of a wide variety of financial assurance mechanisms to meet this requirement. Each financial mechanism must meet the following criteria: be valid and enforceable; be issued by a provider that is qualified or licensed in the State; not permit cancellation without allowing the State to draw funds; ensure that funds will only and directly be used for corrective action and third–party liability costs; and require that the provider notify the owner or operator of any circumstance that would impair or suspend coverage.		
(d) States must require owners and operators to maintain records and demonstrate compliance with the State financial responsibility requirements, and these records must be made readily available when requested by the implementing agency.		

Notes on Fulfilling the Objective

- More discussion on financial responsibility for UST owners and operators may be found in the preamble to the Federal financial responsibility requirements (53 FR 43365), in the preamble to the State Program Approval Financial Responsibility objective (53 FR 43382), and in Appendix I of this handbook.

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Discussion of Financial Responsibility Requirements for States

The objective for financial responsibility for USTs containing petroleum was published separately from the rest of the State Program Approval Rule. The objective appeared in the **Federal Register** on October 26, 1988 with the Federal Financial Responsibility Requirements for Petroleum USTs (Part 280, Subpart H).

The basic purpose of financial responsibility is simply to establish **reasonable assurance** that someone has the funds to pay for the costs of corrective action and third–party liability resulting from an UST release. This means that someone (or combination of persons) is ready to pay from the "first dollar" of costs incurred up to the maximum amount required by the Federal regulations.

In order to be no less stringent than the Federal requirements for financial responsibility, the State must either:

- establish requirements for owners and operators to have financial assurance for the types and amount of coverage specified in the objective; or
- develop a State financial assurance fund to provide coverage to all owners and operators **in lieu of** enacting a State law or regulations requiring owners and operators to comply with the minimum coverage requirements. When used for this purpose, the fund must provide coverage to all owners and operators in the full amount required by the Federal objective, or the State must have law or regulations requiring owners or operators to supplement the coverage provided by the fund with another acceptable financial assurance mechanism. This topic is described in OUST's guidance document titled "Reviewing State Funds for Financial Responsibility: Phase 2 — Meeting the State Program Approval Objective" dated November 17, 1989. (See Appendix I)

Note that while many States have enacted financial assurance funds, they are typically **not** being used **in lieu of** regulations requiring tank owners and operators to obtain the required amounts of coverage. Rather, as discussed further below, they function as one of several financial assurance mechanisms that owners can use to meet the coverage requirements.

States may allow the use of a variety of financial assurance mechanisms to meet the requirements. These mechanisms must:

- Be valid and enforceable;
- Be issued by a provider that is qualified or licensed in the State;
- Not permit cancellation without allowing the State to draw funds if the mechanism is a guarantee, surety bond, or letter of credit;
- Ensure that funds will only and directly be used for corrective action and third–party liability costs;
- Require that the provider notify the owner or operator of any circumstance that would impair or suspend coverage, (i.e., bankruptcy of provider).

The mechanisms cited in the Federal financial responsibility regulation meet the above criteria.

Finally, States must require owners and operators to maintain records and demonstrate compliance with the State financial responsibility requirements. These records must be made readily available when requested by the State implementing agency.

State Funds

In general, States have enacted financial responsibility legislation or regulations similar or identical to the Federal requirements. In addition, 43 States have either proposed or passed statutes creating State assurance funds to help owners and operators of petroleum USTs in their State comply with financial responsibility requirements. In almost all cases, the way in which States intend to use these funds is as an additional mechanism that owners and operators may choose to use to satisfy the State's financial responsibility requirements.

As is the case with other financial responsibility mechanisms, State funds must meet the five criteria for mechanisms contained in §281.37(c), which are mentioned above. For State funds, however, the main criteria of concern are the first, fourth, and fifth. With regard to the second criterion, we can generally assume that the fund has been issued by a qualifying organization, i.e., the State. As discussed in the preamble to the final rule, the third criterion was designed for guarantees, surety bonds, and letters of credit, where the Director can order the funding of a standby trust fund should a leak be suspected or confirmed after notice of cancellation. It therefore has little relevance for State funds.

In determining whether the State fund is a "valid" financial assurance mechanism (criterion 1) we suggest that Regions should rely primarily on OUST's existing guidance documents on "Reviewing State Funds for Financial Responsibility." Areas such as source and amount of funds, coverage provided, methods of payment, and eligibility would appear to be appropriate topics to consider in evaluating a State fund for "validity." We expect that most, if not all, funds that meet the criteria in the fund review guidance would be deemed to be valid. The 22 State funds that EPA has approved thus far as financial responsibility mechanisms (under Section 280.101) would be considered "valid" mechanisms for State Program Approval. However, there may be other legally justifiable criteria to use in determining whether a fund is a "valid" financial assurance mechanism for purposes of satisfying the State program approval objective. As with other State Program Approval decisions, this is a judgment call that Regions will make on a case–by–case basis.

In applying the fourth criterion, the preamble discusses it as a safeguard against legal defense costs absorbing too great a portion of coverage limits and thus leaving little coverage available for corrective action and third party liability. Although State funds are sometimes used to cover other costs, such as fund administration, this is generally acceptable, since such expenditures do not affect the per occurrence or aggregate levels of coverage being provided by the fund.

With regard to the last criterion, the State, as a provider of financial assurance, bears the same responsibility as other providers who intend to terminate coverage (Section 280.105). At least sixty days prior to the termination of fund coverage, the State must notify all covered owners and operators that coverage is terminating. The State should also advise owners and operators that they must obtain other mechanisms to satisfy the State's financial responsibility requirements.

Remember that States do not need a fund to meet the Federal objective for financial responsibility. Statutory or regulatory provisions that contain the Federal coverage requirements are sufficient for State program approval, as long as they satisfy the State program approval requirements contained in 40 CFR Part 281.37 (a)–(d). In particular, this means that each mechanism (including a State fund) that a State

allows owners and operators to use to satisfy the requirement must meet the criteria contained in Section 281.37(c).

Some States may establish a financial assurance fund or other compliance mechanism **after** receiving approval of their program. Such modifications should be treated as changes to the State program, which are addressed under Section 281.52 of the State Program Approval rules — "Revision of Approved State Programs." The State must inform EPA of such changes, and EPA will determine in each case whether a revision of the approved program is necessary.

The financial responsibility objective under §281.37(b) in the October 26, 1988 financial responsibility rule regarding the phase–in of the financial responsibility requirements was replaced in the **Federal Register** on October 31, 1990. The phase–in of the financial responsibility objective is now tied to the compliance dates established by EPA under 40 CFR §280.91. This phase–in date can be characterized as a "moving target" because the compliance date for Category 4 tank owners, or the last financial responsibility compliance date, was adjusted again in 1991. (On December 23, 1991, EPA extended the financial responsibility compliance date for Category 4 tank owners (petroleum marketers owning 1–12 tanks or one facility with less than 100 tanks and non–marketers with less than $20 million in tangible net worth) to December 31, 1993 (56 FR 66369). In addition, local governments, which were originally included in Category 4, were placed in their own sub–category and received a deferral for compliance on October 31, 1990. Compliance will be required within twelve months after a final rule concerning alternative compliance mechanisms for local governments is promulgated.

C. Adequate Enforcement Authorities

In the Attorney General's Statement, the State must demonstrate that its enforcement authorities meet the criteria specified in Subpart D of the State Program Approval Rule which requires legal authorities for: (1) compliance monitoring; (2) enforcement response; and (3) public participation. These authorities are the minimum necessary for a program to provide "adequate enforcement." Although a State may use local agencies to implement certain aspects of its compliance monitoring and enforcement program, the application for program approval must demonstrate that the State has adequate legal authorities to enforce its requirements; the State cannot rely on local authorities in its demonstration of adequate enforcement. Tables outlining and explaining the specific requirements of the compliance monitoring and enforcement response authorities are provided below. The regulatory requirements for public participation in enforcement proceedings include options for both legal authorities and procedural requirements. However, the handbook discussion of public participation in enforcement proceedings is located in this chapter (rather than Chapter 5) because EPA believes most States will probably choose one of the authority options. A table is also provided for the public participation in enforcement proceedings requirement. Additional information on this subject is available in the preamble to the State Program Approval Rule (53 FR 37234).

* * *

Legal Authorities for Compliance Monitoring
(§281.40)

The State must have the following specific compliance monitoring authorities:	Cite Regulation	Cite Statute
(a) Any authorized representative of the State engaged in compliance inspections, monitoring, and testing must have authority to obtain by request any information from an owner or operator with respect to the UST system(s) that is necessary to determine compliance with the regulations.		
(b) Any authorized representative of the State must have authority to require an owner or operator to conduct monitoring or testing.		
(c) Authorized representatives must have the authority to enter any site or premises subject to UST system regulations or in which records relevant to the operation of the UST system(s) are kept, and to copy these records, obtain samples of regulated substances, and inspect or conduct the monitoring or testing of UST system(s).		

Notes on Fulfilling the Requirements

1. The proposed rule limited inspection authority solely to "employees of the State." However, EPA believes that States may also wish to delegate implementation responsibility to individuals such as the local building inspector or fire marshall. Thus, in order to broaden the scope of this authority to include such persons, the Agency has in the final rule substituted the word "employee" with "representative," as provided for in Subtitle I, Section 9005 of RCRA.
2. More discussion on legal authorities for compliance monitoring may be found in the preamble to the final State Program Approval Rule (53 FR 37234).

* * *

Legal Authorities for Enforcement Response
(§281.41)

The State must have the following specific enforcement response authorities for State program approval:	Cite Regulation	Cite Statute
(a) Any State agency administering a program must have the authority to implement the following remedies for violations of State program requirements:		
(1) To restrain immediately and effectively any person by order or by suit in State court from engaging in any unauthorized activity that is endangering or causing damage to public health or the environment;		
(2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement;		

(3) To assess or sue to recover in court civil penalties as follows: (i) Civil penalties for failure to notify or for submitting false information pursuant to tank notification requirements must be capable of being assessed up to $5,000 or more per violation. (ii) Civil penalties for failure to comply with any State requirements or standards for existing or new tank systems must be capable of being assessed for each instance of violation, up to $5,000 or more for each tank for each day of violation. If the violation is continuous, civil penalties shall capable of being assessed up to $5,000 or more for each day of violation.		

Notes on Fulfilling the Requirements

1. "Unauthorized activity" is considered to include any activity by an UST owner or operator that results in noncompliance with a State's UST regulations.
2. States may find these standard legal authorities in general enforcement statutes and not necessarily in UST–specific statutes.
3. More discussion on legal authorities for compliance monitoring may be found in the preamble to the final State Program Approval Rule (53 FR 37237).

* * *

Public Participation in Enforcement Proceedings
(§281.42)

Any State administering a program must provide for public participation in the State enforcement process by providing any one of the following three options:	Cite Regulation	Statute
(a) Authority that allows intervention analogous to Federal Rule 24(a)(2), and assurance by the appropriate State enforcement agency that it will not oppose intervention under the State analogue to Rule 24(a)(2) on the ground that the applicant's interest is adequately represented by the State.		
(b) Authority that allows intervention as of right in any civil action to obtain the remedies specified in 281.41 by any citizen having an interest that is or may be adversely affected; or		
(c) Assurance by the appropriate State agency that: (1) It will provide notice and opportunity for public comment on all proposed settlements of civil enforcement actions (except where immediate action is necessary to adequately protect human health and the environment); (2) It will investigate and provide responses to citizen complaints about violations; and (3) It will not oppose citizen intervention when permissive intervention is allowed by statute, rule, or regulation.		

Notes on Fulfilling the Requirements

1. These requirements are separate from the public participation requirement under the corrective action objective on page 43 of this chapter.
2. EPA expects that States will not have difficulty in fulfilling one of the three options presented here, particularly because most States already have an authority analogous to Federal Rule

24(a)(2) as a result of involvement in the RCRA hazardous waste management program. Federal Rule 24(a)(2) is presented in Appendix E.

3. The "right of intervention" required in the second option is considered to be the right of a citizen, having an interest that is or may be adversely affected by an UST system that is in violation of the State's requirements, to intervene in a civil action brought by the State against the owner or operator. The citizen has all the rights of an intervenor, including the right to submit a statement, the right to notice, and the right to receive motions for arguments filed by other parties to the action.

* * *

Additional Explanation of the Public Participation Requirements

The purpose of providing public participation in the enforcement decision–making process is to meet the Federal statutory requirement, reflected in Section 7004 of RCRA, that the public be provided with a reasonable opportunity to participate in the implementation of the program. The final State program approval regulations (§281.42) require that States allow opportunities for the public to be informed and participate in the enforcement decision–making process. To provide such public participation, States may choose one of three options. The first two of these options allow States to obtain legal authorities that permit public participation in the enforcement process. The third option allows States to develop procedures that assure that the implementing agency will respond to citizen input.

States that choose not to obtain either of the two legal authorities, however, must develop procedures that assure public participation in enforcement proceedings. States choosing this option are required to provide opportunity for public comments on all proposed enforcement settlements and to respond to citizen complaints about violations. States have the flexibility to determine whether the citizen complaint is valid and to provide the appropriate response depending on the significance of the violation. To inform the public of proposed settlements for minor violations, for example, States may consider submitting to a local newspaper a public notice of the plan for returning to compliance. Public hearings may be held if enough public interest is expressed. To handle citizen complaints, States may determine the most appropriate follow–up action, depending upon the validity of the complaint.

If a State chooses the first option, (§282.42(a)), which provides authority to allow citizen intervention analogous to Federal Rule 24(a)(2), there must be an explicit assurance by the State agency that it will **not oppose** intervention because that applicant's interest is adequately represented by the State. In addition, if the State chooses the third option, (§281.42(c)), the State agency must provide assurance that it will not oppose citizen intervention when permissive intervention is allowed by statute, rule, or regulation. The MOA would be the most appropriate place for the State agency to articulate these assurances.

Also, before submitting an application to EPA for approval of a State program, the State must provide an opportunity for public notice and comment in the development of its underground storage tank program (§281.50(b)). The State Attorney General must certify in the Statement that these opportunities were provided.

D. Scope of the State Program

A State has the option to develop an UST program to regulate either all petroleum tanks, all hazardous substance tanks, or both. Depending upon which of these options a State chooses, the State must have jurisdiction over at least the same categories of tanks as the Federal program. For this reason, the Attorney General must certify that the State UST program covers the same scope of jurisdiction within each option as the Federal program, and does not exclude any part of the UST universe regulated under the Federal rule. Those categories of USTs that EPA had proposed to defer but now regulates in the final Technical Standards must be included within the scope of the State program. For example, used oil USTs need to be regulated under State programs.

For a State program to be as broad in scope as the Federal program, it must demonstrate that it covers the same UST systems and does not exclude UST systems regulated under the Federal rule. Some key definitions that define a program's scope include: "underground storage tank", "regulated substance", "petroleum", "release", "owner", "operator", and "person". If these definitions differ markedly from the Federal definitions, the State program may not be sufficiently broad in scope. For example, if the State definition of "petroleum" does not include diesel fuel, it does not cover the same scope of UST systems as the Federal program.

Certain UST systems are currently deferred from regulation in the final Federal rule because EPA has insufficient information to regulate these USTs. However, these deferred systems are subject to interim prohibition and the corrective action requirements under the Federal Technical Standards. UST systems storing fuel for emergency generators are subject to all but the release detection requirements. Thus, the EPA and the State must agree on how to oversee compliance of the regulatory requirements applicable to any deferred USTs in the Memorandum of Agreement (explained in Chapter 6). States should consider including the list of deferred USTs within their statutory authority from the start to avoid the necessity for future changes to expand their jurisdiction when complete Federal regulations for the deferred systems are published.

EPA has exempted by regulation certain other categories of UST systems entirely, and States will not need to include these systems within their jurisdictions in order to have adequate program scope for approval.

States are free to implement a State program that is broader in scope than the Federal program (§281.12(a)(3)). A State program, for example, may regulate all heating oil tanks, although tanks used for storing heating oil for consumptive use on the premises where stored are excluded from the Federal UST program. In such cases, the additional scope of coverage is not approved by EPA as part of the State program approval process. In addition, if EPA were asked to provide enforcement assistance, EPA cannot enforce the States' requirements against the tanks within the additional scope of coverage.

EPA will administer the UST program on Indian lands, except where Congress has clearly expressed an intention to grant a State the authority to regulate USTs on Indian lands (§281.12(a)(2)). If a State has authority over UST activities on Indian lands, the Attorney General's Statement must contain an appropriate analysis of the State's authority.

Jurisdiction over USTs on Indian lands will vary by State, which will necessitate a flexible approach, so it would be beneficial for States and Regions to seek out additional information, based upon their individual needs. Regional offices may find it helpful to refer to the Indian Lands Implementation Tool Kit, in order to more fully understand the issues and questions pertaining to USTs on Indian lands.

The following table contains the categories of tanks that are exempted from the Federal Technical Standards. State programs must have the authority to regulate all categories of UST systems except for those UST systems contained in this checklist. (As noted above, Federally–deferred tanks are only subject to the interim prohibition and corrective action requirements.) If the State exempts or defers any category of UST systems that are in the jurisdiction of the Federal program, a discussion must be provided in the Memorandum of Agreement on how those tanks will be covered along with a schedule for expanding the State's jurisdiction. Additional discussion on the State program scope and universe may be found in the preamble to the State Program Approval Rule (53 FR 37219).

SCOPE OF THE STATE PROGRAM

The State must have authority to regulate all UST systems except those UST systems outside the jurisdiction of the Federal program, listed as follows:

Excluded by Congress

1. Farm or residential tanks of 1,100 gallons or less capacity storing motor fuel for non–commercial purposes;
2. Tanks storing heating oil for consumptive use on the premises where stored;
3. Septic tanks;
4. Pipeline facilities (including gathering lines) regulated under the National Gas Pipeline Safety Act of 1968, the Hazardous Liquid Pipeline Act of 1979, or State laws comparable to these Acts;
5. Surface impoundments, pits, ponds, or lagoons;
6. Storm-water or waste-water collection systems;
7. Flow-through process tanks;
8. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; and
9. Storage tanks situated on or above the floor of underground areas, such as basements or cellars.

Excluded by EPA

1. Any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other Subtitle I regulated substances;
2. Any waste–water treatment tank system that is part of a waste–water treatment facility regulated under section 402 or 307(b) of the Clean Water Act;
3. Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks;
4. Any UST system whose capacity is 110 gallons or less;
5. Any UST system that contains a de minimis concentration of regulated substances; and

6. Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

CHAPTER 5. DEMONSTRATION OF ADEQUATE ENFORCEMENT PROCEDURES

A. Introduction

To ensure that States have adequate enforcement, EPA requires that States have certain compliance monitoring and enforcement procedures in addition to the legal authorities discussed in the previous chapter. These procedures are necessary to ensure compliance with all UST requirements in both the technical and financial responsibility rules. Furthermore, EPA expects that any State program that incorporates these required procedures will also have the ability to carry them out. That is, EPA will not approve an apparent "paper" program. Beyond this, EPA will not set any numerical resource minimums to determine a State's enforcement capability.

Under §281.22 of the regulations, States seeking program approval are required to submit descriptions of their compliance monitoring and enforcement program in their application. Section 281.22 requires that any related State administrative or judicial review procedures must be submitted as well. In general, EPA considers a comprehensive enforcement program to include procedures for the following areas:

- Compliance monitoring and data collection; and
- Enforcement responses.

As discussed in more detail below, §§281.40(d) - (g) set forth the procedural requirements for compliance monitoring and enforcement. In developing these requirements, EPA seeks to maintain the flexibility to approve a variety of State programs, and encourages States to use innovative approaches to monitoring compliance and taking enforcement actions. For that reason, the final regulations for State program approval do not specify details of compliance monitoring and enforcement procedures, but rather describe general procedural areas that are necessary for program approval.

In addition, §281.41(b) and (c) state that the burden of proof and degree of knowledge or intent required under State law for establishing violations must be no greater than that which EPA must provide when it brings an action under Subtitle I. Further, a civil penalty assessed, sought, or agreed upon by the State enforcement agency must be appropriate to the violation.

To provide guidance on fulfilling these procedural requirements, this chapter reiterates the overall purpose of each requirement and provides examples of compliance monitoring and enforcement procedures that may accomplish these purposes. Some of these procedures are currently being used in existing State programs. It should be noted, however, that none of the actual compliance monitoring and enforcement procedures described represent an "ideal" or unique UST enforcement program, but serve only as examples of methods that fulfill the purpose of the particular requirement. Further detail on these examples and additional information on State compliance monitoring and enforcement techniques can be found in the EPA handbook on **Building State Compliance Programs** (August, 1988).

B. Procedures for Compliance Monitoring

An important purpose of the Federal requirements for adequate enforcement is that States be able to identify violators and bring them into compliance. The final State program approval regulations for adequate enforcement require that States develop certain sets of procedures for collecting and maintaining

data on violators. In addition, the State implementing agency must maintain data on the compliance status of the regulated community to monitor the effectiveness of the compliance program and ensure that violations are not repeated.

Specifically, States are required to develop procedures in each of the following four areas:

1. **Record Review:** Procedures to receive, evaluate, retain, and investigate records and reports that owners and operators are required to submit to the implementing agency, and procedures to enforce against failure to submit such mandatory reports (§281.40(d));
2. **Inspections:** Systematic inspection procedures to determine compliance with program requirements, independent of information supplied by the regulated community, and to provide for enforcement of failure to comply with program requirements (§281.40(e));
3. **Public Reporting:** Programs to encourage public effort in reporting violations and to investigate information obtained from the public about suspected violations (§281.40(f)); and
4. **Data Maintenance:** Procedures for maintaining the data collected through inspections and record reviews so that the implementing agency can monitor over time the compliance status of the regulated community (§281.40(g)).

In addition, for any compliance monitoring program to be effective, a State should also be able to identify and characterize the regulated community. Thus, procedures for developing an UST inventory are also fundamental to a State's ability to ensure compliance with the regulations.

Guidance for each requirement and examples of compliance monitoring procedure and techniques that fulfill the requirements in each of these areas are described below. Enforcement procedures that fulfill the requirements in §§281.40(d) and (e) are discussed in Section C of this chapter.

1. Identifying the Regulated Community.
To structure an effective compliance monitoring program, a State implementing agency must have a thorough awareness of its regulated community. Examples are provided below of some optional procedures that have been developed for identifying and characterizing UST systems and for keeping track of changes in facility status over time. These are only examples, however, and it is assumed that States do have other procedures that may be perfectly acceptable.

Registration and Permitting. One customary and versatile method for keeping inventory is to require that every facility in the regulated community obtain a registration or permit. Registration and permitting programs vary in the level of information required from the owners and operators, the means of enforcing the program, and the consequences of noncompliance. In general, registration programs require that UST owners and operators obtain an annual license to operate their UST system. In doing so, owners and operators will supply the implementing agency with little more detailed data than that required for notification. For example, the registration programs in Rhode Island and Texas merely require that owners and operators notify the State of changes in the status of the UST system. Permit programs also serve to provide inventory data, although they are usually developed primarily to monitor compliance (as discussed in the following section on Record Review) and thus provide more detailed UST information.

Another means of identifying USTs is to require certain actions from the owner or operator. For example, a State may require that when property containing an UST system is sold, the seller notify the purchaser

of State notification and reporting requirements applicable to the UST system. This requirement would not only help keep the data updated, but also would ensure that information is passed on to the next owner or operator.

Alternative Means of Identification. To supplement their data on the regulated community, States may rely upon other State or local government agencies, such as building inspectors or fire departments, to identify UST systems. For example, some State and county agencies incorporate UST requirements into local construction standards by requiring building permits for UST system installation, alteration, or removal, much like any other construction activity. The State or county typically requires these other agencies to submit their observations and information to the UST implementing agency.

States have also used commercial activities to help identify UST systems. For example, Iowa requires that for all property transfers, real estate agents must file a "Real Estate Ground-Water Hazards Statement," in which the agent must note if the property involved contains any UST systems. This statement is filed with the County Recorders Office and can be compared with information submitted by the owners and operators to verify the accuracy of their reports.

2. Record Review.

Under §281.40(d) of the final State program approval regulations, States must develop procedures for collecting and analyzing data submitted by UST system owners and operators. Although owners and operators will be required to submit certain information under State and Federal regulations (for example, reporting releases), States may require additional information as a means of expanding compliance monitoring efforts. By developing a program that encourages owners and operators to submit accurate data on their compliance status, States can reduce the need for resource-intensive inspections. Several techniques for incorporating record reviews into a compliance monitoring program are described below. Compliance outreach, which can enhance the effectiveness of a reporting program, is also discussed.

Permit Programs. Some State programs have reduced their need for resource-intensive inspections by implementing comprehensive permit programs that provide data on compliance. Many States and counties require that all UST systems obtain annual permits as a condition of operation. To obtain these permits, UST system owners and operators must demonstrate by independent means that their UST systems have passed performance standards. States can verify compliance in several ways, such as by inspecting the facility prior to issuing the permit, or by requiring the owner or operator to submit results of tank tightness tests. Once an initial inspection is conducted, States can rely more heavily on periodic reports submitted by owners and operators with permitted systems. States can also reduce the number of comprehensive inspections conducted by increasing the time between major inspections at permitted facilities.

California has developed a comprehensive permit program that is implemented at the county level (and delegated to certain cities). The permit requirements vary from county to county but are generally extensive. In San Mateo County, for example, owners and operators applying for a permit must complete a number of requirements, including conducting a precision test, undergoing an inspection by the county, and installing leak detection equipment. All UST systems in the State require permits for operation, and any tank system that does not pass its county's requirements is taken out of service.

Self-certification. States may also reduce the need for extensive inspections by allowing some owners and operators to certify that they are in compliance. Such self-certification programs have been used in the Occupational Safety and Health Administration for large, independent business chains. In these programs, companies that demonstrate an understanding of the regulations and a good compliance record are given the freedom to self-inspect and submit results to the implementing agency. (This would reduce the number and frequency of inspections that the agency would have to conduct at these facilities.)

Effective use of such a program would require that the State have significant penalties for false certification. Clearly, the State would also need to conduct additional inspections at facilities that have not demonstrated a good compliance record. It would be up to the State to determine whether random inspection of self-certifying facilities was necessary, although it seems reasonable to expect that periodic random inspections would be conducted at all self-certifying facilities, not just at those facilities with a demonstrated record of poor compliance. Random inspections are customarily conducted as part of many State UST programs. Although this method would not be sufficient for determining the compliance status of the entire regulated community, its use for a certain portion of the UST population may enable a State to reduce some of its resource needs for inspections.

Compliance Outreach. The effectiveness of reporting by the regulated community can be enhanced by developing a compliance outreach program. Given the large size of the regulated universe and the limited resources available for compliance monitoring and inspections, the State UST programs will have to rely heavily on voluntary compliance, and outreach is an effective tool for encouraging compliance. States have developed a number of methods to inform the regulated community of its obligations under the State UST program. A common means of reaching the regulated community is to identify certain industry groups as representative of the regulated community and then develop relationships with these groups. For example, Minnesota and Texas have established ongoing communication with the Independent Service Station Organization and the Texas Oil Marketer's Association, respectively.

To reach a wider audience, some State programs use standard communication techniques, such as press releases, public service announcements, and mass mailings. The Maryland Department of Environment has established an advisory committee comprising members from local government, industry, and community groups to aid in communicating UST issues and to encourage the exchange of ideas. The State of Oregon sends a newsletter "Tankline" to all persons in the State who may be connected to the UST community. This newsletter discusses State regulations along with UST technology and practices.

3. Inspections.

Although the final State program approval regulations (§281.40(e)) require States to develop an inspection program, States should be aware that the requirements do not mandate a State to develop "traditional" programs that have specific inspection schedules and a required number of inspections and subsequent enforcement actions. EPA realizes that resource constraints in most States will make it difficult for them to develop the traditional "bean counting" inspection program. Currently, some States do not have sufficient resources to do much more than conduct inspections in response to potential or known violations or releases. Although these States are expected to develop the capability to conduct systematic inspections to detect non-compliance, EPA recognizes that alternative approaches to gathering inspection data may help meet the overall performance goal of ensuring compliance. Several alternative approaches to an inspection program are described below.

Targeted Inspections. One alternative to periodic, random inspections is to develop inspection priorities, taking into account factors such as: (1) the nature and magnitude of the threat; (2) the availability of resources for preventative action; and (3) the results of past leak incidents. For example, some States have targeted their inspections to groups of UST systems that potentially pose greater risk to human health and the environment. Examples of such UST populations include: aging UST systems, which have a greater chance of leaking; UST systems located near sources of drinking water or ground water; and UST systems whose owners or operators have a history of significant violations.

Alternatively, some States have targeted UST-related activities, such as installation or closure, for inspections. For example, in Rhode Island, an inspector must be present at every UST system closure to ensure that no releases have occurred. In San Diego County, California, the UST staff has inspected all new UST system installations and UST system removals since the program was established in 1984. In these types of targeted inspections, compliance is driven by the certainty that at least during one critical event, all UST systems will be examined.

Alternative Inspectors. States can also supplement their basic inspection programs by delegating certain compliance monitoring responsibilities to other governmental entities or to private parties through certification. A number of governmental programs, ranging from fire safety to consumer affairs, require the presence of governmental personnel at UST system sites. Some State and local agencies have incorporated their inspection needs into the inspection programs of these agencies. Specifically, many agencies rely on fire marshals or plumbing inspectors to conduct technical UST inspections when at a facility.

Several States delegate elements of their UST inspections to private parties. New York and Maine, for example, certify UST installers who then must verify that UST system installations meet State requirements. Florida has set up a licensing program for UST installers, testers, and removers. Rhode Island certifies the tank testing procedure developed by companies providing that service, and gives the testing company the responsibility for approving their testers. These approaches reduce the need for the presence of a State inspector at each UST system installation or testing event. Thus, these States can limit their direct involvement to follow-up inspections and possible enforcement actions if an UST system fails the test.

4. Public Reporting.

Under the Federal requirements for adequate enforcement (§281.40(f)), States must encourage the public to report violations and must provide the public with information about reporting procedures. In addition to the compliance outreach procedures for the regulated community described above, States are encouraged to develop basic outreach procedures designed to reach the general public. However, this requirement does not mandate States to develop comprehensive outreach programs. Instead, procedures for encouraging communication with the public may be as simple as providing a telephone "hot-line" service for citizens to report observations and suspected violations. Some States use mechanisms such as public notices, newspaper articles, press releases, and mass mailings to inform the public about the UST program. In particular, publicity that focuses on the State's enforcement response to a particular violation may draw public attention to the program. (Publicity of enforcement actions is described in Part C of this chapter).

5. Data Maintenance.
The final State program approval regulations for adequate enforcement (§281.40(g)) require States to develop procedures for maintaining the data collected through inspections and record reviews so that the implementing agency can monitor over time the compliance status of the regulated community. Any such compilation of compliance data must be made available to EPA upon request. This requirement is based on Section 9002 of Subtitle I, which mandates the establishment of State inventories, and emphasizes the necessity of such inventories for effective compliance monitoring.

The Agency intends to limit these requests as much as possible and will negotiate specific reporting requirements with the States as part of the annual State grant process.

C. Procedures for Enforcement Response

The final State program approval regulations require State agencies to have certain legal authorities for enforcement. The specific requirements and guidance for these enforcement authorities were addressed in Chapter 4 on the Attorney General's statement. However, in order to receive program approval, States must also demonstrate that they have enforcement response procedures for exercising these legal authorities. The purpose of enforcement response is to take action against violators, bring them into compliance, and deter other violators. Although the requirements for adequate enforcement do not provide specific details on the requirements for enforcement procedures, §§281.40(d) and (e) (see below) require that States have procedures for enforcing against noncompliance. EPA will evaluate the adequacy of a State's enforcement response procedures and their implementation as a whole.

Enforcement Response (§281.40)

(d)

State programs must have procedures for receipt, evaluation, retention, and investigation of records and reports required of owners or operators and must provide for enforcement of failure to submit these records and reports.

(e)(1)

State programs must have inspection procedures to determine, independent of information supplied by regulated persons, compliance with program requirements, and must provide for enforcement of failure to comply with the program requirements. States must maintain a program for systematic inspections of facilities subject to regulations in a manner designed to determine compliance or non-compliance, to verify accuracy of information submitted by owners or operators or regulated USTs, and to verify adequacy of methods used by owners or operators in developing that information.

(e)(2)

When inspections are conducted, samples taken, or other information gathered, these procedures must be conducted in a manner (for example, using proper "chain of custody" procedures) that will produce evidence admissible in an enforcement proceeding, or in court.

States seeking program approval are not restricted to "traditional" formal enforcement programs, but instead may prefer to use a combination of formal and informal enforcement techniques. Formal

enforcement is considered to include any actions taken under the authority contained in a statute, such as issuing a formal notice of violation or compliance order. In general, two types of compliance orders can be levied: administrative orders and judicial orders, both of which may have accompanying civil penalties. In States that do not have administrative order authority, or where the order is not heeded by the owner or operator, judicial orders and civil penalties typically are sought. Informal enforcement programs include any other actions taken to achieve compliance, such as the issuance of warning letters or undertaking other means of encouraging voluntary compliance.

Although formal enforcement techniques are necessary for an effective enforcement program, EPA recognizes that it may not be reasonable or appropriate for State agencies to carry out formal enforcement responses in all situations. States may often encounter violations that are not significant enough to require formal orders and high penalties. In addition, States may lack the legal staff or funds necessary to carry out such responses in all situations. Thus, a broad range of enforcement tools may be necessary.

By having a variety of formal and informal enforcement procedures, a State can determine which type of response is most appropriate in a particular situation, depending upon the threat to human health or the environment, the willingness of the violator to cooperate, or a violator's history of noncompliance. A State may want to develop procedures for issuing some of the more formal orders (for example, notice of violation) as an informal response when violations are minor and compliance is expected. For example, in cases of minor violations, a State inspector may issue a simple warning notice or on-site complaint, informing the owner or operator of the requirements and specifying actions necessary to bring the UST system(s) into compliance. Warning notices and on-site complaints may describe potential penalties, but States typically do not have administrative authority to assess a penalty through such notices. However, the threat of more stringent enforcement actions and penalties remains an important factor in the success of using informal notices. The following checklists, one for compliance monitoring procedures and one for enforcement response procedures, outline some of the procedures States may choose to develop when putting together an UST program.

COMPLIANCE MONITORING CHECKLIST

States are required to have procedures to determine compliance with regulatory requirements and to investigate suspected violations. These procedures will vary greatly among the States but the following checklist provides a brief list of procedures that all States should develop.

Facility Notification and Identification

- Procedures for initial notification of ownership and operation of USTs.
- Procedures for notification of changes in the number and type of USTs, changes in the use of the USTs, and changes in ownership and operation of the USTs.

Record Review

- Procedures to request, receive, evaluate, retain, and investigate records and reports from owners and operators.
- Procedures to enforce against failure to respond to such requests for information.

Inspections

- Systematic methods for conducting facility inspections.
- Appropriate methods to ensure that samples are taken and other information is gathered in a manner that will ensure that such data will be admissible evidence in an enforcement proceeding or in court, e.g., "chain of custody" procedures.
- Procedures to ensure that appropriate follow-up actions are taken for violations discovered as a result of inspections.

Public Reporting

- A method for receiving public reports of suspected violations and procedures to ensure that such reports are investigated and that appropriate follow-up action is taken against confirmed violations.

Data Maintenance

Procedures for maintaining information collected through record reviews, inspections, and public reports to ensure that facility compliance status can be tracked over time.

ENFORCEMENT RESPONSE CHECKLIST

States are required to have procedures to take appropriate enforcement action against known violations of UST regulatory requirements. Once again, these procedures will vary greatly among the States but the following checklist provides a brief list of the procedures that the States may choose to develop. [NOTE: The procedures listed below are not mandatory but States are encouraged to have some variation thereof.]

Informal Enforcement Response

- Procedures for initially notifying an owner or operator of a violation (e.g., issuing a notice of violation or warning letter).
- Procedures to implement a self-certification program coupled with warning letters to non-respondents.
- A program to encourage voluntary compliance through outreach efforts.

Formal Enforcement Response

- Procedures for inspectors to issue field citations on site, including:
    - Procedures to identify violations appropriate for field citation use;
    - Procedures to ensure that any appeals are addressed in an expedited manner.
- Procedures to issue administrative compliance orders, including:
    - Methods to calculate and assess appropriate penalties.
    - Procedures to ensure speedy administrative hearings on these orders.

- Strategy to refer cases to and coordinate with the Attorney General on judicial compliance orders, including:
    - Methods to calculate and assess appropriate penalties.

Examples of some informal and formal enforcement techniques that may be appropriate for use in UST programs are discussed in detail below.

1. Informal Means of Encouraging Voluntary Compliance.

The type of enforcement response used by a State generally will depend upon the cooperation of the violator and the severity of the violation. Unless a violation is significant or the violator is recalcitrant, States may prefer to negotiate informally with the violator as a first step in obtaining compliance. This is less resource-intensive than more formal actions and encourages a cooperative relationship on the part of the regulated community.

Some States have developed procedures for notifying violators and encouraging their cooperation in correcting a violation without having to obtain compliance orders. Such notices are typically used when the violation appears to have resulted from the violator's unfamiliarity with the regulations. Most of these informal notices, such as Maryland's "Warning Notice" and Rhode Island's "Letter of Noncompliance," require the violator to bring the UST system(s) into compliance. The notice may indicate the potential penalty if actions are not taken, but generally does not have the force of law for imposing penalties.

Several States, including Michigan, Oklahoma, Hawaii, Arizona and Nevada, have used an innovative approach to enforcement which, by notifying the regulated community of its regulatory obligations and putting the burden on owners and operators for self-certifying compliance, encourages voluntary compliance with a minimum expenditure of resources. The States begin by sorting through their databases to identify owners and operators who should be in compliance with release detection requirements. Through a mass mailing, owners and operators are notified of their obligations and appropriate means for achieving compliance, and provided with a form on which the owner certifies the method used to achieve compliance. Non-responders are sent increasingly severe follow-up letters which have the effect of encouraging larger and larger numbers of the compliance group targeted to come into compliance or close tanks. Michigan has followed-up on this informal approach with formal enforcement, by inspecting non-responders and issuing compliance orders, while Arizona has continued with the mass mailing approach by sending administrative orders to recalcitrant violators.

A State may also take advantage of a permit program to convince violators to remedy major violations. As mentioned previously, the implementing agency in any California county can threaten to revoke permits or threaten to remove an UST system completely if major or repeated violations occur. Other States enforce their permit requirements through commercial vendors. In Iowa and Florida, for example, it is illegal for fuel vendors to fill an unregistered UST system. UST programs that encourage participation of local agencies such as fire departments may be able to employ the enforcement authorities of that agency to encourage compliance. For example, in Baltimore County, Maryland, the enforcement responses are tied to building permits. An UST system found to be leaking is considered to have violated the building permit, and the permit is subsequently revoked. Without a permit, the UST system cannot be operated, and its contents must be pumped out until a replacement permit is obtained (after corrective action).

For violations or releases that require cleanups, States may develop techniques that encourage the owner or operator to take responsibility for remedying releases. For example, Minnesota has a program that encourages voluntary cleanup from responsible parties without having to use traditional enforcement techniques. To provide an incentive, the State has a trust fund that reimburses costs to responsible parties who are in compliance when a release is discovered, as long as they cooperate with the State in achieving an agreed-upon level of cleanup. The "hammer" for encouraging voluntary compliance is an aggressive State cleanup and cost recovery program supplemented by penalties for unresponsive owners and operators. Florida has implemented a similar program that provides amnesty from cleanup costs as long as the owners have complied with certain requirements and have been cooperative. In addition to cost recovery programs that provide reimbursement or amnesty to cooperative owners or operators, some States provide no-cost oversight of corrective action if the responsible party cooperates.

2. Formal Enforcement Responses.

For an effective program, a State must have procedures for carrying out formal enforcement actions in certain situations. These enforcement actions may be needed to compel compliance with regulatory requirements, to compel corrective action, or to compel cost recovery. Formal enforcement responses generally include authority to issue civil administrative compliance orders or penalties. Although administrative authority is not required for program approval, EPA encourages States to obtain such authority (including penalty authority) as a cost-effective enforcement mechanism. In addition, judicial authorities, which are required for program approval, will be needed to address certain violations (e.g., a certain degree of environmental harm), and to back up other enforcement responses if compliance has not been achieved. States must also have adequate procedures for implementation of judicial authorities.

States can undertake to make "traditional" authorities an effective part of their UST program. For example, a State may want to develop streamlined administrative hearing procedures for minor violations, or to develop judicial case strategies or priorities with the Attorney General. Since these traditional approaches may be resource-intensive, States may wish to consider developing expedited formal enforcement procedures such as field citations and other alternative means of obtaining compliance. Regardless of the procedures chosen by the State, its enforcement program considered as a whole needs to meet the requirement of adequate enforcement of compliance.

In general, field citations are modified administrative orders issued on site by inspectors when violations are discovered. In general, a field citation can be any of a number of legal entities, including a notice of violation, an administrative order, a short-form settlement agreement, or a summons, but in each case the citation is issued on site by an inspector when a clear-cut violation is discovered. Using the citations, the inspector typically assesses a low to moderate penalty at the site and requires that violators correct the violation within a short time period. Appeal procedures can also be expedited, usually using informal conferences or specially-appointed administrative law judges, to review citations. New Mexico uses a two-pronged approach in its field citation program: non-correctable violations are assessed immediate penalties on-site, whereas, for correctable violations, the citation requires that the violation be addressed within thirty days and a certificate of compliance submitted or a compliance order and penalty will be issued. For States that have the necessary statutory authority, cease-and-desist orders are also an effective and efficient alternative to administrative orders for compelling compliance. Such orders may require violators to cease operation of their UST systems, may revoke the operating permit, or may require that

tanks be pumped until empty, or closed, if necessary. These cease-and-desist orders do not necessarily include a penalty, but are effective in reducing the environmental threat caused by the violation. The advantage of these less formal procedures is that they allow for tailored on-site settlement of the violation without requiring extensive administrative resources.

3. Enforcement Outreach.

As a supplement to compliance outreach, enforcement outreach can be a useful tool for encouraging compliance in any enforcement program. States can encourage compliance by publicizing enforcement responses. For example, the implementing agency could publicize violations in local or national newspapers. Currently, some State programs use press releases of patterns of violations to encourage marketers to assess their compliance status. For example, Rhode Island has had considerable success in influencing compliance efforts through adverse publicity stimulated by press releases accompanying violations. Alabama required a violator to place a statement in the **Alabama Oilmen's Newsletter** in which he admitted that he had violated the regulations and was taking actions to return to compliance.

If a State finds a pattern of violations among a chain of outlets of one owner or operator, the State could require that violator to initiate a self-auditing program in lieu of a highly-publicized, intensive State inspection. This type of enforcement outreach has been used in numerous enforcement settlements under the Toxic Substances Control Act, the Clean Air Act, and the Resource Conservation and Recovery Act.

CHAPTER 6. MEMORANDUM OF AGREEMENT

A. Explanation

The MOA specifies the roles and responsibilities of EPA and the State after approval of the State's program to operate in lieu of the Federal program. The EPA Regional Office (the Region) will discuss the details of particular components with the individual State to tailor the Agreement to the specific needs and aspects of the State program. The MOA is a vehicle for communicating the respective roles of the State and EPA, and clearly spelling out the purpose and limitations of that role.

1. Who Signs.
Generally, the MOA is negotiated between the State Director and the Regional Administrator and is drafted either by the State or the Region. (Each Region may decide this question for itself.) In cases in which two or more State agencies share considerable responsibilities for the functions described in the MOA, the director of the lead agency should sign the MOA with EPA. The lead agency may execute a Memorandum of Understanding (MOU) with the other implementing agencies. The MOA describes the coordination and implementation of those provisions of the MOA that concern more than one State agency. Agreements with local units of government need not be included in the MOA.

2. Federal/State Partnership.
EPA will maintain communication and provide support in order to assist the State in achieving its program objectives. The Regional role in this partnership includes: providing information and guidance regarding the Federal UST regulations; communicating national and Regional priorities; providing information on other successful State programs; and collecting information to assess the nation's progress in the implementation of the underground storage tank program. EPA must maintain reliable national data on underground storage tanks which will be used to advise the President, the Congress, and the public on the status of the Subtitle I UST program, and to support EPA's regulatory development efforts. EPA will first seek to obtain this data from the States when it decides what information is needed.

Perhaps the most important function described above is to provide technical guidance to the State, including information on alternative and effective UST technologies or corrective action approaches used in other States. The Regions will inform Headquarters of specific State needs as well. Headquarters will assemble this information for use in updating national program policies and priorities.

Approved States have primary responsibility for implementing and enforcing the UST program. They will work with the Regions in determining specific State priorities and goals on an annual basis under the grant negotiation process. The States are responsible for collecting and reporting information regarding the size of their UST population and compliance monitoring data. States also will provide input to the Regions with regard to further development of national program policy and future regulatory development.

3. State Program Appraisal Process.
OUST's program appraisal process has three objectives:

- Identify the levels of performance in key program areas;
- Assist and support States in improving their performance where needed; and

- Disseminate information on successful approaches to other States.

Regional offices, in particular the UST Program Managers, will have the primary responsibility for balancing the service and evaluation functions that are part of this process. They will use reporting information, on-site program reviews, service visits, self appraisals by States and other tools to determine the most pressing needs of the States for improvement and assistance. The Regional UST program staff work with other offices within the Region (for example, Grants, Financial Management, and Regional Counsel) to appraise performance in relevant program areas and to provide technical, legal and other assistance to the States. State visits and reviews by other Regional office staff should be coordinated with UST program reviews whenever possible in order to minimize the disruption of normal program activities in the States. At a minimum, UST Program Managers and the States should know of such visits far enough in advance to allow for adequate preparation by the States.

OUST's program appraisal process recognizes that State programs will be using a variety of approaches to meet the Federal program objectives. Therefore, expectations regarding State performance negotiated under grant workplans and cooperative agreements will be tailored as much as possible to reflect State-specific program implementation strategies. Reporting data on UST system ownership, releases, and clean-up action contributes to a comprehensive picture on the implementation of the UST program. In addition, such data may assist EPA in further rulemaking efforts. The appraisal process will rely on quantitative as well as qualitative assessments. The Regions will negotiate specific reporting requirements with each of their States and incorporate those requirements into the State grant workplans and cooperative agreements.

4. Compliance Monitoring and Enforcement.
State programs operate "in lieu of" the Federal government; consequently approved States have primary enforcement responsibility in the State. When requested, the Regions will be able to assist the States by providing legal and technical expertise, compliance outreach, and formal enforcement of the State's requirements.

The criteria for "adequate enforcement" have been designed to reflect the significant differences that may exist in the UST universe across the States. The goals of the UST enforcement program reflect an emphasis on promoting compliance within the UST universe.

The MOA is an appropriate vehicle for establishing the relationship between EPA and the State with respect to the State's enforcement program. The agreement provides performance expectations for the State to use as goals for achievements. The agreement enables the Region to evaluate the success of State enforcement programs without relying solely on more traditional measures of performance, for example, the number of enforcement actions taken in a given year.

One of the most important uses of the MOA is as a guarantee that the program will be effectively implemented by the State. First, it provides for Federal enforcement of the State program requirements if State enforcement is deemed insufficient. Federal enforcement of the State program is not likely to be an issue for most States, however, because the MOA is also used in performance reviews of the State program, usually conducted at mid-year and the end of the year. The MOA itself is also customarily reviewed at this time and decisions are made regarding any changes that need to be made. Because receipt of Federal grant money is contingent upon adherence to the terms of the MOA, there are substantial

incentives for the State to comply. Thus, the MOA is an agreement that assesses where the State program is, where it is going, and, through mid- and end-of-year reviews, ensures that its terms will be met because of the possibility that States not in compliance may lose their Federal UST program grant.

By the same token, however, the MOA can be a vehicle for States to demonstrate their commitment to the UST program by fully complying with its terms, or creatively using it to compensate for weaknesses in their programs, which are approvable despite the weaknesses. Such use of the MOA can help Regional UST staff feel more comfortable approving such programs, as they can be assured that program development will be an ongoing activity in the State and the State program will eventually be as effective as the Federal program. See paragraph 7 below for a more detailed discussion of creative use of the MOA.

5. Scope of the UST Program.
To receive program approval, a State program must include within its jurisdiction all of the categories of UST systems that are addressed within the scope of the Federal program for either petroleum tanks or hazardous substance tanks or both. While it is not encouraged, the Regions may in a few exceptional cases, approve a State program where the State does not have immediate jurisdiction over all categories of tanks. The Agreement will also spell out EPA's interim enforcement responsibilities with regard to those unregulated segments of the UST universe.

6. Variances.
State programs using variances may be approved under certain conditions. The objectives laid out in the State Program Approval Rule do not allow approval of State programs with standards less stringent than those at the Federal level. Ground-water area variances (for example, those that allow less stringent release detection in remote or low groundwater table areas) are prohibited, as well as **any** other variance that affords less stringent protection of human health and the environment. For example, the rule does not allow approval of State programs that allow less stringent requirements (such as less frequent release detection) in ground-water areas that are described or classified as less vulnerable, whether these variances are applied on a case-by-case or class basis.

A State program with a variance procedure may be approved if the State's eligibility criteria and procedures for reviewing site-specific or equivalent technology-type variances requests will result in no less stringent prevention, detection, and responses to releases. The State must not have any provisions in its program that allow less stringent variances to be granted. Furthermore, in the MOA, the State must agree to issue variances only in a manner that is no less stringent than the Federal program in protecting human health and the environment. More discussion of the general subject of variances and EPA's response to public comments on this aspect of the rule can be found in the preamble to the State Program Approval Rule (53 FR 37223).

Although no State program that includes a risk-based variance procedure can be approved (for example, a variance procedure that allows less stringent requirements in "less risky" situations), the Agency did approve the use of technology-based variances, and may approve State programs with such variances. Two examples of technology-based variances may be helpful. First, a State that allows owners and operators to use an alternative technology (for example, different release detection methods) may be no less stringent if each particular method can be shown to achieve the same level of performance as the methods allowed under the Federal program. The State may identify the approved methods in regulation or the State may decide instead simply to make provisions (in the form of a variance) to allow for the use

of alternatives as they are developed in the future and determined by the State to perform as well as the Federally-allowed methods. This variance could allow the use of any particular method in accordance with the conditions that are necessary to ensure that the requisite level of performance of that method is attained.

A second type of variance is the site-specific variance, where the State approves a variance from its regulations for a particular UST system based on site-specific circumstances. An instance in which a State could choose to allow such variances that would be no less stringent, for example, would be in cases where the State has determined that the nature of the soil at a particular site or type of site is sufficiently non-corrosive, such that the bare steel tanks or piping at that site will not leak due to corrosion during its operating life. As stated above, the terms of agreement on how variances will be issued by the State must be specified in the MOA.

7. Creative Use of the Memorandum of Agreement

Regional UST staff may be reluctant to approve State programs that diverge in some way from the Federal structure or that may appear to have limited staffing or funding. This need not be the case, however; through creative use of the Memorandum of Agreement between the Region and State, questions about the State program which might have led to doubts about its approvability may be sufficiently resolved so that approval can be granted.

For example, consider a State with a very small staff or limited budget that is seeking program approval. Both the Region and State want to see the State program approved, but the Region is reluctant to approve what may turn out to be a "paper" program that the State cannot enforce. Upon close scrutiny of the State program, however, the Region sees that the State is utilizing a number of innovative approaches to program implementation, including working closely with the Fire Marshal's office, Building Inspector, and Board of Health to ensure that it receives any new information that may affect the UST program; actively involving local entities such as industry representatives, community groups, local media, and government agencies such as the fire department in the UST program; and delivering presentations at oil industry and trade association meetings.

Such activities help compensate for the lack of staff and funding, and indicate that the State may indeed have the capabilities to run an effective UST program. In such cases, allowances for the lack of program resources can be made within the MOA and the program can be approved, as long as the Region is confident that it can work with the State to further develop program capabilities and provide support for continual improvement. States that consciously work to make the most of their limited resources are often able to implement a program comparable to that of a less diligent State with significantly more resources. The MOA may also be used to specify that the State shall seek additional resources over the next several years. The signed agreement should provide significant leverage for the State during legislative sessions.

Specifically, the MOA could be structured so that the State would be required to submit information on statewide compliance status, with the stipulation that if it is deemed unsatisfactory, the Region would be justified in stepping in to enforce compliance with the requirements. The MOA could also outline in some detail what form State program development would take, clearly defining the respective roles of the State and Region. The MOA could also outline what form continuing EPA oversight of the State program would take. In each case, the MOA could set forth provisions that increase the likelihood that the State program can be effectively implemented, despite the areas in which it diverges from or is less explicit

than the Federal program, provided, of course, that the State's requirements are no less stringent than the Federal performance objectives.

The Region may choose to use the MOA to spell out specific activities expected of States upon receipt of program approval. Some examples of such activities are provided below. It is important that Regions and States recognize the flexibility of the MOA and utilize that flexibility to the fullest extent possible, thus maximizing the benefits to their programs of "customized" MOAs.

- A promise from the State agency to attempt to obtain increased staffing and conduct other program development activities;
- A commitment from the State to develop guidance documents to clarify the intent of regulations;
- A promise that, where the State regulations allow variances as part of the program, such variances will not be granted unless they are implemented in a no less stringent manner and result in a no less stringent program;
- An explanation of implementation issues; specifically, an outline of when and how they intend to develop or clarify guidance materials to improve compliance status, or a specification of how a particular portion of the program could be implemented, e.g., the State fund; or
- A discussion of general program development issues. For example, the agreement could specify that the State will develop an automated data management system and pledge EPA support to assist in adapting the UST data management system to the State's specific needs. To date, most MOAs submitted by States have discussed what obligations the State has to EPA; States could use the MOA to include what obligations EPA has to the State in program implementation and development as well, especially in those programs where assistance is most needed.

The MOA can also be used to require States to report any program changes that may affect the approved Subtitle I program. EPA can then review those changes and determine whether the State must submit an application for program revision.

The structure of the sample MOA which follows this section should not be viewed as the only one allowable, but rather as a baseline upon which States and Regions can build. Writing the MOA should not be seen as a mere formality or paperwork exercise, but a chance to use this adaptable State Program Approval application component to promote flexibility in the structure of State programs. The MOA can be structured in such a way to help gain approval for programs that differ slightly from the Federal program or have minor weaknesses that can be corrected over time, as long as there are explicit pledges from both the State and Region to continuously work to solve existing problems and further develop a fully capable State UST program.

B. Sample Memorandum of Agreement

MEMORANDUM OF AGREEMENT
BETWEEN
The State of New Columbia
and
The United States Environmental Protection Agency
Region III

I. GENERAL

This Memorandum of Agreement (hereinafter "Agreement") establishes policies, responsibilities, and procedures pursuant to 40 CFR 281 for the State of New Columbia's Underground Storage Tank Program (hereinafter "State Program") approved under Section 9004 of Subtitle I of the Resource Conservation and Recovery Act (hereinafter "RCRA" or "the Act") of 1976 (Public Law 98-616, USC "6901 **et seq.**), as amended, and the United States Environmental Protection Agency (hereinafter "EPA") Regional office for Region III. This Agreement further sets forth the manner in which the State and EPA will coordinate in the State's administration of the State program.

This Agreement is entered into by the Director [or other title as appropriate] of **[State Agency]** (hereinafter "Director" or "the State") and the Regional Administrator, EPA Region III (hereinafter "Regional Administrator" or "EPA"). [Where State program responsibility is shared among two or more agencies, each of the agencies is to be identified here as a party of the Agreement and the Agreement must identify which of the agencies is responsible for each provision of the Agreement.]

For administrative purposes, the **[State Agency]** will serve as lead agency to simplify coordination and communication between the State and EPA. [This provision need not be included in the MOA where there is only one responsible State agency.]

Nothing in this Agreement shall be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities under Subtitle I of RCRA. Nothing in this Agreement shall be construed to contravene any provision of 40 CFR Parts 280 and 281.

The parties will review the Agreement jointly at least once a year. This Agreement may be modified upon the initiative of either party in order to ensure consistency with State program modifications made or for other purposes mutually agreed upon. Any revisions or modifications must be in writing and must be signed by the State and the Regional Administrator.

This Agreement will remain in effect until such time as State program approval is withdrawn by or is voluntarily transferred to EPA according to the criteria and procedures established in 40 CFR Part 281.60 and 281.61.

This Agreement shall be executed by the State and the Regional Administrator and shall become effective at the time the State's approval takes effect, which shall be the effective date of the approval as specified in the **Federal Register** notice announcing EPA's final decision to grant approval to the State.

II. POLICY STATEMENT

Each of the parties to this Agreement is responsible for ensuring that its obligations under Subtitle I of RCRA are met. Upon award of final approval by EPA, the State assumes primary responsibility for implementing the Subtitle I Underground Storage Tank Program within its boundaries. EPA retains its responsibility to ensure full and faithful execution of the requirements of Subtitle I of RCRA, including direct implementation in the event the State is unwilling or unable to act. The State and the Regional Administrator agree to maintain a high level of cooperation and coordination between their respective staffs in a partnership to assure successful and effective administration of the State program.

[Insert discussion on Regional and State roles and responsibilities with regard to partial approved State programs. Provide details on how the petroleum or hazardous substance UST systems will be managed in the approved State.]

EPA assumes a management role upon granting [interim] final approval to the State. EPA will review the State program in order to assist the State in implementing its program, to allow EPA to report to the President, the Congress, and the public on the achievements of the underground storage tank program, and to encourage the State and EPA to agree on desirable technical support and targets for joint efforts to prevent and mitigate environmental problems associated with improper management of underground storage tanks. Management will be accomplished by EPA through written reporting requirements, compliance and enforcement overview, and annual review of the State's program.

III. STATE PROGRAM REVIEW

The Regional Administrator will assess the State administration and enforcement of the underground storage tank program on a continuing basis for stringency with Subtitle I requirements, with this Agreement, and with all applicable Federal requirements and policies and for adequacy of enforcement. This assessment will be accomplished by EPA review of information submitted by the State in accordance with this Agreement and annual review of State program activities. The Regional Administrator may also consider, as part of this regular assessment, written comments about the State's program administration and enforcement that are received from regulated persons, the public, and Federal, State, and local agencies. Copies of any such comments received by the Regional Administrator will be provided to the State.

To ensure effective program review, the State agrees to allow EPA access to all files and other information requested by the Regional Administrator and deemed necessary for reviewing State program administration and enforcement.

Review of [State agency] files may be scheduled at quarterly intervals. Program review meetings between the State and the Regional Administrator or their assignees will be scheduled at reasonable intervals not less than annually to review specific operating procedures and schedules, to resolve problems and to discuss mutual program concerns. These meetings will be scheduled at least 15 days in advance unless agreed to differently. A tentative agenda for the meeting will be prepared by EPA.

IV. INFORMATION SHARING

A. General

As the national underground storage tank program matures, the respective roles and responsibilities in this State/Federal partnership will become more clear. As the respective information needs of the State and EPA evolve, changes to this section of the Agreement may be appropriate. During the annual review of this agreement, the State and Regional Administrator will carefully examine the following information sharing provisions for necessary revisions.

B. EPA

EPA will keep the State informed of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives, and any other factors that affect the State program. EPA will also provide general technical guidance to the State. EPA will share with the States any national reports developed by EPA from the data submitted through State reporting requirements.

EPA will make available to the State other relevant information as requested that the State needs to implement its approved program.

[Add specific language here regarding actions EPA agrees to pursue for the State in order for the State to accomplish its program development and implementation activities.]

C. State

The State agrees to inform the Regional Administrator of any proposed or adopted program changes that would affect the State's ability to implement the approved program. Program changes of concern include modification of the State's legal authorities (for example, statutes, regulations, and judicial or legislative actions affecting those authorities), modifications of memoranda of agreement or understanding with other agencies, and modifications of resource levels (for example, available or budgeted personnel and funds). The State recognizes that program revisions must be made in accordance with the provisions of 40 CFR Part 281.

The State will provide compliance monitoring and enforcement information to the Regional Administrator, as specified in the annual grant guidance, on a quarterly basis. The State agrees to provide EPA with copies of reports on data resulting from any compliance inspection and subsequent enforcement actions, if EPA requests such copies.

[Insert specific language here regarding specific program changes the State agrees to seek or adopt in order to improve its effectiveness; e.g., develop an automated data management system.]

D. National Data

EPA maintains certain national data on underground storage tanks. This data is used to report to the President, the Congress, and the public on the achievements of the underground storage tank program and to support EPA's regulatory development efforts. Whenever EPA determines that it needs to obtain certain information, EPA will first seek to obtain this information from the States. The State agrees to supply the Regional Administrator with this information if readily available and as resources allow. If the State is unable to provide the information or if it is necessary to supplement the State information, EPA may conduct a special survey or perform information collection site visits after notifying the State. EPA will share with the State any national reports developed by EPA as a result of such information collection.

E. Confidentiality

Any information obtained or used in the administration of the State program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing the information. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR Part 2.

V. COMPLIANCE MONITORING AND ENFORCEMENT

A. EPA

Nothing in this agreement shall restrict EPA's right to inspect any underground storage tank facility or bring enforcement action against any person believed to be in violation of the approved State underground storage tank program. Before conducting an inspection of a facility, the Regional Administrator will normally give the State at least 7 days notice of the intent to inspect. [The Regional Administrator and State may agree on a longer period of time in order to allow the State the opportunity to conduct the inspection.] If the State performs a compliance inspection and submits a report and relevant data thereto within that time to EPA, no EPA inspection will be made, unless the Regional Administrator deems the State report and data to be inadequate. In case of an imminent hazard to human health or the environment, the Regional Administrator may shorten or waive the notice period.

The Regional Administrator may take enforcement action against any person determined to be in violation of Subtitle I of RCRA in accordance with section 9006. EPA also retains its right to issue orders and bring actions under Section 9003(h) or 9006 of Subtitle I of RCRA and any other applicable Federal statute. With regard to Federal enforcement, it is EPA's policy not to take such action where a State has taken appropriate enforcement action. Before issuing a compliance order under Section 9006, EPA will give notice to the State.

B. State

The State agrees to carry out an effective program for monitoring the compliance by owners and operators of facilities with applicable program requirements. As part of this program, the State will conduct compliance inspections and use other mechanisms to assess compliance with underground storage tank standards, compliance schedules, and all other program requirements.

The State agrees to develop an appropriate enforcement response against all persons in violation of underground storage tank standards (including notification requirements), compliance schedules, and all other program requirements, including violations detected by State compliance inspections. The State will maintain procedures for receiving and ensuring proper consideration of information about violations submitted by the public.

The State agrees to retain all records for at least 3 years unless there is an enforcement action pending. In that case all records will be retained until such action is resolved.

The terms set forth in this Agreement are intended solely for the purpose of memorializing the parties' understanding of their respective roles and commitments in the administration of the Underground Storage Tank Program. They are not intended, and cannot be relied upon, to create any rights, substantive

or procedural, enforceable by any other party in litigation with either of the parties to this agreement. The parties reserve the right to modify this agreement in accordance with its terms without public notice.

STATE OF: _____

U.S. ENVIRONMENTAL PROTECTION AGENCY

AGENCY: _____ REGION: _____

BY: _____ BY: _____

DATE: _____ DATE: _____

CHAPTER 7. PROGRAM DESCRIPTION

A. Introduction

This section of the application describes the scope and organization of the State UST program and the resources that are available to run it. This information is needed to enhance the Agency's and the public's understanding of the State program, and to ensure that a basic program exists. EPA expects that the information requested in these questions will rarely be used as grounds for program approval or disapproval.

The questions covered in the Program Description are grouped into four major categories: general information; program scope; program organization and structure; and resource information. The first two sections request information regarding the range of the State's jurisdiction over USTs and whether the State program is a "partial" or "complete" program. For example, a State may regulate an UST universe that is broader in scope than the Federal program. (Program scope is also covered in Chapter 4 on the Attorney General's Statement.) These questions also inquire about the extent of the State's authority to regulate Indian lands.

The third category in the Program Description asks for information regarding the organization and structure of any State and local implementing agencies administering the UST program within a State. A State should identify the major jurisdictional responsibilities, program operation roles, and lines of communication and authority of these implementing agencies. It should also provide an organizational chart depicting the role and responsibility of each State agency that is involved in UST implementation.

The fourth section of the Program Description asks the State to describe its staff and funding resources with any existing restrictions on the utilization of either. In addition, the State should provide estimates of various administrative and implementation costs involved in running a State UST program.

The purpose of the Program Description is two-fold. First, the information provided by the State in these sections will enhance EPA's and the general public's understanding and knowledge of the content and structure of that particular program. The overall success of a nationwide UST program depends heavily on the sharing of such information among States in order that they may draw from one another's experiences in developing and improving their own programs.

Second, EPA can use this information as a yardstick by which to measure the nature and scope of future improvements made in State UST programs. The data that the States provide in their Program Descriptions will describe an initial "baseline" UST program that the Agency can compare with future programs.

B. Local Implementation

Although EPA gives States the primary responsibility to implement and enforce their UST programs, the Agency strongly encourages States to involve local agencies in this process. If a State chooses to involve local agencies in the implementation of its UST program, it may do so in one of two possible ways.

First, a State may request assistance from local agencies and allow them to conduct activities **under State authorities and requirements**. In such instances, States are not required to provide detailed discussion of

local agency implementation assistance in their applications. If the State program has already been approved, the State can inform the EPA Regional Office of the nature of the local involvement in its implementation and enforcement programs. In summary, if local implementation activities supplement State activities but do not replace State authorities and requirements, no formal approval is required by EPA.

Second, a State develops an approvable program. Within the context of an approvable program, the State may also permit local governments to develop their own authorities and procedures as long as those requirements are no less stringent than the approved State program. In this case, the State agency retains the ultimate responsibility for ensuring that the UST program implemented in the State is no less stringent in all areas of the Federal program and provides for adequate enforcement. In this example, EPA interacts with the State agency regarding its approved program. It is the State's responsibility to interact with local governments.

Chapter 2 of this Handbook provides additional discussion of the program revision process, as does the preamble to the State Program Approval Rule (53 FR 37329).

C. Program Description Questions

1. General Questions.

a. Questions

1. Type of approval requested:
    1. Final _____ or Interim _____.
    2. Complete (Petroleum & Hazardous Substances)_____

       or Partial (Petroleum) _____
       or Partial (Hazardous Substances) _____.

2. Does the State have any existing agreements with Indian tribes related to jurisdiction on Indian lands for environmental programs? If so, attach agreements and briefly describe.

b. Explanation

States may choose to apply for approval of a program that regulates either petroleum or hazardous substances or both. Approval of a partial program authorizes a State to run the program only for the specific type of substance indicated.

The information in question 2 is necessary so that EPA can identify Indian lands in the State that it has responsibility for. EPA does not expect States without authorities or agreements for Indian lands to secure these authorities and agreements in order to receive approval. Pursuant to Federal law, EPA cannot approve a State's assertion of jurisdiction over Indian lands absent a clear and unambiguous expression of intent to confer State jurisdiction through either a Federal statute or an applicable treaty with an affected tribe. (Note that RCRA itself cannot be deemed such an expression of intent.) In the absence of such a Federal statute or treaty, EPA has exclusive jurisdiction over Indian lands.

2. Program Scope.

a. Questions

3. Describe the scope of the UST universe covered by the State program. Include the estimated number of petroleum UST systems, hazardous substance UST systems, and any other information affecting the State's regulation of this universe.

b. Explanation

By "UST universe", EPA means all of the categories or types of UST systems including those not currently regulated under Subtitle I. The USTs regulated under Subtitle I are a subset of the tanks in the UST universe. What tanks are included in this subset, or the "scope" of the Federal UST program, is defined by those tanks that are excluded from the program by statute or through EPA regulations. In other words, if the type of tank in question is not listed as one of those that is excluded, then it is within the jurisdiction of the Federal program. Although deferred tanks are within the jurisdiction of the Federal program, they are subject only to the requirements of Subparts A (interim prohibition) and F (corrective action) of the Federal Technical Standards. Exhibit 1 lists those UST systems that are outside the scope of the Federal UST program.

In the program description, the State must describe the scope of the State UST program and provide the information requested on the estimated size of the universe. This information does not duplicate the program scope section required in the Attorney General's Statement. The Attorney General certifies that the State has authority to regulate those tanks within the scope of the State program and that it includes all those tanks regulated under the Federal program. The program description provides a more useful description of what the scope of the State program is in terms of its size and categories of tanks.

Exhibit 1.

UST Systems Outside the Scope of the Federal UST Universe

Exclusions

Excluded by Congress through the definition of UST	
farm USTs < 1100 gallons	stormwater and wastewater collection systems
heating oil USTs	flow-thru process tanks
septic tank systems	oil and gas production facilities
pipelines	USTs in underground areas
impoundments, pits, ponds, and lagoons	

Excluded by EPA through applicability section 281.10(b)	
hazardous waste USTs	USTs < 110 gallons
wastewater treatment tanks under the Clean Water Act	de minimus concentration USTs
equipment and machinery tanks	emergency overflow USTs

Deferrals

Only Interim Prohibition and Corrective Action Standards Apply
waste water treatment tanks not under the Clean water Act
radioactive material USTs
emergency generator USTs at nuclear power plants
airport hydrant fuel systems
field-constructed USTs

Release Detection Standards are Deferred; All Other Standards Apply
emergency generator USTs

In the program description, States must also identify those areas where their UST programs are broader in scope than the Federal program. For example, a State's statutes and laws may cover a larger regulated UST community (for example, heating oil tanks) than is addressed by the Federal program, and should be clearly identified in response to Question 4.

3. Organization and Structure of Program.

a. Questions

4. Indicate the lead agency for facilitating communications between EPA and the State. If there is a separate agency for coordinating Trust Fund activities, indicate that here also.

5. Include a simple chart that describes the organizational structure of the complete State underground storage tank program, including all implementing agencies.

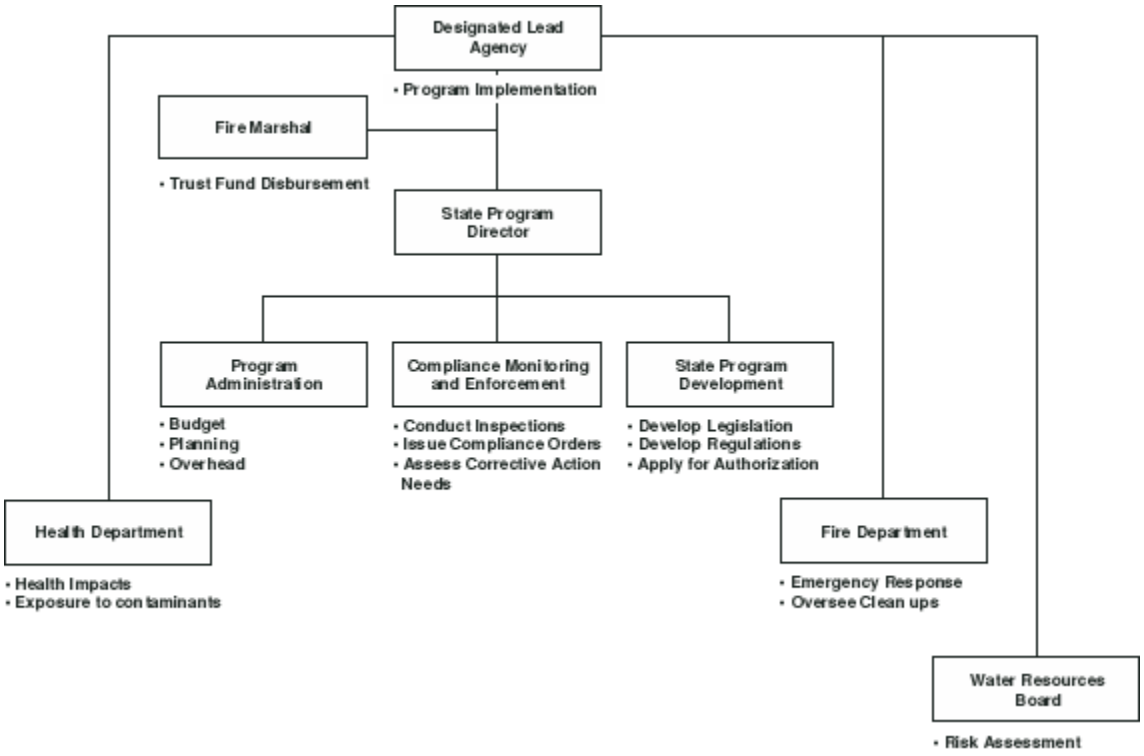
6. Describe the procedures for coordinating the State implementing agencies.

b. Explanation

The program description should include an explanation of the organization and structure of the State agencies with responsibility for administering the program. The jurisdiction and responsibilities of State implementing agencies should be delineated, appropriate procedures for coordination set forth, and one State agency designated as a "lead agency" to facilitate communications between EPA and the State. The identification of the lead agency is intended to simplify coordination and communication between the State and EPA. The "lead agency" will be the agency that other State agencies and EPA contact when an issue concerns one or more State agencies or when it is unclear which State agency should be contacted concerning a particular issue.

The organizational structure chart (see sample in Exhibit 2 below) should include each agency involved in the implementation of the State UST program, and describe the relationship and overall responsibilities of each State and local agency that is involved in UST implementation. For example, if the State UST program relies heavily on local programs, the State should include a description of those organizations in questions 5 and 6.

Exhibit 2.
Sample State UST Program Organization



All of the information requested in this section will be used to inform the public about the State underground storage tank program. In addition, this information will assist EPA in working with the States to implement their UST programs.

4. Resource Information.

a. Questions

7. For each State implementing agency with responsibilities for developing, regulating, enforcing, or administering the underground storage tank program, please estimate the total dollar budget and number of staff assigned to the underground storage tank program.

8. Please provide an estimate of the administrative and implementation costs of the State's underground storage tank program on an annual basis.

9. Indicate current Federal, State and local funding sources, with approximate amounts for each. Please explain any restrictions or limitations regarding these funding sources.

b. Explanation

If a State is formally delegating authority to local agencies, the State should include information on local resources, staffing, and budget in the program description. States should note that local resource estimates are not required as a condition of approval. However, if the State uses local agencies to help implement its program and feels that a description of those agencies is necessary for a complete understanding of the entire UST program organization, the State may include information regarding local government participation in response to Questions 7, 8, and 9. The resource estimates provided in response to the questions in this section will not be judged with any upper or lower bounds for approval or disapproval. The next section of this chapter discusses how EPA will conduct capabilities assessments to ensure that State UST programs are not "paper programs."

Implementation costs are the direct costs incurred in developing and implementing State programs. Some examples include the cost of conducting inspections, writing field citations, issuing permits, reviewing tank test results, working with the State legislature, preparing program approval applications, and similar activities. Administrative costs, on the other hand, include indirect program expenses such as the following examples: developing a budget, providing clerical support, negotiating State grants and cooperative agreements, testifying to State legislatures on program accomplishments, maintaining supplies, etc.

D. Capabilities Assessment

As one tool to assist Regional UST personnel in developing and approving State UST programs, OUST, with input from Regional and State UST staff, has developed the "State UST Program Implementation Activities" charts, or "capabilities matrices" (see Appendix G). These matrices were developed in response to Regional staff requests for additional guidance and tools for determining the capabilities of and approving State programs. The purpose of these matrices, their structure, and how they can be used is described below.

1. Purpose of the Capabilities Matrices.
The State program approval regulations establish environmental performance objectives in key program areas. To become approved, States must have requirements that meet these objectives in each area and they must demonstrate the ability to undertake "adequate enforcement of those requirements." These performance objectives are designed to give States considerable flexibility in developing a regulatory program that meets the specific needs of the State. Thus, unlike many other EPA programs, EPA is not requiring that States match the Federal technical regulations line-by-line.

Many Regions have expressed concern over how to determine whether a particular State has the capability to implement an effective program. Regions were particularly concerned about States that meet the performance objectives in the State program approval regulations, but might not have the resources to make their regulations effective. For example, a State may have corrective action regulations that meet all the criteria for the corrective action objective in the State program approval regulations, but not have sufficient staff to oversee corrective actions, review corrective action plans, or prepare information to guide responsible parties through the corrective action process. In effect, the State may only have a "paper" program.

The capabilities matrices are designed to: (1) assist the Regions in working with States to develop the capabilities necessary to implement the regulations, and (2) to assist the Regions in reviewing State applications to determine if the State has the necessary capabilities for an effective program. The matrices accomplish this by describing the various options a State might use in implementing requirements in each of the key program areas. A particular State is not required to use all or any of these specific options in implementing a program. Instead, these options illustrate the numerous approaches that can be taken to run an effective program.

The matrices do not establish a specific number to define what is an approvable level of State program staffing and resources. They are designed to assist in the development of State programs without establishing such a number. As the matrices demonstrate, program staffing and resources can only be determined based on what approach the State chooses to use. There is no "minimum" number for these implementation activities. It is the responsibility of the Regions to work with the States in assessing the acceptable level of program staffing and resources.

2. Structure of the Capabilities Matrices.
A matrix has been developed for each of the State program approval objectives including:

- Upgrading Existing UST Systems,
- New UST Systems and Notification,
- General Operating Requirements,
- Release Detection,
- Release Reporting, Investigation, and Confirmation,
- Release Response and Corrective Action,
- Out-of-Service UST Systems and Closure, and
- Financial Responsibility for USTs Containing Petroleum.

For each of these program areas, the matrix is divided into three or four categories of implementation activities. For example, the closure matrix is divided into the following categories: (1) informing owners

and operators of the closure requirements, (2) validating proper closure, and (3) taking action against violators of the closure requirements. Under each of these categories a number of different approaches for achieving the objective for that category are listed. Thus, the "taking action against violators of closure requirements" category includes such activities as issuing expedited administrative orders, placing a lien on the property, and establishing training programs for fire and police departments to recognize illegal closure activities.

3. Use of the Capabilities Matrices.
As mentioned above, the capabilities matrices can be used in two important ways. First, they can be used as a planning tool at the beginning of the State program approval process. The information may be used by Regions to work with a State in developing a State program and a State program approval application. For example, if a particular State is weak in its capabilities to validate proper closure, the matrices can help identify realistic alternative methods for achieving this goal given the State's resource and staffing constraints (e.g., delegating inspections to local governments). This will, in turn, result in better State program approval applications and will ensure that the State programs have developed not only the necessary regulatory requirements, but the actual capabilities to implement those regulations.

Second, after receiving a State program approval application, Regional staff may use the matrices to evaluate whether the State has the necessary capabilities to run an effective UST program. The description of a State's capabilities will likely be included in the "Program Description" and "Demonstration of Adequate Enforcement Procedures" sections of the State application. Regional staff can use the matrices to determine whether a State has adequately developed policies, procedures, and capabilities to address the major program areas. Again, a State is not required to perform all or any specific activity in the matrices. However, States should be undertaking a sufficient number of these activities to make the regulations effective. The determination of what is a "sufficient" number is a Regional decision.

As an example of how the matrices might be applied, consider two States that each submit applications containing closure requirements that are identical to the Federal requirements (i.e., both States meet the closure objective). Using the closure matrix in conjunction with the review of the application will help determine that State A is conducting:

1. Two types of activities to inform owners and operators of the requirements:
    - Employing mass mailings to the regulated community; and
    - Delivering presentations at oil industry and trade association meetings.
2. Three types of activities to validate proper closure:
    - Inspectors oversee all closure activities;
    - Local agency staff monitor closure activities; and
    - Owners and operators must place a notice on their property deed describing the specific location of the abandoned tank, method of closure, and proof of closure certification.
3. Three types of actions against violators of the closure requirements:
    - Issuing administrative notices of violation, specifying closure violations, and required compliance schedule;
    - Issuing administrative or judicial orders; and
    - Publishing newspaper and journal articles on violator and associated enforcement action.

State B is conducting:

1. One type of activity to inform owners and operators of the requirements:
    - Employing mass mailings.

State B is not undertaking any activities to validate proper closure or taking action against violators of the closure requirements.

State A is actively ensuring that the closure requirements are well known among the regulated community, and that violators are detected and enforced against. State A would appear to have the necessary capabilities in the closure area to implement an approved program. State B, however, is not undertaking any activities to discover or take action against violators and therefore, may not have the necessary capabilities in the closure area to implement an approved program. This example demonstrates how the matrices may be used in assessing State applications.

Because of the numerous different approaches that can be taken to run an UST program, the capabilities matrices may not include all the possible activities a State could be undertaking. The matrices are not meant to limit the types of activities States can perform. As additional activities are identified by OUST, the Regions, and the States, the matrices will be updated. The matrices are viewed as a continuously evolving tool to assist the Regions and States in developing and improving State UST programs.

APPENDIX A: Sample Application for Approval of State Underground Storage Tank Programs

GOVERNOR'S LETTER AND ATTORNEY GENERAL'S STATEMENT

[Insert Governor's letter and the
Attorney General's certification here in that order.]

New UST Systems and Notification
Objective §281.30

The State must have requirements that ensure that all new UST systems conform with the following:	Cite Regulation	Cite Statute
(a) Be designed, constructed, and installed in a manner that will prevent releases for their operating life due to manufacturing defects, structural failure, or corrosion. [Note: Codes of practice developed by nationally-recognized organizations may be used to demonstrate that the State program requirements are no less stringent in this area.]		
(b) Be provided with equipment to prevent spills and tank overfills when new tanks are installed or existing tanks are upgraded, unless the tank does not receive more than 25 gallons at one time.		
(c) All UST system owners and operators must notify the implementing State agency of the existence of any new UST system using a form designated by the State agency.		

Please put explanations of how State requirements meet this objective on a separate page, as well as a detailed description of areas where the State program is more stringent or broader in scope than the Federal program, including specific statutory and regulatory citations.

Upgrading Existing UST Systems
Objective §281.31

	Cite Regulation	Cite Statute
The State must have requirements that ensure existing UST systems will be replaced or upgraded before December 22, 1998, to prevent releases for their operating life due to corrosion, and spills or overfills.		

Please put explanations of how State requirements meet this objective on a separate page, as well as a detailed description of areas where the State program is more stringent or broader in scope than the Federal program, including specific statutory and regulatory citations.

General Operating Requirements
Objective §281.32

The State must have requirements that ensure all new and existing UST systems conform to the following:	Cite Regulation	Cite Statute
(a) Prevent spills and overfills by ensuring that the space in the tank is sufficient to receive the volume to be transferred and that the transfer operation is monitored constantly;		
(b) Where equipped with cathodic protection, be operated and maintained by a person with sufficient training and experience in preventing corrosion, and in a manner that ensures that no releases occur during the operating life of the UST system [Note: Codes of practice developed by nationally-recognized organizations and national independent testing laboratories may be used to demonstrate the State program requirements are no less stringent.];		
(c) Be made of or lined with materials that are compatible with the substance stored;		
(d) At the time of upgrade or repair, be structurally sound and upgraded or repaired in a manner that will prevent releases due to structural failure or corrosion during their operating lives;		
(e) Have records of monitoring, testing, repairs, and closure maintained that are sufficient to demonstrate recent facility compliance status, except that records demonstrating compliance with repair and upgrading requirements must be maintained for the remaining operating life of the facility. These records must be made readily available when requested by the implementing agency.		

Please put explanations of how State requirements meet this objective on a separate page, as well as a detailed description of areas where the State program is more stringent or broader in scope than the Federal program, including specific statutory and regulatory citations.

Release Detection
Objective §281.33

(a) Release detection requirements for owners and operators must consist of a method, or combination of methods, that is:	Cite Regulation	Cite Statute
(1) capable of detecting a release of the regulated substance from any portion of the UST system that routinely contains regulated substances -- as effectively as any of the methods allowed under the Federal Technical Standards -- for as long as the UST system is in operation. In comparing methods, the implementing agency shall consider the size of release that the method can detect and the speed and reliability with which the release can be detected.		
(2) designed, installed, calibrated, operated and maintained so that releases will be detected in accordance with the capabilities of the method;		
(b) Release detection requirements must, at a minimum, be scheduled to be applied at all UST systems:	**Cite Regulation**	**Cite Statute**
(1) immediately when a new UST system is installed:		
(2) on an orderly schedule that completes a phase-in of release detection at all existing UST systems (or their closure) before December 22, 1993, except that release detection for the piping attached to any existing UST that conveys a regulated substance under greater than atmospheric pressure must be phased-in		

before December 22, 1990.		
(c) All petroleum tanks must be sampled, tested, or checked for releases at least monthly, except that:	**Cite Regulation**	**Statute**
(1) new or upgraded tanks (that is, tanks and piping protected from releases due to corrosion and equipped with both spill and overfill prevention devices) may temporarily use monthly inventory control (or its equivalent) in combination with tightness testing (or its equivalent) conducted every 5 years for the first 10 years after the tank is installed or upgraded, or until December 22, 1998, whichever is later; and		
(2) existing tanks unprotected from releases due to corrosion or without spill and overfill prevention devices may use monthly inventory control (or its equivalent) in combination with annual tightness testing (or its equivalent) until December 22, 1998.		
(d) All underground piping attached to the tank that routinely conveys petroleum must conform to the following:	**Cite Regulation**	**Statute**
(1) if the petroleum is conveyed under greater than atmospheric pressure: (i) the piping must be equipped with release detection that detects a release within an hour by restricting or shutting off flow or sounding an alarm; and (ii) the piping must have monthly monitoring applied or annual tightness tests conducted.		
(2) if suction lines are used: (i) tightness tests must be conducted at least once every 3 years, unless a monthly method of detection is applied to this piping; or (ii) the piping is designed to allow the contents of the pipe to drain back into the storage tank if the suction is released and is also designed to allow an inspector to immediately determine the integrity of the piping system.		
(e) All UST systems storing hazardous substances must meet the following:	**Cite Regulation**	**Statute**
(1) all existing hazardous substance UST systems must comply with all the requirements for petroleum UST systems in sections 281.33(c) and (d) above, and after December 22, 1998, they must comply with the following subsection (e)(2).		
(2) all new hazardous substance UST systems must use interstitial monitoring within secondary containment of the tanks and the attached underground piping that conveys the regulated substance stored in the tank, unless the owner and operator can demonstrate to the State (or the State otherwise determines) that another method will detect a release of the regulated substance as effectively as other methods allowed under the State program for petroleum UST systems and that effective corrective action technology is available for the hazardous substance being stored that can be used to protect human health and the environment.		

Please put explanations of how State requirements meet this objective on a separate page, as well as a detailed description of areas where the State program is more stringent or broader in scope than the Federal program, including specific statutory and regulatory citations.

Release Reporting, Investigation, and Confirmation
Objective §281.34

All owners and operators must conform with the following:	Cite Regulation	Cite Statute
(a) Promptly investigate all suspected releases, including:		
(1) when unusual operating conditions, release detection signals and environmental conditions at the site suggest a release of regulated substances may have occurred; and		
(2) when required by the implementing agency to determine the source of a release having an impact in the surrounding area; and		
(b) Promptly report all confirmed underground releases and any spills and overfills that are not contained and cleaned up.		
(c) Ensure that all owners and operators contain and clean up unreported spills and overfills in a manner that will protect human health and the environment.		

Please put explanations of how State requirements meet this objective on a separate page, as well as a detailed description of areas where the State program is more stringent or broader in scope than the Federal program, including specific statutory and regulatory citations.

Release Response and Corrective Action
Objective §281.35

The State must have requirements that ensure:	Cite Regulation	Cite Statute
(a) All releases from UST systems are promptly assessed and further releases are stopped;		
(b) Actions are taken to identify, contain and mitigate any immediate health and safety threats that are posed by a release (such activities include investigation and initiation of free product removal, if present);		
(c) All releases from UST systems are investigated to determine if there are impacts on soil and ground water, and any nearby surface waters. The extent of soil and ground-water contamination must be delineated when a potential threat to human health and the environment exists.		
(d) All releases from UST systems are cleaned up through soil and ground water remediation and any other steps, as necessary to protect human health and the environment;		
(e) Adequate information is made available to the State to demonstrate that corrective actions are taken in accordance with the requirements of (a) through (d) of this section. This information must be submitted in a timely manner that demonstrates its technical adequacy to protect human health and the environment; and		
(f) In accordance with section 280.67, the State must notify the affected public of all confirmed releases requiring a plan for soil and ground water remediation, and upon request provide or make available information to inform the interested public of the nature of the release and the corrective measures planned or taken.		

Please put explanations of how State requirements meet this objective on a separate page, as well as a detailed description of areas where the State program is more stringent or broader in scope than the Federal program, including specific statutory and regulatory citations.

Out-of-Service UST Systems and Closure
Objective §281.36

The State must have requirements that ensure UST systems conform with the following:	**Cite**	
	Regulation	**Statute**
(a) All new and existing UST systems temporarily closed must:		
(1) continue to comply with general operating requirements, release reporting and investigation, and release response and corrective action;		
(2) continue to comply with release detection requirements if regulated substances are stored in the tank;		
(3) be closed off to outside access; and		
(4) be permanently closed if the UST system has not been protected from corrosion and has not been used in one year, unless the State approves an extension after the owner and operator conducts a site assessment.		
(b) All tanks and piping must be cleaned and permanently closed in a manner that eliminates the potential for safety hazards and future releases. The owner or operator must notify the State of permanent UST system closures. The site must also be assessed to determine if there are any present or were past releases, and if so, release response and corrective action requirements must be complied with.		
(c) All UST systems taken out of service before December 22, 1988, must permanently close in accordance with paragraph (b) of this section when directed by the State.		

Please put explanations of how State requirements meet this objective on a separate page, as well as a detailed description of areas where the State program is more stringent or broader in scope than the Federal program, including specific statutory and regulatory citations.

Financial Responsibility for USTs Containing Petroleum
Objective §281.37

(a) State requirements for financial responsibility must ensure that:	**Cite**	
	Regulation	**Statute**
(1) owners and operators have $1 million per occurrence for corrective action and third-party claims in a timely manner to protect human health and the environment;		
(2) owners and operators not engaged in petroleum production, refining, and marketing and who handle a throughput of 10,000 gallons of petroleum per month or less have $500,000 per occurrence for corrective action and third-party claims in a timely manner to protect human health and the environment;		
(3) owners and operators of 1 to 100 petroleum USTs must have an annual aggregate of $1 million; and		
(4) owners and operators of 101 or more petroleum USTs must have an annual aggregate of $2 million.		
(b) Phase-in requirements. Financial responsibility requirements for petroleum		

UST systems must, at a minimum, be scheduled to be applied at all UST systems on an orderly schedule that completes a phase-in of the financial responsibility requirements within the time allowed in the Federal regulations under 40 CFR §280.91.		
(c) States may allow the use of a wide variety of financial assurance mechanisms to meet this requirement. Each financial mechanism must meet the following criteria: be valid and enforceable; be issued by a provider that is qualified or licensed in the State; not permit cancellation without allowing the State to draw funds; ensure that funds will only and directly be used for corrective action and third-party liability costs; and require that the provider notify the owner or operator of any circumstance that would impair or suspend coverage.		
(d) States must require owners and operators to maintain records and demonstrate compliance with the State financial responsibility requirements, and these records must be made readily available when requested by the implementing agency.		

Please put explanations of how State requirements meet this objective on a separate page, as well as a detailed description of areas where the State program is more stringent or broader in scope than the Federal program, including specific statutory and regulatory citations.

PROGRAM SCOPE

[Insert Program Scope discussion here.]

Legal Authorities for Compliance Monitoring
(§281.40)

The State must have the following specific compliance monitoring authorities:	**Cite**	
	Regulation	**Statute**
(a) Any authorized representative of the State engaged in compliance inspections, monitoring, and testing must have authority to obtain by request any information from an owner or operator with respect to the UST system(s) that is necessary to determine compliance with the regulations.		
(b) Any authorized representative of the State must have authority to require an owner or operator to conduct monitoring or testing.		
(c) Authorized representatives must have the authority to enter any site or premises subject to UST system regulations or in which records relevant to the operation of the UST system(s) are kept, and to copy these records, obtain samples of regulated substances, and inspect or conduct the monitoring or testing of UST system(s).		

Please put explanations of how State requirements meet this objective on a separate page, as well as a detailed description of areas where the State program is more stringent or broader in scope than the Federal program, including specific statutory and regulatory citations.

Legal Authorities for Enforcement Response
(§281.41)

The State must have the following specific enforcement response authorities for State program approval:	Cite Regulation	Cite Statute
(a) Any State agency administering a program must have the authority to implement the following remedies for violations of State program requirements:		
(1) To restrain immediately and effectively any person by order or by suit in State court from engaging in any unauthorized activity that is endangering or causing damage to public health or the environment;		
(2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement;		
(3) To assess or sue to recover in court civil penalties as follows: (i) Civil penalties for failure to notify or for submitting false information pursuant to tank notification requirements must be capable of being assessed up to $5,000 or more per violation. (ii) Civil penalties for failure to comply with any State requirements or standards for existing or new tank systems must be capable of being assessed for each instance of violation, up to $5,000 or more for each tank for each day of violation. If the violation is continuous, civil penalties shall capable of being assessed up to $5,000 or more for each day of violation.		

Please put explanations of how State requirements meet this objective on a separate page, as well as a detailed description of areas where the State program is more stringent or broader in scope than the Federal program, including specific statutory and regulatory citations.

Public Participation in Enforcement Proceedings
(§281.42)

Any State administering a program must provide for public participation in the State enforcement process by providing any one of the following three options:	Cite Regulation	Cite Statute
(a) Authority that allows intervention analogous to Federal Rule 24(a)(2), and assurance by the appropriate State enforcement agency that it will not oppose intervention under the State analogue to Rule 24(a)(2) on the ground that the applicant's interest is adequately represented by the State.		
(b) Authority that allows intervention as of right in any civil action to obtain the remedies specified in 281.41 by any citizen having an interest that is or may be adversely affected; or		
(c) Assurance by the appropriate State agency that: (1) It will provide notice and opportunity for public comment on all proposed settlements of civil enforcement actions (except where immediate action is necessary to adequately protect human health and the environment); (2) It will investigate and provide responses to citizen complaints about violations; and (3) It will not oppose citizen intervention when permissive intervention is allowed by statute, rule, or regulation.		

Please put explanations of how State requirements meet this objective on a separate page, as well as a detailed description of areas where the State program is more stringent or broader in scope than the Federal program, including specific statutory and regulatory citations.

DEMONSTRATION OF PROCEDURES FOR ADEQUATE ENFORCEMENT

I. COMPLIANCE MONITORING

A. Purpose
The implementing agency must have compliance monitoring procedures for collecting and maintaining data on violators and monitoring their and the rest of the regulated community's compliance status over time. Specifically, States must develop procedures in each of the following four areas: record review; inspections; public reporting; and data maintenance.

B. Explanation

II. ENFORCEMENT RESPONSE

A. Purpose
The implementing agency must have procedures to exercise legal enforcement authorities against violators, bring them into compliance, and deter other potential violators.

B. Explanation

PROGRAM DESCRIPTION

General

1. Type of approval requested:

(check one)	**(check one)**
Interim _____	Complete _____
Final _____	Partial (Petroleum) _____
	Partial (Hazardous Substances) _____

2. Does the State have any existing agreements with Indian tribes? If so, attach agreements and briefly describe.

Program Scope

3. Describe the UST universe covered by the State program. Include the estimated number of petroleum UST systems, hazardous substance UST systems, and any other information affecting the State's regulation of this universe.

Organization and Structure of State Program

4. Indicate the lead agency for facilitating communications between EPA and the State. If there is a separate agency for

5. Include a simple chart that describes the organizational structure of the complete State underground storage tank program, including all implementing agencies.

6. Describe the procedures for coordinating the State implementing agencies.

Resource Information

7. For each State implementing agency with responsibilities for developing, regulating, enforcing, or administering the underground storage tank program, please estimate the total dollar budget and number of staff assigned to the underground storage tank program.

8. Please provide an estimate of the administrative and implementation costs of the State's underground storage tank program on an annual basis.

9. Indicate current Federal, State, and local funding sources, with approximate amounts for each. Please explain any restrictions or limitations regarding these funding sources.

APPENDIX B: Subtitle I -- Regulation of Underground Storage Tanks

Subtitle I is part of the Hazardous and Solid Waste Amendments (HSWA) passed in 1984. These amendments to the Resources Conservation and Recovery Act (RCRA) of 1976 include requirements for tank notification, interim prohibition, new tank standards, reporting and record keeping for existing tanks, corrective action, financial responsibility, compliance monitoring and enforcement, and approval of State programs. The law also required EPA to develop a comprehensive program for the regulation of UST systems "as may be necessary to protect human health and the environment."

The text of Subtitle I is available from the Government Printing Office. For legal purposes you should always refer to a printed copy produced by the Government Printing Office (GPO). The relevant sections are 40 CFR 280.200 - 280.230 & 281.39.

- GPO maintains HTML and PDF versions of 40 CFR 280. View GPO's versions of 40 CFR 280.
- Printed copies are available for a fee directly from GPO. Order copies from GPO.

APPENDIX C: Tools for Implementing State Regulations

The following section describes various approaches that States have used to implement their regulations and monitor compliance. These examples are provided here to assist States in developing their UST program or making it work more effectively. The use of such approaches are merely suggestions for interested States and are not necessary to receive State program approval. **New UST System Design, Construction, Installation and Notification**. To make sure that installations of new UST systems are completed properly, Maine certifies installers. The certification involves a written test based on nationally-recognized codes and a review of applicant's qualifications (including apprenticeship and work experience) as an installer by the Board of Underground Oil Storage Tank Installers.

Permitting is another way to ensure that new UST systems are soundly designed, constructed, and installed. In one State, the permitting process requires the owners to describe: (1) the UST characteristics, such as tank capacity, contents, and material of construction, cathodic protection and release detection methods, and (2) facility characteristics, including property boundaries, the location of buildings at the site and in the surrounding area, the location of the proposed tank system, and the approximate location of public or private water wells and any surface water bodies within 500 feet of the proposed UST. The permitting process in Nebraska includes a review of shop drawings by the State Fire Marshal's Office and an on-site inspection of the tank and piping systems during installation.

Upon notification, Florida provides each owner or operator with a registration sticker or a certificate that lists all of the registered USTs at the facility. State regulations require that this proof of registration be posted in plain view near the UST system so that fuel distributors can verify the registration status of the UST before they make a delivery. If no proof of registration is displayed, the distributor is prohibited from making a delivery. Distributors are also required to make notification forms available to any customers who may own USTs that need to be registered.

In addition to the Federally-required notification by owners and operators of new and existing USTs, Connecticut requires notification in the event of change in ownership or control of a new or existing UST system within 15 days of the change in status. Also, owners and operators must report any changes in the information provided to the State for purposes of notification within 30 days of the change(s) (for example, type of substance stored).

Upgrading Existing UST Systems. Vermont has an innovative approach that helps to implement upgrading requirements. Vermont recently passed legislation that sets forth an incentive program to encourage UST upgrading. This program provides financial assistance to owners of retail gas stations that sell less than 20,000 gallons of gasoline per month and that want to replace their USTs in accordance with Vermont's regulations. Owners must fill out an application providing the Vermont Agency of Environmental Conservation with essential facility information. Grants up to $5,000 or the cost of bringing the system into compliance (whichever is less) may be awarded to the applicants. Priority is given to applicants from areas with a low density of retail gasoline stations and for whom the expense of tank replacement is likely to cause "termination of retail gasoline services." California is considering the establishment of a similar program with financial assistance in the form of a loan provided for UST system upgrades and repairs at small businesses.

General Operating Requirements. Maryland has developed an innovative approach to prevent operational problems that can cause overfills and spills. In Maryland, drivers of tank trucks and transports must pass an examination to demonstrate knowledge of the procedures used in the safe handling of oil, oil spill control measures, and oil spill reporting requirements. Upon successful completion of the exam, drivers receive an "Oil Vehicle Operator's Certificate", which they must carry at all times while involved in the transfer or transport of oil. Temporary (30 day) certificates are issued to new drivers provided that the distributor instructs the driver regarding basic procedures involved in safe handling of oil and oil spill reporting requirements. Interstate drivers that transport petroleum products through Maryland are not required to have an operator's certificate; however, all drivers must follow a detailed set of product transfer requirements to make sure that petroleum transfers are handled properly. These requirements supplement the typical procedural requirements that appear in Maryland's regulations and serve as a useful program implementation tool.

To ensure that substances are delivered to USTs with which they are compatible, some States require labeling of UST systems. Five States (Delaware, Florida, New Hampshire, New York, and Vermont) have issued requirements for labeling of tanks and fill ports to identify tank material and regulated substance compatibility. Both Delaware and Florida have provisions specifically for USTs made of fiberglass-reinforced plastic. In these States, both the tank and the fill cap must be equipped with a label that says: "Non-metallic Underground Tank for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures" or "Non-Metallic Underground Tank for Petroleum Products Only".

To aid delivery personnel, some States require fill ports to be labeled with the tank volume and substance stored (for example, color coding for substance type in accordance with API 1637). In this way, delivery personnel are provided with the essential information they need to gauge an UST system accurately and to make the appropriate delivery of regulated substance. The use of such labeling helps prevent overfills and spills.

The Delaware Department of Natural Resources and Environmental Control (DNREC) is drafting standardized methods for recordkeeping. Such standardization will help UST owners and operators to determine what types of information must be documented and in what form they must be recorded. The resulting records should contain useful information that is consistent in quality and presentation. These characteristics are helpful to the implementing agency when trying to determine facility compliance. Maintenance of clear and comprehensive records enhances DNREC's compliance monitoring capabilities.

Release Reporting, Investigation, and Confirmation. Most States require immediate reporting of all suspected or confirmed releases. Hotlines have been established in many States in order to provide a fast, effective way of contacting the emergency response unit. Typically, once a release is reported, State officials advise UST owners as to what actions they must take. In TANKLINE (September 1987), Oregon's newsletter for UST owners and interested parties, a checklist was presented to guide the actions of UST owners in the event of a release. The checklist contains 10 major items, three of which relate to release reporting and investigation, and seven of which pertain to corrective action. The recommended actions relating to release reporting and investigation are: (1) notify the DEQ through the Oregon Accident Response Hotline; (2) determine if there is a fire danger (if so, contact the fire department immediately); and (3) determine the source of the release.

Florida has an innovative approach toward release reporting. The State has instituted an "Early Detection Incentive" program in which the UST owners are required to report any UST releases, but have amnesty from clean-up costs because the remedial actions are financed through a special State trust fund. Petroleum UST owners are eligible provided that (1) they have complied with the notification requirement by October 1, 1988; (2) the UST facility is not owned by the Federal government; (3) State access to the facility for inspection has not been or is not denied; and (4) the State determines that the facility was not operated in a grossly negligent manner. (This last provision gives UST owners an incentive to comply with release detection monitoring requirements.) Once eligible, the owner or operator may choose to have the State perform the cleanup, or perform it himself and receive reimbursement from the State. The number of reports and cleanups this program has motivated is impressive. The newsletter LUSTLINE (published by the New England Interstate Water Pollution Control Commission), reports that as of March 2, 1987, 477 sites had requested State cleanup and an additional 298 sites were being cleaned up by the responsible party and receiving reimbursement from the State.

A different type of incentive for release reporting, abatement, and hazard mitigation has been put forth in Missouri House Bill No. 528. This legislation requires "any person having control over a hazardous substance" who detects a release to notify the State and initiate cleanup. Should this person fail to comply with these requirements, he is not only liable for the associated cleanup cost, he is also liable for punitive damages up to three times the cleanup cost amount. The "any person" language can refer to a transporter making a product delivery as well as the owner or operator of an UST system.

One State requires that any facility where one confirmed UST release has occurred must have all other tanks at that facility inspected within 180 days to determine whether other releases may exist.

Release Response and Corrective Action. Oregon's newsletter, TANKLINE (September 1987), presents a checklist to provide guidance to UST owners and operators in the event of a release. Seven items on this checklist direct owners on how to clean up the release: (1) determine the extent of contamination; (2) if product has moved off your property, notify affected owners; (3) meet with DEQ to set up a cleanup standard and a schedule for the cleanup; (4) write a remedial action plan to achieve the cleanup goals; (5) submit your plan to DEQ for approval; (6) implement your plan and monitor progress; and (7) report to DEQ on your success at meeting cleanup goals. By posting the State requirements in a newsletter that is circulated to the UST community, Oregon is using an innovative approach for informing UST owners and operators of their responsibilities.

In addition to its basic corrective action requirements, Nebraska has developed a detailed set of protocols for determining the need for and the nature of ground water remedial action. A systematic flow chart provides guidance in determining the type and extent of treatment needed. For releases that have or may potentially impact ground water, a detailed site assessment is required that must address the characteristics of the soil, hydrogeology, contaminant, and site (for example, proximity to water supplies and land use) as well as the background water and soil quality or use. A ground-water classification scheme is used to determine the degree of hazard presented and make decisions concerning remedial actions. Based on this assessment, preliminary cleanup levels are defined and remedial actions proposed.

Florida's Department of Environmental Regulation (DER) has developed a set of site cleanup criteria for petroleum contamination. The State has provided criteria for evaluating: (1) the initial remedial action, (2) a Quality Assurance Project Plan for collecting and analyzing samples, (3) a contamination assessment

and report, (4) a remedial action plan, (5) the remedial action, and (6) the completion of site rehabilitation. Site Rehabilitation Levels (SRLs) are allowable contaminant concentration limits that must be met before the site cleanup can be deemed complete. The SRLs are based on water quality standards. Alternative or less stringent SRLs may be created if it can be demonstrated that site-specific factors (for example, background contaminant levels) can justify their use.

In order to protect human health and the environment when an immediate threat is perceived, some State agencies swiftly perform corrective action for UST releases even before they are able to identify all the potentially responsible parties (PRPs). States like Maine and New York are able to do this because they have created cleanup trust funds that allow them to incur the cost of cleanup and seek PRP reimbursement later. This type of State trust fund can be an effective tool in mitigating immediate hazards and ensuring environmental restoration.

Out-of-Service UST Systems and Closure. UST owners or operators in South Carolina who have temporarily removed their UST system(s) from service within the past calendar year must submit a report, during January of each year, to the Department of Health and Environmental Control that describes the system's location, capacity, permit number, dates temporarily taken out of operation, and method used to place the system temporarily out of operation. This report helps South Carolina monitor the compliance of these temporarily out-of-service USTs.

For permanent UST closure, some States (FL, MA, and OR) require that the person dismantling and removing the UST system be certified to ensure that permanent UST closures are performed properly and safely by trained professionals. In Maine, the UST owner or operator must notify appropriate State and local agencies and receive written permission from the Maine Department of Environmental Protection (DEP). By requiring notification and written permission, the DEP is aware of planned tank closures and is able to give UST owners guidance, when necessary, to ensure that appropriate procedures are used to close the UST system. In Rhode Island, owners and operators are required to obtain a certificate of closure. In this way, the State can ensure that site assessments for past and present releases are performed, and any necessary corrective actions implemented. The potential dangers associated with UST closure should not be underestimated. To prevent mishaps, the use of good closure practices is absolutely necessary. The approaches described above also help States ensure that the UST closure is performed safely and properly.

New Jersey's proposed regulations suggest another method of ensuring that closures are performed safely and properly. Owners or operators in New Jersey who plan to close their UST systems must submit a closure plan to the Department of Environmental Protection (DEP) 60 days before the anticipated closure date. This plan consists of a site assessment that incorporates the following information: (1) three consecutive months of monitoring data from a DEP-approved external monitoring system; or (2) a work plan for conducting soil sampling and analysis. This work plan must provide: (1) the number and location of soil samples; (2) soil sampling procedures (for which the DEP provides some guidance) and analysis protocols that must be in accordance with DEP-approved methods; (3) a plot plan clearly indicating all major structures, including the tank itself (in use and closed), piping, dispensers and other equipment; (4) a health and safety plan (may be required); (5) an implementation schedule; and (6) a plan showing the installation of monitoring wells (may be required). Based on the substance stored, the DEP provides guidance as to what constituents must be looked for in the soil samples. The owner or operator is required

to implement the closure plan within 30 days after obtaining all necessary Federal, State, and/or local approvals.

An essential part of permanent UST closure by removal is disposal of tanks and any end products derived from tank cleaning. Massachusetts has an innovative approach to address these matters. It requires USTs that are undergoing removal to be emptied of stored product, purged of vapors, and taken to a licensed or permitted tank dismantling yard. At the tank yard, the UST must be logged in, cleaned of residue, and dismantled. The cleaning end product must be treated as hazardous waste and removed by a hazardous waste or waste oil transporter licensed by the Department of Environmental Quality Engineering.

Maine makes provisions in the regulations for the proper disposal of sludge and scale, as well as for recycling and disposal of USTs. Furthermore, Maine mandates that the tank owner have a notice regarding permanent UST abandonment attached to the property deed. Although such a requirement is not needed for State program approval, this mechanism ensures that future property owners will be informed about the tank's presence on their property. In California, UST owners or operators choosing to close their USTs in place are also required to place a notice on the property deed, describing the location in detail of the closed UST, the regulated substance it contained and the closure method.

APPENDIX D: Table of National Industry Codes and Standards

TABLE 1. SELECTED NATIONAL CONSENSUS CODES AND RECOMMENDED PRACTICES FOR UST MANAGEMENT

MAJOR TECHNICAL TOPICS OF THE FINAL EPA UST RULE								
DOCUMENT NUMBER	DESIGN AND CONSTRUCTION	CORR-OSION PROTE-CTION	INSTAL-LATION	UST SYSTEM REPAIR AND RETROFIT	OPERATING REQUIR EMENT	RELEASE DETECTION	RELEASE REPORTING AND CORRECTIVE ACTION	CLOSURE
American National Standards Institute (ANSI)								
ANSI B31.4	X	X	X	X	X	X	X	X
American Petroleum Institute (API)								
# API 5L	X							
# API 12F	X							
API 650	X							
API 1604								X
# API 1615		X	X		X	X		
API 1628						X	X	
# API 1631		X		X	X	X		
API 1632	X	X		X	X			
API 2202								X
American Society for Testing and Materials (ASTM)								
ASTM (Steel, Piping, Tubing, and Fittings)	X							
# ASTM A 53-87b	X							
# ASTM A182/ A182M-87	X			X				
# ASTM D 4021-86	X							
Association of Composite Tanks (ACT)								
# ACT 100	X	X	X		X			
Factory Mutual (FM)								
FM 1920	X		X					
National Association of Corrosion Engineers (NACE)								
NACE RP-0169-83	X	X	X	X	X			
NACE RP-0172-72	X	X		X				
NACE RP-0184-84		X		X				
NACE RP-0275-75	X	X						
NACE RP-0285-85	X	X	X	X	X			
NACE RP-0572-85	X	X	X	X		X		

DOCUMENT NUMBER	DESIGN AND CONSTRUCTION	CORR-OSION PROTE-CTION	INSTAL-LATION	UST SYSTEM REPAIR AND RETROFIT	OPERATING REQUIR EMENT	RELEASE DETECTION	RELEASE REPORTING AND CORRECTIVE ACTION	CLOSURE
National Fire Protection Association (NFPA)								
# NFPA 30	X	X	X		X	X		X
# NFPA 321	X						X	X
# NFPA 327					X			
# NFPA 328							X	X
# NFPA 329					X	X	X	X
# NFPA 385					X			
National Leak Prevention Association (NLPA)								
## NLPA 631	X	X	X	X				X
Owens Corning (OC)								
OC 3-PE-9632-A	X		X					
Petroleum Equipment Institute (PEI)								
# PEI/RP100	X	X	X	X		X	X	X
Steel Tank Institute (STI)								
STI (Installation of Sti-P3)		X	X					
STI (Interior Corrosion Control)	X	X	X	X				
STI (Exterior Corrosion Protection)	X	X	X					
STI (Dual Wall USTs)	X	X	X					
Underwriters Laboratories (UL)								
UL 58	X							
UL 567	X	X						
# UL 1316	X		X					
Western Fire Chiefs Association								
# UFC 1985	X	X	X	X	X	X	X	X

Revised in 1987
Drafted in 1987
X There is a code or recommended practice.

APPENDIX E: Public Participation

Federal Rule 24(a)(2)

RULES OF CIVIL PROCEDURE

Rule 24. Intervention

- a. Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.
- b. Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant of the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.
- c. Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of the United States gives a right to intervene. When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action to which the United States or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of the United States as provided in Title 28, U.S.C. §2403.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987.)

APPENDIX F: Capabilities Matrices

UPGRADING:
STATE UST PROGRAM IMPLEMENTATION ACTIVITIES

INFORMING OWNERS AND OPERATORS OF UPGRADING REQUIREMENTS	VALIDATING PROPER UPGRADING	TAKING ACTION AGAINST VIOLATORS OF UPGRADING REQUIREMENTS
• State employs mass mailings of information concerning the requirements to the regulated community (e.g., "Musts for USTs," State-developed materials, and copies of the regulations). • State inspectors distribute outreach materials on-site. • State has local agencies (e.g., local fire departments) distribute information to owners and operators concerning the upgrading requirements. • State forms committee (including members from local government, industry, community groups) that relays regulatory requirements and information to oil industry and trade associations and other interested parties. • State staff deliver presentations at oil industry and trade association meetings and at seminars and conferences. • State sponsors public service announcements on radio and television. • State requires jobbers to distribute information on upgrading requirements. • State publicizes violations of requirements in local newspapers or trade publications. • State includes information on upgrading requirements as "statement stuffers" in tank fee invoices • State holds an annual conference/trade show with owners and operators to share information. • State provides a telephone number to owners and operators to call for additional information on the upgrading requirements • State holds press conferences on regulatory requirements	• State conducts preventative inspections to validate upgrading. • State requires owners and operators to notify agency of upgrade or repair. • State agency or fire marshal's office requires permits for upgrade or repair. • Local fire departments inspect facilities. • State conducts targeted inspections of facilities in areas of greater sensitivity. • State provides owners or operators with self-audit forms for self-inspection.	• State bars non-upgraded tanks from receiving state funds for cleanup. • State conducts informal activities (e.g., letters, phone calls) to inform owners and operators of non-compliance and encourage compliance. • State issues warning letters and notices of violation to facilities not in compliance. • State issues on-site expedited administrative orders (e.g., "traffic tickets"). • State hold face-to-face compliance meetings (e.g., a "show-cause" meeting) with the violator in which the violator must demonstrate why an administrative order should not be issued. • State issues administrative or judicial orders with penalties. • State revokes permit or does not reissue permit of recalcitrant violators. • State locks delivery pipe of facilities not in compliance. • State shuts down facilities of recalcitrant violators. • State has the ability to remove tanks when the owner or operator is recalcitrant. • State conducts hearings concerning the violations before a citizen board. The hearings are advertised in local newspapers. • State publishes newspaper and journal articles on violators and associated enforcement actions. • State requires violators to publish a public statement in a local newspaper explaining the violation and pledging not to repeat the offense.

NEW UST SYSTEMS AND NOTIFICATION:
STATE UST PROGRAM IMPLEMENTATION ACTIVITIES

INFORMING OWNERS AND OPERATORS OF NEW UST SYSTEMS AND NOTIFICATION REQUIREMENTS	VALIDATING PROPER DESIGN, CONSTRUCTION, INSTALLATION OF NEW UST SYSTEMS	VALIDATING COMPLIANCE WITH NOTIFICATION REQUIREMENTS	TAKING ACTION AGAINST VIOLATORS OF NEW UST SYSTEMS AND NOTIFICATION REQUIREMENTS
• State employs mass mailings of information concerning the requirements to the regulated community (e.g., "Musts for USTs", State-developed materials, and copies of the regulations). • State inspectors distribute outreach materials on-site. • State requires tank vendors to distribute information on notification requirements. • State has local agencies (e.g., local fire departments) distribute information to owners and operators concerning the new UST system requirements. • State forms committee (including members from local government, industry, community groups) that relays regulatory requirements and information to oil industry and trade associations and other interested parties. • State staff deliver presentations at oil industry and trade association meetings and at seminars and conferences. • State sponsors public service announcements on radio and television • State requires jobbers to distribute	• State certifies installers of new UST systems to ensure proper installation procedures. Certification requirements may include: o secured course work o written tests o review of applicants qualifications by independent board • State issues installation permits for new UST systems based on UST and facility characteristics descriptions or on-site UST system inspections. • State requires all companies offering UST services to register with environmental agency before commencing work. • State requires prospective owners and operators to submit plot plans and specifications to fire marshal's office and receive installation approval before commencing work. • State provides tank installation videos to tank installers. • State distributes information on latest tank installation techniques to tank	• State issues registration sticker or certificate after notification or existence of new UST systems. State requires that this tab be placed on or near UST system to enable fuel distributors to verify registration status of UST system before making a delivery. If tags are missing then distributor must notify the state agency. • State develops and maintains UST data base which tracks: permit and closure deadlines and upgrading dates. • State fire authority has local engine companies drive through their districts looking for visible vent pipes to identify unknown/unregistered tanks. • State conducts phone surveys of potential UST facilities to determine if notification requirements have been met. • State reviews building code/permit files to potential UST facilities. • State requires distributor to submit lists of customers to verify compliance with notification requirements. • State requires UST vendors to submit lists of customers.	• State requirements prohibit fuel distributors from delivering to UST systems that do not display registration stickers or tags. If tags are missing, then distributor must notify the state agency. • State conducts informal activities (e.g., letters, phone calls) to inform owners and operators of non-compliance and encourage compliance. • State issues warning letters and notices of violation to facilities not in compliance. • State issues on-site expedited administrative orders (e.g., traffic tickets") • State hold face-to-face compliance meetings (e.g., a "show-cause" meeting) with the violator in which the violator must demonstrate why an administrative order should not be issued. • State issues administrative or judicial orders with penalties. • State revokes permit or fails to reissue permit of recalcitrant violators. • State locks delivery pipe of facilities not in compliance. • State shuts down

information on new UST system and notification requirements. • State publicizes violations of requirements in local newspapers or trade publications. • State includes information on new UST system and notification requirements as "statement stuffers" in tank fee invoices. • State holds an annual conference/trade show with owners and operators to share information. • State provides a telephone number to owners and operators to call for additional information on the new UST system and notification requirements • State holds press conferences on regulatory requirements.	installers. • State sends inspectors to all installations • State sends inspectors to a selected number of installations based on facility criteria (e.g., proximity to aquifers, compliance history, previous experience of contractor). • State requires owner or operator to submit daily inventory results for a specified period immediately following tank installation.		facilities of recalcitrant violators. • State has the ability to remove tanks when the owner or operator is recalcitrant. • State levies penalties or takes other enforcement actions against manufacturers that sell USTs not authorized under new UST standards. • State conducts hearings concerning the violations before a citizen board. The hearings are advertised in local newspapers. • State publishes newspaper and journal articles on violators and associated enforcement actions. • State require violators to publish a public statement in a local newspaper explaining the violation and pledging not to repeat the offense.

GENERAL OPERATING REQUIREMENTS: STATE UST PROGRAM IMPLEMENTATION ACTIVITIES

INFORMING OWNERS AND OPERATORS OF GENERAL OPERATING REGULATIONS	VALIDATING COMPLIANCE WITH GENERAL OPERATING REGULATIONS	TAKING ACTION AGAINST VIOLATORS OF GENERAL OPERATING REGULATIONS
• State employs mass mailings of information concerning the requirements to the regulated community (e.g., "Musts for USTs", and copies of the regulations). • State inspectors distribute outreach materials on-site. • State has local agencies (e.g., local fire departments) distribute information to owners and operators concerning the general operating requirements. • State forms committee (including members from local government, industry, community groups) that relays regulatory requirements and information on oil industry and trade associations and other interested parties. • State staff deliver presentations at oil industry and trade association meetings and at seminars and conferences • State sponsors public service announcements on radio and television. • State requires jobbers to distribute information on general operating requirements. • State publicizes violations of requirements in local newspapers or trade publications. • State includes information on general operating requirements as "statement stuffers" in tank fee invoices • State holds an annual conference/trade show with owners and operators to share information. • State provides a telephone number to owners and operators to call for additional information on the general operating requirements • State holds press conferences on regulatory requirements.	• State requires labeling of tanks and fill pipes to identify tank material and proper regulated substance for tank. • State requires special compatibility labeling of fiberglass-reinforced plastic tanks. • State tests and licenses product transporters in spill and overfill prevention. • State certifies tank installers, closers, testers, and supervisors according to nationally recognized codes. • State requires owners or operators to obtain permit before beginning repairs. • State requires that tanks have attached label indicating volume to prevent overfills. • State develops standardized format for recordkeeping to aid owners and operators and inspectors. • State requires owners and operators to submit documentation on tank tests. • State requires that records be kept on-site for out-of-service tanks. • State requires tank testers to submit documentation on tank tests. • State requires records of daily inventory tests.	• State conducts informal activities (e.g., letters, phone calls) to inform owners and operators of non-compliance and encourage compliance. • State issues warning letters and notices of violation to facilities not in compliance. • State issues on-site expedited administrative orders (e.g., "traffic tickets"). • State hold face-to-face compliance meetings (e.g., a "show-cause" meeting) with the violator in which the violator must demonstrate why an administrative order should not be issued. • State issues administrative or judicial orders with penalties. • State revokes permit or does not reissue permit of recalcitrant violators. • State locks delivery pipe of facilities not in compliance. • State shuts down facilities or recalcitrant violators. • State has the ability on remove tanks when the owner or operator is recalcitrant. • State conducts hearings concerning the violations before a citizen board. The hearings are advertised in local newspapers. • State publishes newspaper and journal articles on violators and associated enforcement actions. • State requires violators to publish a public statement in a local newspaper explaining the violation and pledging not to repeat the offense.

RELEASE DETECTION:
STATE UST PROGRAM IMPLEMENTATION ACTIVITIES

INFORMING OWNERS AND OPERATORS OF THE RELEASE DETECTION REQUIREMENTS	VALIDATING COMPLIANCE WITH RELEASE DETECTION REQUIREMENTS	TAKING ACTION AGAINST VIOLATORS OF RELEASE DETECTION REQUIREMENTS
• State employs mass mailings of information concerning the requirements to the regulated community (e.g., "Musts for USTs," "Leak Lookout," State-developed materials, and copies of the regulations). • State inspectors distribute outreach materials on-site. • State publishes articles or announcements in newspaper and oil industry and trade association publications. • State forms committee (including members from local government, industry, community groups) that relays regulatory requirements and information to oil industry and trade associations and other interested parties. • State has local agencies (e.g., local fire departments) distribute information to owners and operators concerning the release detection requirements. • State staff deliver presentations at oil industry and trade association meetings and at seminars and conferences. • State sponsors public service announcements on radio and television. • State requires jobbers to distribute information on release detection requirements. • State publicizes violations of requirements in local newspapers or trade publications. • State includes information on release detection requirements as "statement stuffers" in tank fee invoices • State holds an annual conference/trade show with owners and operators to share information. • State provides a telephone number to owners and operators to call for additional information on the release detection requirements. • State holds press conferences on regulatory requirements.	• State or local agency conducts inspections, or "spot checks" at facilities to determine compliance status. • State requires evidence of release detection compliance at various times, including: o prior to issuing operating permits; o on notification forms; or o prior to delivering product. • State or local agency staff monitor leak detection compliance by reviewing written results or tank tightness tests, and requiring owners or operators to submit automatic tank gauging records. • State requires owners or operators to self-certify that they have proper leak detection at various times (e.g. during permit renewal process). • State approves leak detection methods to ensure that owners and operators are using effective leak detection methods. • State requires submittal of site plans and reviews them with respect to leak detection installation. • State establishes training program for local agencies on recognizing noncompliance with release detection requirements.	• State conducts informal activities (e.g., letters, phone calls) to inform owners and operators of non-compliance and encourage compliance. • State issues warning letters and notices of violation to facilities not in compliance. • State issues on-site expedited administrative orders (e.g., "traffic tickets"). • State holds face-to-face compliance meetings (e.g., a "show-cause" meeting) with the violator in which the violator must demonstrate why an administrative order should not be issued. • State issues administrative or judicial orders with penalties. • State revokes permit or does not reissue permit of recalcitrant violators. • State locks delivery pipe of facilities not in compliance. • State shuts down facilities of recalcitrant violators. • State has the ability to remove tanks when the owner or operator is recalcitrant. • State conducts hearings concerning the violations before a citizen board. The hearings are advertised in local newspapers. • State publishes newspaper and journal articles on violators and associated enforcement actions. • State requires violators to publish a public statement in a local newspaper explaining the violation and pledging not to repeat the offense.

RELEASE REPORTING, INVESTIGATION, AND CONFIRMATION: STATE UST PROGRAM IMPLEMENTATION ACTIVITIES

INFORMING OWNERS AND OPERATORS OF THE RELEASE REPORTING REQUIREMENTS	ENCOURAGING PROMPT RELEASE REPORTING, INVESTIGATION, AND CONFIRMATION	TAKING ACTION AGAINST VIOLATORS OF THE RELEASE REPORTING REQUIREMENTS
• State distributes stickers that may be placed on owner or operator's telephone with release reporting number. • State produces signs for jobber's trucks that advertise the release reporting phone number. • State requires commercial gas station owners or operators to post sign on or around gas pumps informing customers on how to detect a release and report a release. • State employs mass mailings of information concerning the requirements to the regulated community (e.g., "Oh No!," State-developed materials, and copies of the regulations). • State inspectors distribute outreach materials on-site. • State has local agencies (e.g., local fire departments) distribute information to owners and operators concerning the release reporting requirements. • State forms committee (including members from local government, industry, community groups) that relays regulatory requirements and information to oil industry and trade associations and other interested parties. • State staff deliver presentations at oil industry and trade association meetings and at seminars and conferences. • State sponsors public service announcements on radio and television. • State requires jobbers to distribute information on release reporting requirements. • State publishes articles or announcements in newspaper and oil industry and trade association publications. • State publicizes violations of requirements in local newspapers or	• State requires disclosure of releases during property transfer. violators may be fined for false statements. • State staffs a 24-hour toll-free hot line for reporting releases. • Owners and operators may be ineligible for reimbursement of cleanup costs from a state fund if they fail to report the release promptly to the state. • State provides information to jobbers on detecting releases and encourages jobbers to bring them to the owner or operators attention when discovered. • State, when a leak is suspected, can "loan" product to tank owners who are financially unable to fill tank completely, thereby enabling tightness test to be completed. • State provides incentive to closures contractor to report releases during closure.	• State conducts informal activities (e.g., letters, phone calls) to inform owners and operators of non-compliance and encourage compliance. • State issues warning letters and notices of violation to facilities not in compliance. • State issues on-site expedited administrative orders (e.g., "traffic tickets") • State hold face-to-face compliance meetings (e.g., a "show-cause" meeting) with the violator in which the violator must demonstrate why an administrative order should not be issued. • State issues administrative or judicial orders with penalties. • State revokes permit or does not reissue permit of recalcitrant violators. • State locks delivery pipe of facilities not in compliance. • State shuts down facilities of recalcitrant violators. • State has the ability to remove tanks when the owner or operator is recalcitrant. • State conducts hearings concerning the violations before a citizen board. The hearings are advertised in local newspapers. • State publishes newspaper and journal articles on violators and associated enforcement actions. • State requires violators to publish a public statement in a local newspaper explaining the violation and pledging not to repeat the offense. • State orders the tank to be emptied pending further investigation when an owner or operator has not reported a suspected release.

trade publications. • State includes information on release reporting requirements as "statement stuffers" in tank fee invoices. • State holds an annual conference/trade show with owners and operators to share information. • State provides a telephone number to owners and operators to call for additional information on the release reporting requirements. • State holds press conferences on regulatory requirements.		

RELEASE RESPONSE AND CORRECTIVE ACTION:
STATE UST PROGRAM IMPLEMENTATION ACTIVITIES

INFORMING OWNERS AND OPERATORS OF CORRECTIVE ACTION REQUIREMENTS	ENSURING ADEQUATE RELEASE RESPONSE AND OVERSEEING CORRECTIVE ACTIONS	TAKING ACTION AGAINST VIOLATORS OF THE CORRECTIVE ACTION REQUIREMENTS
• State has written guidance for RPs concerning their responsibilities for responding to a release and penalties for inaction. • State staff delivers presentations at oil industry and trade association meetings. • State sponsors public service announcements on radio and television. • State works with local agency staff to distribute information to owners and operators. • State employs mass mailings of information concerning the requirements to the regulated community (e.g., "Oh No!," State-developed materials, and copies of the regulations). • State inspectors distribute outreach materials on-site. • State has local agencies (e.g., local fire departments) distribute information to owners and operators concerning the corrective action requirements. • State forms committee (including members from local government, industry, community groups) that relays regulatory requirements and information to oil industry and trade associations and other interested parties. • State staff deliver presentations at oil industry and trade association meetings and at seminars and conferences. • State sponsors public service announcements on radio and television. • State requires jobbers to distribute information on corrective action requirements. • State publishes articles or announcements in newspaper and oil industry and trade association publications. • State publicizes violations of	• State conducts a "contractor day" where cleanup consultants, engineers, tank manufacturers, etc. receive information on proper release response and corrective action. • State develops satellite broadcasts that owners and operators may watch for information on proper release response and corrective action. • State has a field manual that contains guidelines for site assessments and cleanup activities. • State has developed a workload tracking system to follow site progress. • State co-sponsors corrective action training workshops with a local university or training center. Workshops cover environmental assessment methodologies and corrective action procedures. • State provides financial incentives for proper cleanup (e.g., tax breaks to encourage compliance, and a fund to provide RPs reimbursement for cleanup expenses when the RP demonstrates cooperation during the initial assessment. • State has an emergency spills hot line with a recorded message that provides information 24-hours a day. The message informs owners and operators how to get personal assistance if necessary. • State certifies contractors through required training and certification tests. • State distributes a list of certified corrective action contractors. To be eligible for state fund reimbursement, an approved contractor must be used. • State has written guidance for contractors on preparing	• State conducts informal activities (e.g., letters, phone calls) to inform owners and operators of non-compliance and encourage compliance. • State issues warning letters and notices of violation to facilities not in compliance. • State issues on-site expedited administrative orders (e.g., "traffic tickets") • State hold face-to-face compliance meetings (e.g., a "show-cause" meeting) with the violator in which the violator must demonstrate why an administrative order should not be issued. • State issues administrative or judicial orders with penalties. • State revokes permit or does not reissue permit of recalcitrant violators. • State has established a system for tracking state-lead cleanup costs and recovering costs from RPs. • State publicizes cost recovery cases to inform owners and operators that RP-lead cleanups are less costly to the owner or operator than state-lead cleanups. • State locks delivery pipe of facilities not in compliance. • State shuts down facilities of recalcitrant violators. • State has the ability to remove tanks when the owner or operator is recalcitrant. • State conducts hearings concerning the violations before a citizen board. The hearings are advertised in local newspapers. • State publishes newspaper and journal articles on violators and associated enforcement actions. • State requires violators to publish a public statement in a local

requirements in local newspapers or trade publications. • State includes information on release reporting requirements as "statement stuffers" in tank fee invoices. • State holds an annual conference/trade show with owners and operators to share information. • State provides a telephone number to owners and operators to call for additional information on the release detection requirements. • State holds press conferences on regulatory requirements.	corrective action plans. • State sponsors training to inform contractors of state cleanup requirements and expectations. • State requires contractors to meet with state staff and demonstrate that they are capable of conducting corrective actions appropriately before being placed on a list that is given to owners and operators who request a referral • State conducts on-site inspections at cleanup sites. • State has developed expedited procedures to issue air or water permits required for corrective action. • State promotes a positive environment for private insurers so that they will be willing to offer coverage in the state and funds for cleanup will be available in a timely manner.	newspaper explaining the violation and pledging not to repeat the offense. • State has procedures whereby penalties can be waived or negotiated provided the RP signs and complies with the terms or a settlement agreement. • State places a lien on RPs property if state or federal funds have been used for a cleanup and not repaid.

CLOSURE:
STATE UST PROGRAM IMPLEMENTATION ACTIVITIES

INFORMING OWNERS AND OPERATORS OF THE CLOSURE REQUIREMENTS	VALIDATING PROPER CLOSURE	TAKING ACTION AGAINST VIOLATORS OF THE CLOSURE REQUIREMENTS
• State employs mass mailings of information concerning the requirements to the regulated community (e.g., "Musts for USTs," State-developed materials, and copies of the regulations). • State publicizes violations of requirements in local newspapers. • State inspectors distribute outreach materials on-site. • State has local agencies (e.g., local fire departments) distribute information to owners and operators concerning the closure requirements. • State forms committee (including members from local government, industry, community groups) that relays regulatory requirements and information to oil industry and trade associations and other interested parties. • State staff deliver presentations at oil industry and trade association meetings and at seminars and conferences. • State sponsors public service announcements on radio and television. • State requires jobbers to distribute information on closure requirements. • State publishes articles or announcements in newspaper and oil industry and trade association publications. • State publicizes violations of requirements in local newspapers or trade publications. • State includes information on closure requirements as "statement stuffers" in tank fee invoices. • State holds an annual conference/trade show with owners and operators to share information. • State provides a telephone number to owners and operators to call for additional information on the closure requirements. • State holds press conferences on regulatory requirements.	• State establishes policy for prioritizing inspection of closure activities, based on such factors as proximity to vulnerable ground water and previous experience with closure contractors. • State inspectors oversee all closure activities. • Local agency staff (e.g., fire or health department) monitor closure activities. • State institutes certification program for tank closure contractors. • Closure permit is required for all closures. • Owners and operators must place a notice on property deed, describing the location of abandonment, method of closure, and proof of closure certification. • Retired engineers are hired to conduct closure inspections on a case-by-case basis. • State implements computerized system for maintaining closure records (e.g., results of closure inspection, enforcement, and certification). • State responds to public reports of nuisance, odors, unusual activity, etc. • State reviews tax records to identify recent tank closures. • State requires a certificate of closure before any transfer of property can occur.	• State established training program for fire and police departments on recognizing illegal closure activities. • State conducts informal activities (e.g., letters, phone calls) to inform owners and operators of non-compliance and encourage compliance. • State issues warning letters and notices of violation to facilities not in compliance. • State issues on-site expedited administrative orders (e.g., "traffic tickets") • State hold face-to-face compliance meetings (e.g., a "show-cause" meeting) with the violator in which the violator must demonstrate why an administrative order should not be issued. • State issues administrative or judicial orders with penalties. • State revokes permit or does not reissue permit of recalcitrant violators. • State locks delivery pipe of facilities not in compliance. • State shuts down facilities of recalcitrant violators. • State conducts hearings concerning the violations before a citizen board. The hearings are advertised in local newspapers. • State publishes newspaper and journal articles on violators and associated enforcement actions. • State requires violators to publish a public statement in a local newspaper explaining the violation and pledging not to repeat the offense.

FINANCIAL RESPONSIBILITY:
STATE UST PROGRAM IMPLEMENTATION ACTIVITIES

INFORMING OWNERS AND OPERATORS OF FINANCIAL RESPONSIBILITY REGULATIONS	STATE COMPLIANCE ASSISTANCE PROGRAMS	PROMOTING AVAILABILITY AND AFFORDABILITY OF INSURANCE OR OTHER MECHANISMS	COMPLIANCE MONITORING AND ENFORCEMENT
• State publishes monthly newsletter with periodic reminders of compliance deadlines and updates on availability of private or state-run financial responsibility mechanisms. • State employs mass mailings of information concerning the requirements to the regulated community (e.g., "Dollars and Sense," State-developed materials, and copies of the regulations). • State inspectors distribute outreach materials on-site. • State has local agencies (e.g., local fire departments) distribute information to owners and operators concerning the financial responsibility requirements. • State forms committee (including members from local government, industry, community groups) that relays regulatory requirements and information to oil industry and trade associations and other interested parties. • State staff deliver presentations at oil industry and trade association meetings and at seminars and conferences. • State sponsors public service announcements on radio and television. • State provides a telephone number to owners and	• Some states have developed financial assurance funds which help owners and operators pay for cleanups and/or third-party damages. • State provides grants or low interest loans to rural and small business tank owners to upgrade tanks (because tanks that have been upgraded are more likely to be covered by private insurers).	• State promotes development of risk retention group that provide UST coverage to municipal or other large groups of UST owners and operators. • State promotes communication with private insurers to maximize their participation in providing financial responsibility. • State supplies insurance companies with a list of tank owners and operators and tank characteristics so that insurers can determine whether they will provide coverage. • State reinsures private insurance carriers who agree to provide coverage to owners and operators (i.e., the state protects carriers from large claims). • State has developed a co-payment program where it pays a portion of fund claims and a private insurer pays the rest. The proportions change over time until the private insurer takes over the program.	• State requires owners and operators to certify that they have financial assurance on tank notification forms. • State checks for demonstration of financial assurance during routine inspections. • State requires owners and operators to produce copies of financial assurance documents during installation inspections. • State requires UST manufacturers or retailers to ensure owners have financial responsibility before selling new USTs. • State requires installers to verify financial responsibility prior to installation. • State requires jobbers to verify financial responsibility before filling tanks. • State conducts informal activities (e.g., letters, phone calls) to inform owners and operators of non-compliance and encourage compliance. • State issues warning letters and notices of violation to facilities not in compliance. • State issues on-site expedited administrative orders (e.g., "traffic tickets") • State hold face-to-face compliance meetings (e.g., a "show-cause"

operators to call for additional information on the financial responsibility requirements. • State holds press conferences on regulatory requirements.			meeting) with the violator in which the violator must demonstrate why an administrative order should not be issued. • State publishes newspaper and journal articles on violators and associated enforcement actions. • State requires violators to publish a public statement in a local newspaper explaining the violation and pledging not to repeat the offense.

APPENDIX G: Most Commonly Asked Questions about State Program Approval Handbook and Suggested Procedures Document

Users of the **State Program Approval Handbook** and **Suggested Procedures for the Review of State UST Applications** have indicated that they have not always been able to quickly find specific information or guidance when they need it. In response to extensive feedback from State and Regional UST personnel, we have developed the following list of subject areas and the places within the two documents or the State Program Approval regulations where information relating to each area can be found.

Q: What are the legally mandated steps in the State Program Approval process?
A: See

- Final State Program Approval Rule §281.50 (53 FR 37245), and
- **Suggested Procedures for Review of State UST Applications (PDF)**.

Q: What are the minimum components of a complete State Program Approval application?
A: See

- Chapter 3, **State Program Approval Handbook**;
- Sample State Program Approval Application, **State Program Approval Handbook**, Appendix A; and
- Checklist for Complete State Applications, **Suggested Procedures for Review of State UST Applications**, Appendix E.

Q: What are the required components of the program description?
A: See

- **State Program Approval Handbook**, Chapter 3;
- **State Program Approval Handbook**, Appendix A; and
- §281.21 of the final State Program Approval rule (53 FR 37242).

Q: What are the required components of a *Federal Register* notice?
A: See

- Suggested Procedures for Review of "State UST Applications**, Appendix B, "Guidance on Preparing "Federal Register Notices,"** (PDF)
- Suggested Procedures for Review of "State UST Applications**, Appendix C, "Approval** Determinations" (PDF)

Q: Exactly what steps must be followed in preparing a *Federal Register* notice? A public notice?
A: See **Suggested Procedures for Review of State UST Applications**, Appendix B (PDF).

Q: How does a State codify its approved UST program?
A: See section on codification in **Suggested Procedures for Review of State UST Applications** (PDF).

Q: What should Regions be doing/looking for in the pre-application phase?
A: See

- **Suggested Procedures for Review of State UST Applications (PDF)**, including
- "Pre-Application Checklist" (PDF), and
- "Diagnostic Checklist for State Program Approval" (PDF)

Q: What is the proper role of the Regional UST Attorney in State Program Approval review?
A: See

- Suggested Procedures for Review of State UST Applications (PDF)**; also,**
- **"Pre-Application Checklist"** (PDF)

Q: What is the proper role of State attorneys in State Program Approval review?
A: See

- **Suggested Procedures for Review of State UST Applications** (PDF); also
- "Pre-Application Checklist" (PDF)

Q: What role should OUST play in the State Program Approval process?
A: See **Suggested Procedures for Review of State UST Applications** (PDF).

Q: Are there any examples of State requirements that were different from the Federal requirements yet met the objective?
A: See **State Program Approval Handbook** examples in Chapter 4, "Attorney General's Statement."

Q: Are there any examples of State requirements that were different from the Federal requirement and were determined to be less stringent?
A: See **State Program Approval Handbook** examples in Chapter 4, "Attorney General's Statement."

Q: Are there any tools that can be used by States whose programs differ from the Federal program, or who have limited resources, in order to make their programs approvable?
A: See

- **State Program Approval Handbook,** Appendix C, "Tools for Implementing State Regulations"; and
- **State Program Approval Handbook,** Appendix F, "Capabilities Matrices."

Q: What should be the role of EPA (HQ and Regions) after State program approval?
A: See **State Program Approval Handbook**, **State Program Approval Handbook**, Chapter 6, "Memorandum of Agreement."

Q: What are the distinctions between scope and stringency?
A: See

- **State Program Approval Handbook**, Chapter 1;
- **State Program Approval Handboo**k, Chapter 3 (scope), and
- **State Program Approval Handbook**, Chapter 2 (stringency).

Q: Where can I find examples of completed State Program Approval applications, *Federal Register* notices, and other documents related to the State Program Approval process?
A: See

- Appendices in Suggested Procedures for Review of State UST Applications (PDF)

APPENDIX H: Final OUST Guidance on Reviewing State Funds for Financial Responsibility

MEMORANDUM

SUBJECT: Final Guidance for Reviewing State Funds for Financial Responsibility

FROM: Ron Brand, Director Office of Underground Storage Tanks

TO: UST Regional Program Managers, Regions I-X

Attached are final guidance documents for your use in reviewing State funds for financial responsibility. As a result of comments at the Seattle RPMs meeting, we developed two separate documents to assist in the review process:

"Phase 1 -- Helping Owners and Operators Comply with the Federal Requirements"

"Phase 2 -- Meeting the State Program Approval Objective"

In response to your comments and those of the Office of General Counsel, substantive changes have been made to the "Coverage" section. In particular, a new subsection titled "Methods of Payment" has been added, and the discussion of reimbursement funds has been clarified. I believe the changes were necessary to better communicate what we are looking for in approvable fund designs. In addition, a new section has been added regarding "sunset" provisions.

I urge you to share these documents with your Office of Regional Counsel, since they play a key role in the State fund review process. If they have questions that you need assistance in answering, please let us know.

Since this issue is high on the list of many States' concerns, and it remains a somewhat complex topic, we plan to offer "training" for the Regions on using the guidance to review your State funds. As a first step, we will have a conference call during the last week of November to respond to questions that you may have on the guidance, and to discuss training needs. Dave Hamnett will be contacting you shortly regarding arrangements.

I want to thank all of those who contributed their efforts over the past few months to these final guidance documents. While it has taken some time to get to this stage, I feel confident that the guidance now reflects decisions that we and the States can all live with. As you proceed with your reviews of State funds, now and in the future, please do not hesitate to contact OUST if we can assist you in any way.

Attachments

cc:
Earl Salo, OGC,
Kirsten Engel, OGC,
Jim McCormick,
Joe Retzer

REVIEWING STATE FUNDS FOR FINANCIAL RESPONSIBILITY

Phase 2 -- Meeting the State Program Approval Objective

Many States are now developing comprehensive UST programs which they intend to submit to EPA for State Program Approval. If the State's UST program meets EPA's published "Objectives" for approval, its program may be approved to operate in lieu of the Federal program. Some States intend to submit assurance funds and other mechanisms for EPA's review and approval as part of this process, to satisfy the financial responsibility objective. This document will help EPA reviewers of State funds as part of State Program Approval. It will also serve as a guide as you review and comment on State funds as they are being developed.

Keep in mind that the submission of funds to EPA is totally at the State's discretion. However, a State must submit its fund to EPA if it is using the fund to satisfy the financial responsibility objective as part of the State Program Approval process.

I. Basic Purpose of Financial Responsibility

The basic purpose of financial responsibility is simply to establish reasonable assurance that someone has the funds to pay for the costs of corrective action and third-party liability resulting from an UST release. This means that someone (or combination of persons) is ready to pay from the "first dollar" of costs incurred up to the maximum amount required by the Federal regulations.

II. Identify the Specific Purpose of EPA's Review

EPA staff may be asked to review a State fund for three different reasons.

1. The State may be looking for general advice and comment on its proposed program to provide money to assist in cleanup.
2. The State may be seeking an official decision that tank owners and operators in the State may use the Fund as a mechanism for complying with the **Federal** financial responsibility requirements. (Section 280.101) This option is discussed in detail in the companion document "Phase 1 -- Helping Owners and Operators Comply with the Federal Requirements"
3. The State may be seeking EPA approval to operate a State UST program in lieu of the Federal program. In this event the State fund may be part of the State's financial responsibility package that will be examined by the Regional Office to determine if it is no less stringent than the Federal requirements. (Section 281.37)

If the State is looking for general advice on its proposed fund (described in 1, above) there are no formal review criteria. However, the EPA reviewer should ask the State if it intends to submit it as part of the State Program Approval package to meet all or part of the **financial responsibility objective** (described in 3, above). If the State intends to use its fund for this purpose, you should include the elements of review outlined in this document as part of your comments so the State can make the appropriate modifications during the development phase of its fund.

If the review is part of **State Program Approval** the State fund must satisfy the Federal **financial responsibility objective** (Section 281.37). When used for this purpose, the fund must provide coverage to

all owners or operators in the full amount required by the Federal objective, or the State law or regulations must require owners or operators to supplement the coverage provided by the fund with another acceptable financial assurance mechanism (see discussion of Partial Coverage, below).

Remember that States do not necessarily need a fund to meet the federal objective for financial responsibility. Statutory or regulatory provisions that contain the federal coverage requirements are sufficient for State Program Approval, without use of a fund. In this situation, EPA does **not** review and approve the State's fund. Instead, it is up to the State to determine what mechanisms it will allow owners and operators to use to satisfy the **State's** financial responsibility requirements, and to oversee compliance.

III. Four Main Elements of State Fund Review

EPA's review of State funds as part of **State Program Approval** includes four main elements:

- Funding Source
- Amount of Fund
- Coverage Provided
- Eligibility for Use of the Fund

A. Funding Source

To assure that funds will be available to pay for cleanup and third-party damages, money must be reasonably certain and available. The State fund may need to rely on a definite funding source (e.g., tank fees) to make sure that funds will be available to owners and operators. A State fund that relies only on yearly appropriations out of general revenues from its legislature would not adequately assure that funds would be certain and available. The Federal LUST Trust Fund may not be relied on for this purpose either.

Many different sources can be used to finance a State fund, such as petroleum taxes, licensing or tank fees, bond issues, and risk-based premiums. The funding sources can be used alone or in combination.

The State fund need not be reserved for use solely on underground storage tanks. For example, it may include monies to respond to above ground tank releases or surface spills, as long as adequate amounts are available for UST releases.

B. Amount of Fund

There is no magic number for approving the amount of the fund. Instead, think of the fund as a "bank account" with money being "deposited" and money being "spent" as it is needed. The goal here is to reasonably assure that the projected flow of revenues into the fund is sufficient to keep pace with the anticipated rate of expenditures from the fund.

An exact amount is not given here because the demand for funds will fluctuate over time. When reviewing this feature of a State fund, remember that not all leaks will be discovered at the same time and, more importantly, not all corrective actions (at all sites) can be performed at the same time. Furthermore, some State fund programs are designed to first look to the owner or operator to undertake and pay for

corrective action and third party claims. Where the owner or operator is unable or unwilling to do so, the State will usually have to assign priorities to such sites for responses using its fund. Factors such as the number of State staff, procurement practices, and contractor availability will affect how quickly these sites can be addressed. Thus, the amount of the State fund should reflect the overall design of the State's cleanup and enforcement program, as well as the ability of the State to expend monies from the fund.

A State may want to consider various approaches that may be helpful in dealing with the uncertainty of expenditures described above. For example, a triggering provision could allow the funding source to be activated once the level of the fund has reached some bottom limit and, likewise, be deactivated when the level of the fund has reached an upper limit. A State may also want to think about adding a provision to trigger additional collection of funds when a State expects that a large release will be a significant drain on the State fund. Another provision that a State may want to consider, if it uses fees to support its fund, is to allow for a modification of the fee structure.

C. Coverage Provided

State funds can be developed to provide either **full or partial** coverage to help the State meet the financial responsibility objective for State program approval.

1. Full Coverage

If the State desires to satisfy the **financial responsibility objective** for State Program Approval by using its fund, a **full coverage fund** can be used to meet the entire objective. Assuming the fund is approved by EPA as part of State Program Approval, the State does not need to separately require that owners and operators demonstrate financial responsibility because the State fund provides all owners and operators in the State with the appropriate amounts of coverage.

A full coverage fund assures that **for all owners and operators** in the State money will be available to pay for corrective action and third-party liability costs in the amounts required by the Federal objective:

Per occurrence requirements:

- $500,00 per occurrence for non-marketers who pump 10,000 gallons or less each month; and
- $1 million per occurrence for everyone else.

Aggregate requirements:

- $1 million aggregate for those with 100 tanks or less;
- $2 million aggregate for those with more than 100 tanks.

The State fund does **not** necessarily need to prescribe specified limits of coverage. Limits in a State fund set maximum coverage amounts that the State fund will provide to an owner/operator for single or multiple releases occurring in a year. Without such limits, the State fund is able to cover an owner/operator for all releases in a year. On the other hand, if the State wishes to limit the coverage that it will provide for a particular release to an individual owner/operator in any given year, it may choose to establish per occurrence or aggregate limits of coverage. However, the limits must be no less than the Federal limits above.

First Dollar Coverage

A State fund can be considered a full coverage fund even if it has a deductible amount that the owner or operator is responsible for paying, as long as it provides for **"first dollar coverage"** by the State. First dollar coverage simply means that if owners and operators do not meet the deductible requirement, the State can still pay for corrective action and third party claims, including the deductible amount, by using its fund. In this instance, the State may want to consider pursuing cost recovery against the owner or operator for the deductible amount, although this would be at the State's discretion.

2. Partial Coverage

A State fund may be approved as providing only partial coverage if:

- Coverage will be provided for only a portion of the dollar amounts or types of coverage (corrective action and third-party liability) required by the Federal objective; or
- Coverage will be provided for only some owners or operators in the State. (See the "eligibility" section below for additional discussion of this choice.)

When the State uses a **partial coverage fund** to satisfy a portion of the financial responsibility objective for State Program Approval, the State **must also require, by statute or regulation**, that:

- Owners and operators demonstrate responsibility for the amounts of corrective action and third-party liability costs that are not covered by the State fund; and
- Owners and operators not covered by the fund demonstrate financial responsibility for at least the full amounts required by the Federal objective.

The rationale behind this is that for State Program Approval, the State's program must "stand alone" to fully meet the financial responsibility objective. In this case, the State's total program (partial coverage fund + State statute/regs.) can be approved as fully satisfying the financial responsibility objective.

For example, a partial coverage fund might only cover from $10,000 to $1 million in corrective action costs. The State must require that owners and operators find another mechanism to demonstrate coverage for the $10,000 deductible for corrective action (unless the State fund provides "first dollar coverage" as described above). In this example, the State must also require owners and operators to demonstrate, through another assurance mechanism, coverage of third-party liability costs.

To help owners and operators comply with deductive requirements, EPA is allowing States to establish their own financial test of self-insurance for deductible amounts. The Federal test of self-insurance (either $10 million or $20 million net worth) is inappropriate when insuring for deductible amounts, which are often in the $5000 to $50,000 range. In establishing their test, States may want to consider requiring that the owner's or operator's minimum net worth be a specific multiple of the deductible amount.

3. Methods of Payment

Under any State fund, the State must provide reasonable assurance that it will pay full or partial coverage of cleanup and third party liability costs of an eligible owner or operator. The State can make this assurance in several ways. First, the State may undertake corrective action at the site and pay for cleanup and third party costs directly. EPA expects that most States will do so only if the owner or operator is unable or unwilling to pay these costs.

More frequently, State funds are designed assuming that a responsible party (RP) - lead cleanup will occur, either voluntarily or pursuant to a State administrative or judicial order. Acceptable methods of payment under this fund design include, but are not limited to:

- direct payment to a RP's contractor
- direct payment to a RP based on invoices received from his contractor
- joint payment to a RP and his contractor

These payments typically take place periodically as work progresses, based on invoices received ("costs-incurred" basis). In addition, these same methods of payment are acceptable for satisfying third party claims, settlements, and judgments.

In the situations above, the owner or operator takes the lead on the cleanup and handling third party claims, but once he has paid the deductible, the State fund becomes the source of payment, thus providing financial assurance.

4. "Assurance" Provided by Reimbursement Funds

Some State funds, however, operate primarily as reimbursement funds, paying out costs only after the owner or operator has paid for the cleanup and/or any third party liability claims. The owner or operator then applies to the State for reimbursement of these costs, supported by proof that he has already paid them. With this fund design, EPA is concerned that where an owner or operator lacks the funding to pay for the cleanup or satisfy third party claims (despite the promise or reimbursement), the site will remain unaddressed. Therefore, a reimbursement-only fund (even one that provides for interim reimbursements) is **not**, by itself, approvable. It must also be structured to provide State payment (as described in "Methods of Payment") of the costs it purports to cover in the event that the owner or operator is incapable of, or unwilling to, cover these costs prior to being reimbursed.

Specifically, if the State intends to provide **full coverage** the fund must be structured to provide payment of costs by the State from the "first dollar" of cleanup costs incurred. If the State intends to provide **partial coverage** (e.g., above a deductible amount), the fund must be structured to provide payment of costs by the State after the owner or operator has satisfied the deductible. For example, a State fund that assures all owners and operators within the State that it will reimburse all corrective action costs above $10,000 is approvable (as a partial coverage mechanism) but only if it also provides for State payment (as described in "Methods of Payment") of the costs above $10,000 should the owner or operator be unable or unwilling to pay them prior to reimbursement.

The exact nature of the State statutory or administrative provisions governing the fund necessary to demonstrate the State's commitment to pay these costs should be carefully evaluated by the Region on a State-by-State basis. The approach and language employed by States to demonstrate their commitment need not be uniform, and may vary between States. In particular, some State funds that use the term "reimbursement" are designed to be implemented using one of the acceptable payment methods described previously, and thus, could be approvable. The Region must determine whether the provisions of the fund are legally sufficient to satisfy EPA's policy objectives and must, as with other issues involved in approving State funds, be reviewed by the Office of Regional Counsel.

D. Eligibility for Use of the Fund

State funds can provide either unlimited or limited eligibility for use of the funds.

1. Unlimited Eligibility
State funds that cover all owners and operators in the State would have unlimited eligibility.

Some States have designed their funds to require that owners and operators pay a yearly tank fee in order to be eligible for fund coverage. We do not view a fee requirement as limiting eligibility because this provision is open to all owners and operators in the State and, in most cases, they are required to pay these fees.

2. Limited Eligibility
A State could set "entrance" requirements that limit the eligibility of owners and operators to use the fund. For example, a State may require that owners or operators perform a tank tightness test **before** being eligible for coverage by the fund. If a State limits the eligibility of owners and operators to use a State fund, the State must require, by statute or regulation, that these owners and operators demonstrate financial responsibility for at least the full amount required by the federal objective.

3. NOTE: A Caution About Post-Release Eligibility Determinations
To provide incentives for owners and operators to engage in good tank management practices, many States limit their fund coverage by using "substantial compliance" or other clauses. These provisions often limit eligibility to owners and operators who are in "substantial compliance" with the technical requirements of the Federal and State UST regulations **at the time of the release**. After the release occurs, the State evaluates eligibility for fund coverage. This provision may be considered similar to private insurance, where UST owners and operators are required to comply with certain terms and conditions of the policy. Otherwise, the insurance company may elect to deny coverage after a leak occurs.

Our concern with this approach is that owners and operators who are out of compliance with some aspect of the UST regulations may believe they were covered by a State fund, only to find out at the time of the release that they were no longer eligible for coverage. In this situation, the State fund would not provide money for cleaning up the release, and it is highly unlikely that owners and operators would have obtained separate assurance mechanisms. We have concluded, however, that the same situation may occur with private insurance and, thus, States should not be precluded from having similar provisions.

EPA reviewers of State funds with these provisions should recommend to the State that eligibility criteria, particularly those which are evaluated **after** a release occurs, be as specific as possible so that owners and operators know ahead of time what they are expected to do to qualify for coverage. In addition, EPA reviewers should strongly urge the State **not** to bar itself from using the fund to respond to releases, even if questions about eligibility arise. The State should allow itself access to the fund in such circumstances, perhaps followed by cost recovery. This approach assures that money would be available if needed, to clean up the release.

E. "Sunset" Provisions in State Funds

State funds may provide for the expiration of the fund (or revenue mechanism) at a designated time in the future. While many States may choose to reauthorize their funds to continue after this time, there is no guarantee of this occurring. Therefore, we recommend that approval of State programs with funds containing "sunset" provisions be limited to the time for which the fund is currently authorized, or until it ceases to provide the required levels of coverage.

Regions should consider using the following language in approving programs with funds that contain sunset provisions:

"Approval of this Program is effective until such time as the financial assurance funding mechanism expires, unless the State solicits and receives written authorization by the U.S. EPA that the Fund balance is sufficient to provide continued coverage in the amounts provided in the legislation."

In addition, at least sixty days prior to the termination of fund coverage, the State must notify all covered owners and operators that coverage is terminating, and advise them that they must obtain other mechanisms to satisfy their financial responsibility obligation.