

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 82 - SOLID WASTE DISPOSAL
SUBCHAPTER IX - REGULATION OF UNDERGROUND STORAGE TANKS

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SUBCHAPTER IX - REGULATION OF UNDERGROUND STORAGE TANKS

-End-

-CITE-

42 USC Sec. 6991

01/02/2006

-EXPCITE-

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 82 - SOLID WASTE DISPOSAL
SUBCHAPTER IX - REGULATION OF UNDERGROUND STORAGE TANKS

-HEAD-

Sec. 6991. Definitions and exemptions

-STATUTE-

In this subchapter:

(1) Indian tribe. -

(A) In general. - The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community that is recognized as being eligible for special programs and services provided by the United States to Indians because of their status as Indians.

(B) Inclusions. - The term "Indian tribe" includes an Alaska Native village, as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); and (!)

(2) The term "nonoperational storage tank" means any underground storage tank in which regulated substances will not be deposited or from which regulated substances will not be dispensed after November 8, 1984.

(3) The term "operator" means any person in control of, or having responsibility for, the daily operation of the underground storage tank.

(4) The term "owner" means -

(A) in the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances and

(B) in the case of any underground storage tank in use before November 8, 1984, but no longer in use on November 8, 1984, any person who owned such tank immediately before the discontinuation of its use.

(5) The term "person" has the same meaning as provided in section 6903(15) of this title, except that such term includes a consortium, a joint venture, and a commercial entity, and the United States Government.

(6) The term "petroleum" means petroleum, including crude oil

or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

(7) The term "regulated substance" means -

(A) any substance defined in section 9601(14) of this title (but not including any substance regulated as a hazardous waste under subchapter III of this chapter), and

(B) petroleum.

(8) The term "release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water or subsurface soils.

(9) Trust fund. - The term "Trust Fund" means the Leaking Underground Storage Tank Trust Fund established by section 9508 of title 26.

(10) The term "underground storage tank" means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground. Such term does not include any

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(A) farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes,

(B) tank used for storing heating oil for consumptive use on the premises where stored,

(C) septic tank,

(D) pipeline facility (including gathering lines) -

(i) which is regulated under chapter 601 of title 49, or

(ii) which is an intrastate pipeline facility regulated under State laws as provided in chapter 601 of title 49,

and which is determined by the Secretary to be connected to a pipeline or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline,

(E) surface impoundment, pit, pond, or lagoon,

(F) storm water or waste water collection system,

(G) flow-through process tank,

(H) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations, or

(I) storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" shall not include any pipes connected to any tank which is described in subparagraphs (A) through (I).

-SOURCE-

(Pub. L. 89-272, title II, Sec. 9001, as added Pub. L. 98-616, title VI, Sec. 601(a), Nov. 8, 1984, 98 Stat. 3277; amended Pub. L. 99-499, title II, Sec. 205(a), Oct. 17, 1986, 100 Stat. 1696; Pub. L. 102-508, title III, Sec. 302, Oct. 24, 1992, 106 Stat. 3307;

Pub. L. 103-429, Sec. 7(d), Oct. 31, 1994, 108 Stat. 4389; Pub. L. 109-58, title XV, Secs. 1532(a), 1533(1), Aug. 8, 2005, 119 Stat. 1104, 1105.)

-REFTEXT-

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (1)(B), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (Sec. 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

-MISC1-

AMENDMENTS

2005 - Pub. L. 109-58 substituted "In this subchapter:" for "For the purposes of this subchapter - " in introductory provisions, added pars. (1) and (9), redesignated former pars. (1) to (8) as pars. (10), (7), (4), (3), (8), (5), (2), and (6), respectively, and, in par. (4)(A), substituted "substances" for "sustances".

1994 - Par. (1)(D). Pub. L. 103-429 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "pipeline facility (including gathering lines) -

"(i) which is regulated under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671 et seq.),

"(ii) which is regulated under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001 et seq.), or

"(iii) which is an intrastate pipeline facility regulated under State laws as provided in the provisions of law referred to in clause (i) or (ii) of this subparagraph, and which is determined by the Secretary to be connected to a pipeline or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline,".

1992 - Par. (1)(D). Pub. L. 102-508 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows:

"pipeline facility (including gathering lines) regulated under -

"(i) the Natural Gas Pipeline Safety Act of 1968,

"(ii) the Hazardous Liquid Pipeline Safety Act of 1979, or

"(iii) which is an intrastate pipeline facility regulated under State laws comparable to the provisions of law referred to in clause (i) or (ii) of this subparagraph,".

1986 - Par. (2)(B). Pub. L. 99-499 struck out ", including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute)". See par. (8).

Par. (8). Pub. L. 99-499 added par. (8).

ABOVEGROUND STORAGE TANK GRANT PROGRAM

Pub. L. 106-554, Sec. 1(a)(4) [div. B, title XII, Sec. 1201], Dec. 21, 2000, 114 Stat. 2763, 2763A-313, provided that:

"(a) Definitions. - In this provision:

"(1) Aboveground storage tank. - The term 'aboveground storage tank' means any tank or combination of tanks (including any connected pipe) -

"(A) that is used to contain an accumulation of regulated substances; and

"(B) the volume of which (including the volume of any connected pipe) is located wholly above the surface of the ground.

"(2) Administrator. - The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(3) Denali Commission. - The term 'Denali Commission' means the commission established by section 303(a) of the Denali Commission Act of 1998 [Pub. L. 105-277, div. C, title III] (42 U.S.C. 3121 note).

"(4) Federal environmental law. - The term 'Federal environmental law' means -

"(A) the Oil Pollution Control Act of 1990 (33 U.S.C. 2701 et seq.);

"(B) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

"(C) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

"(D) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); or

"(E) any other Federal law that is applicable to the release into the environment of a regulated substance, as determined by the Administrator.

"(5) Native village. - The term 'Native village' has the meaning given the term in section 11(b) in Public Law 92-203 (85 Stat. 688) [43 U.S.C. 1610(b)].

"(6) Program. - The term 'program' means the Aboveground Storage Tank Grant Program established by subsection (b)(1).

"(7) Regulated substance. - The term 'regulated substance' has the meaning given the term in section 9001 of the Solid Waste Disposal Act (42 U.S.C. 6991).

"(8) State. - The term 'State' means the State of Alaska.

"(b) Establishment. -

"(1) In general. - There is established a grant program to be known as the 'Aboveground Storage Tank Grant Program'

"(2) Grants. - Under the program, the Administrator shall award a grant to -

"(A) the State, on behalf of a Native village; or

"(B) the Denali Commission.

"(c) Use of Grants. - The State or the Denali Commission shall use the funds of a grant under subsection (b) to repair, upgrade, or replace one or more aboveground storage tanks that -

"(1) leaks or poses an imminent threat of leaking, as certified by the Administrator, the Commandant of the Coast Guard, or any other appropriate Federal or State agency (as determined by the Administrator); and

"(2) is located in a Native village -

"(A) the median household income of which is less than 80 percent of the median household income in the State;

"(B) that is located -

"(i) within the boundaries of -

"(I) a unit of the National Park System;

"(II) a unit of the National Wildlife Refuge System; or

"(III) a National Forest; or

"(ii) on public land under the administrative jurisdiction of the Bureau of Land Management; or

"(C) that receives payments from the Federal Government under chapter 69 of title 31, United States Code (commonly known as 'payments in lieu of taxes').

"(d) Reports. - Not later than 1 year after the date on which the State or the Denali Commission receives a grant under subsection (c), and annually thereafter, the State or the Denali Commission, as the case may be, shall submit a report describing each project completed with grant funds and any projects planned for the following year, to -

"(1) the Administrator;

"(2) the Committee on Resources of the House of Representatives;

"(3) the Committee on Environment and Public Works of the Senate;

"(4) the Committee on Appropriations of the House of Representatives; and

"(5) the Committee on Appropriations of the Senate.

"(e) Authorization of Appropriations. - There are authorized to be appropriated to carry out this Act [probably means this section], to remain available until expended -

"(1) \$20,000,000 for fiscal year 2001; and

"(2) such sums as are necessary for each fiscal year thereafter."

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

-FOOTNOTE-

(!1) So in original. The semicolon probably should be a period and the word "and" probably should not appear.

-End-

-CITE-

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TITLE 42 - THE PUBLIC HEALTH AND WELFARE
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-HEAD-

Sec. 6991a. Notification

-STATUTE-

(a) Underground storage tanks

(1) Within 18 months after November 8, 1984, each owner of an underground storage tank shall notify the State or local agency or department designated pursuant to subsection (b)(1) of this section of the existence of such tank, specifying the age, size, type, location, and uses of such tank.

(2)(A) For each underground storage tank taken out of operation after January 1, 1974, the owner of such tank shall, within eighteen months after November 8, 1984, notify the State or local agency, or department designated pursuant to subsection (b)(1) of this section of the existence of such tanks (unless the owner knows the tank subsequently was removed from the ground). The owner of a tank taken out of operation on or before January 1, 1974, shall not be required to notify the State or local agency under this subsection.

(B) Notice under subparagraph (A) shall specify, to the extent known to the owner -

- (i) the date the tank was taken out of operation,
- (ii) the age of the tank on the date taken out of operation,
- (iii) the size, type and location of the tank, and
- (iv) the type and quantity of substances left stored in such tank on the date taken out of operation.

(3) Any owner which brings into use an underground storage tank after the initial notification period specified under paragraph (1), shall notify the designated State or local agency or department within thirty days of the existence of such tank, specifying the age, size, type, location and uses of such tank.

(4) Paragraphs (1) through (3) of this subsection shall not apply to tanks for which notice was given pursuant to section 9603(c) of this title.

(5) Beginning thirty days after the Administrator prescribes the form of notice pursuant to subsection (b)(2) of this section and for eighteen months thereafter, any person who deposits regulated substances in an underground storage tank shall reasonably notify the owner or operator of such tank of the owner's notification requirements pursuant to this subsection.

(6) Beginning thirty days after the Administrator issues new tank performance standards pursuant to section 6991b(c) of this title, any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser of such tank of the owner's notification requirements pursuant to this subsection.

(b) Agency designation

(1) Within one hundred and eighty days after November 8, 1984, the Governors of each State shall designate the appropriate State agency or department or local agencies or departments to receive the notifications under subsection (a)(1), (2), or (3) of this section.

(2) Within twelve months after November 8, 1984, the Administrator, in consultation with State and local officials designated pursuant to subsection (b)(1) of this section, and after notice and opportunity for public comment, shall prescribe the form of the notice and the information to be included in the notifications under subsection (a)(1), (2), or (3) of this section. In prescribing the form of such notice, the Administrator shall take into account the effect on small businesses and other owners and operators.

(c) State inventories

Each State shall make 2 separate inventories of all underground storage tanks in such State containing regulated substances. One inventory shall be made with respect to petroleum and one with respect to other regulated substances. In making such inventories, the State shall utilize and aggregate the data in the notification

forms submitted pursuant to subsections (a) and (b) of this section. Each State shall submit such aggregated data to the Administrator not later than 270 days after October 17, 1986.

(d) Public record

(1) In general

The Administrator shall require each State that receives Federal funds to carry out this subchapter to maintain, update at least annually, and make available to the public, in such manner and form as the Administrator shall prescribe (after consultation with States), a record of underground storage tanks regulated under this subchapter.

(2) Considerations

To the maximum extent practicable, the public record of a State, respectively, shall include, for each year -

(A) the number, sources, and causes of underground storage tank releases in the State;

(B) the record of compliance by underground storage tanks in the State with -

(i) this subchapter; or

(ii) an applicable State program approved under section 6991c of this title; and

(C) data on the number of underground storage tank equipment failures in the State.

-SOURCE-

(Pub. L. 89-272, title II, Sec. 9002, as added Pub. L. 98-616, title VI, Sec. 601(a), Nov. 8, 1984, 98 Stat. 3278; amended Pub. L. 99-499, title II, Sec. 205(b), Oct. 17, 1986, 100 Stat. 1696; Pub. L. 109-58, title XV, Sec. 1526(c), Aug. 8, 2005, 119 Stat. 1098.)

-MISC1-

AMENDMENTS

2005 - Subsec. (d). Pub. L. 109-58 added subsec. (d).

1986 - Subsec. (c). Pub. L. 99-499 added subsec. (c).

-End-

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-HEAD-

Sec. 6991b. Release detection, prevention, and correction regulations

-STATUTE-

(a) Regulations

The Administrator, after notice and opportunity for public comment, and at least three months before the effective dates

specified in subsection (f) of this section, shall promulgate release detection, prevention, and correction regulations applicable to all owners and operators of underground storage tanks, as may be necessary to protect human health and the environment.

(b) Distinctions in regulations

In promulgating regulations under this section, the Administrator may distinguish between types, classes, and ages of underground storage tanks. In making such distinctions, the Administrator may take into consideration factors, including, but not limited to: location of the tanks, soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry recommended practices, national consensus codes, hydrogeology, water table, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tank, the technical capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the tank is fabricated.

(c) Requirements

The regulations promulgated pursuant to this section shall include, but need not be limited to, the following requirements respecting all underground storage tanks -

- (1) requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;
- (2) requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing or comparable system;
- (3) requirements for reporting of releases and corrective action taken in response to a release from an underground storage tank;
- (4) requirements for taking corrective action in response to a release from an underground storage tank;
- (5) requirements for the closure of tanks to prevent future releases of regulated substances into the environment; and
- (6) requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.

(d) Financial responsibility

(1) Financial responsibility required by this subsection may be established in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other method satisfactory to the Administrator. In promulgating requirements under this subsection, the Administrator is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this subchapter.

(2) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in any State

court of the Federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this paragraph such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(3) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this section. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 9607 or 9611 of this title or other applicable law.

(4) For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.

(5)(A) The Administrator, in promulgating financial responsibility regulations under this section, may establish an amount of coverage for particular classes or categories of underground storage tanks containing petroleum which shall satisfy such regulations and which shall not be less than \$1,000,000 for each occurrence with an appropriate aggregate requirement.

(B) The Administrator may set amounts lower than the amounts required by subparagraph (A) of this paragraph for underground storage tanks containing petroleum which are at facilities not engaged in petroleum production, refining, or marketing and which are not used to handle substantial quantities of petroleum.

(C) In establishing classes and categories for purposes of this paragraph, the Administrator may consider the following factors:

(i) The size, type, location, storage, and handling capacity of underground storage tanks in the class or category and the volume of petroleum handled by such tanks.

(ii) The likelihood of release and the potential extent of damage from any release from underground storage tanks in the class or category.

(iii) The economic impact of the limits on the owners and operators of each such class or category, particularly relating to the small business segment of the petroleum marketing industry.

(iv) The availability of methods of financial responsibility in amounts greater than the amount established by this paragraph.

(v) Such other factors as the Administrator deems pertinent.

(D) The Administrator may suspend enforcement of the financial responsibility requirements for a particular class or category of underground storage tanks or in a particular State, if the

Administrator makes a determination that methods of financial responsibility satisfying the requirements of this subsection are not generally available for underground storage tanks in that class or category, and -

- (i) steps are being taken to form a risk retention group for such class of tanks; or
- (ii) such State is taking steps to establish a fund pursuant to section 6991c(c)(1) of this title to be submitted as evidence of financial responsibility.

A suspension by the Administrator pursuant to this paragraph shall extend for a period not to exceed 180 days. A determination to suspend may be made with respect to the same class or category or for the same State at the end of such period, but only if substantial progress has been made in establishing a risk retention group, or the owners or operators in the class or category demonstrate, and the Administrator finds, that the formation of such a group is not possible and that the State is unable or unwilling to establish such a fund pursuant to clause (ii).

(e) New tank performance standards

The Administrator shall, not later than three months prior to the effective date specified in subsection (f) of this section, issue performance standards for underground storage tanks brought into use on or after the effective date of such standards. The performance standards for new underground storage tanks shall include, but need not be limited to, design, construction, installation, release detection, and compatibility standards.

(f) Effective dates

(1) Regulations issued pursuant to subsections (c) and (d) of this section, and standards issued pursuant to subsection (e) of this section, for underground storage tanks containing regulated substances defined in section 6991(7)(B) of this title (petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure) shall be effective not later than thirty months after November 8, 1984.

(2) Standards issued pursuant to subsection (e) of this section (entitled "New Tank Performance Standards") for underground storage tanks containing regulated substances defined in section 6991(7)(A) of this title shall be effective not later than thirty-six months after November 8, 1984.

(3) Regulations issued pursuant to subsection (c) of this section (entitled "Requirements") and standards issued pursuant to subsection (d) of this section (entitled "Financial Responsibility") for underground storage tanks containing regulated substances defined in section 6991(7)(A) of this title shall be effective not later than forty-eight months after November 8, 1984.

(g) Interim prohibition

(1) Until the effective date of the standards promulgated by the Administrator under subsection (e) of this section and after one hundred and eighty days after November 8, 1984, no person may install an underground storage tank for the purpose of storing regulated substances unless such tank (whether of single or double wall construction) -

(A) will prevent releases due to corrosion or structural failure for the operational life of the tank;

(B) is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material,

or designed in a manner to prevent the release or threatened release of any stored substance; and

(C) the material used in the construction or lining of the tank is compatible with the substance to be stored.

(2) Notwithstanding paragraph (1), if soil tests conducted in accordance with ASTM Standard G57-78, or another standard approved by the Administrator, show that soil resistivity in an installation location is 12,000 ohm/cm or more (unless a more stringent standard is prescribed by the Administrator by rule), a storage tank without corrosion protection may be installed in that location during the period referred to in paragraph (1).

(h) EPA response program for petroleum

(1) Before regulations

Before the effective date of regulations under subsection (c) of this section, the Administrator (or a State pursuant to paragraph (7)) is authorized to -

(A) require the owner or operator of an underground storage tank to undertake corrective action with respect to any release of petroleum when the Administrator (or the State) determines that such corrective action will be done properly and promptly by the owner or operator of the underground storage tank from which the release occurs; or

(B) undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank if such action is necessary, in the judgment of the Administrator (or the State), to protect human health and the environment.

The corrective action undertaken or required under this paragraph shall be such as may be necessary to protect human health and the environment. The Administrator shall use funds in the Trust Fund for payment of costs incurred for corrective action under subparagraph (B), enforcement action under subparagraph (A), and cost recovery under paragraph (6) of this subsection. Subject to the priority requirements of paragraph (3), the Administrator (or the State) shall give priority in undertaking such actions under subparagraph (B) to cases where the Administrator (or the State) cannot identify a solvent owner or operator of the tank who will undertake action properly.

(2) After regulations

Following the effective date of regulations under subsection (c) of this section, all actions or orders of the Administrator (or a State pursuant to paragraph (7)) described in paragraph (1) of this subsection shall be in conformity with such regulations. Following such effective date, the Administrator (or the State) may undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank only if such action is necessary, in the judgment of the Administrator (or the State), to protect human health and the environment and one or more of the following situations exists:

(A) No person can be found, within 90 days or such shorter period as may be necessary to protect human health and the environment, who is -

- (i) an owner or operator of the tank concerned,
- (ii) subject to such corrective action regulations, and
- (iii) capable of carrying out such corrective action

properly.

(B) A situation exists which requires prompt action by the Administrator (or the State) under this paragraph to protect human health and the environment.

(C) Corrective action costs at a facility exceed the amount of coverage required by the Administrator pursuant to the provisions of subsections (c) and (d)(5) of this section and, considering the class or category of underground storage tank from which the release occurred, expenditures from the Trust Fund are necessary to assure an effective corrective action.

(D) The owner or operator of the tank has failed or refused to comply with an order of the Administrator under this subsection or section 6991e of this title or with the order of a State under this subsection to comply with the corrective action regulations.

(3) Priority of corrective actions

The Administrator (or a State pursuant to paragraph (7)) shall give priority in undertaking corrective actions under this subsection, and in issuing orders requiring owners or operators to undertake such actions, to releases of petroleum from underground storage tanks which pose the greatest threat to human health and the environment.

(4) Corrective action orders

The Administrator is authorized to issue orders to the owner or operator of an underground storage tank to carry out subparagraph (A) of paragraph (1) or to carry out regulations issued under subsection (c)(4) of this section. A State acting pursuant to paragraph (7) of this subsection is authorized to carry out subparagraph (A) of paragraph (1) only until the State's program is approved by the Administrator under section 6991c of this title. Such orders shall be issued and enforced in the same manner and subject to the same requirements as orders under section 6991e of this title.

(5) Allowable corrective actions

The corrective actions undertaken by the Administrator (or a State pursuant to paragraph (7)) under paragraph (1) or (2) may include temporary or permanent relocation of residents and alternative household water supplies. In connection with the performance of any corrective action under paragraph (1) or (2), the Administrator may undertake an exposure assessment as defined in paragraph (10) of this subsection or provide for such an assessment in a cooperative agreement with a State pursuant to paragraph (7) of this subsection. The costs of any such assessment may be treated as corrective action for purposes of paragraph (6), relating to cost recovery.

(6) Recovery of costs

(A) In general

Whenever costs have been incurred by the Administrator, or by a State pursuant to paragraph (7), for undertaking corrective action or enforcement action with respect to the release of petroleum from an underground storage tank, the owner or operator of such tank shall be liable to the Administrator or the State for such costs. The liability under this paragraph shall be construed to be the standard of liability which obtains under section 1321 of title 33.

(B) Recovery

In determining the equities for seeking the recovery of costs under subparagraph (A), the Administrator (or a State pursuant to paragraph (7) of this subsection) may consider the amount of financial responsibility required to be maintained under subsections (c) and (d)(5) of this section and the factors considered in establishing such amount under subsection (d)(5) of this section.

(C) Effect on liability

(i) No transfers of liability

No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any underground storage tank or from any person who may be liable for a release or threat of release under this subsection, to any other person the liability imposed under this subsection. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(ii) No bar to cause of action

Nothing in this subsection, including the provisions of clause (i) of this subparagraph, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(D) Facility

For purposes of this paragraph, the term "facility" means, with respect to any owner or operator, all underground storage tanks used for the storage of petroleum which are owned or operated by such owner or operator and located on a single parcel of property (or on any contiguous or adjacent property).

(E) Inability or limited ability to pay

(i) In general

In determining the level of recovery effort, or amount that should be recovered, the Administrator (or the State pursuant to paragraph (7)) shall consider the owner or operator's ability to pay. An inability or limited ability to pay corrective action costs must be demonstrated to the Administrator (or the State pursuant to paragraph (7)) by the owner or operator.

(ii) Considerations

In determining whether or not a demonstration is made under clause (i), the Administrator (or the State pursuant to paragraph (7)) shall take into consideration the ability of the owner or operator to pay corrective action costs and still maintain its basic business operations, including consideration of the overall financial condition of the owner or operator and demonstrable constraints on the ability of the owner or operator to raise revenues.

(iii) Information

An owner or operator requesting consideration under this subparagraph shall promptly provide the Administrator (or the State pursuant to paragraph (7)) with all relevant information needed to determine the ability of the owner or operator to pay corrective action costs.

(iv) Alternative payment methods

The Administrator (or the State pursuant to paragraph (7)) shall consider alternative payment methods as may be

necessary or appropriate if the Administrator (or the State pursuant to paragraph (7)) determines that an owner or operator cannot pay all or a portion of the costs in a lump sum payment.

(v) Misrepresentation

If an owner or operator provides false information or otherwise misrepresents their financial situation under clause (ii), the Administrator (or the State pursuant to paragraph (7)) shall seek full recovery of the costs of all such actions pursuant to the provisions of subparagraph (A) without consideration of the factors in subparagraph (B).

(7) State authorities

(A) General

A State may exercise the authorities in paragraphs (1), (2), and (12), subject to the terms and conditions of paragraphs (3), (5), (9), (10), and (11), and the authority under sections 6991j and 6991k of this title and paragraphs (4), (6), and (8), if -

(i) the Administrator determines that the State has the capabilities to carry out effective corrective actions and enforcement activities; and

(ii) the Administrator enters into a cooperative agreement with the State setting out the actions to be undertaken by the State.

The Administrator may provide funds from the Trust Fund for the reasonable costs of the State's actions under the cooperative agreement.

(B) Cost share

Following the effective date of the regulations under subsection (c) of this section, the State shall pay 10 per centum of the cost of corrective actions undertaken either by the Administrator or by the State under a cooperative agreement, except that the Administrator may take corrective action at a facility where immediate action is necessary to respond to an imminent and substantial endangerment to human health or the environment if the State fails to pay the cost share.

(8) Emergency procurement powers

Notwithstanding any other provision of law, the Administrator may authorize the use of such emergency procurement powers as he deems necessary.

(9) Definition of owner or operator

(A) In general

As used in this subchapter, the terms "owner" and "operator" do not include a person that, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, or marketing, holds indicia of ownership primarily to protect the person's security interest.

(B) Security interest holders

The provisions regarding holders of security interests in subparagraphs (E) through (G) of section 9601(20) of this title and the provisions regarding fiduciaries at section 9607(n) of this title shall apply in determining a person's liability as an owner or operator of an underground storage tank for the purposes of this subchapter.

(C) Effect on rule

Nothing in subparagraph (B) shall be construed as modifying or affecting the final rule issued by the Administrator on September 7, 1995 (60 Fed. Reg. 46,692), or as limiting the authority of the Administrator to amend the final rule, in accordance with applicable law. The final rule in effect on September 30, 1996, shall prevail over any inconsistent provision regarding holders of security interests in subparagraphs (E) through (G) of section 9601(20) of this title or any inconsistent provision regarding fiduciaries in section 9607(n) of this title. Any amendment to the final rule shall be consistent with the provisions regarding holders of security interests in subparagraphs (E) through (G) of section 9601(20) of this title and the provisions regarding fiduciaries in section 9607(n) of this title. This subparagraph does not preclude judicial review of any amendment of the final rule made after September 30, 1996.

(10) Definition of exposure assessment

As used in this subsection, the term "exposure assessment" means an assessment to determine the extent of exposure of, or potential for exposure of, individuals to petroleum from a release from an underground storage tank based on such factors as the nature and extent of contamination and the existence of or potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size of the community within the likely pathways of exposure, and the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants. Such assessment shall not delay corrective action to abate immediate hazards or reduce exposure.

(11) Facilities without financial responsibility

At any facility where the owner or operator has failed to maintain evidence of financial responsibility in amounts at least equal to the amounts established by subsection (d)(5)(A) of this section (or a lesser amount if such amount is applicable to such facility as a result of subsection (d)(5)(B) of this section) for whatever reason the Administrator shall expend no monies from the Trust Fund to clean up releases at such facility pursuant to the provisions of paragraph (1) or (2) of this subsection. At such facilities the Administrator shall use the authorities provided in subparagraph (A) of paragraph (1) and paragraph (4) of this subsection and section 6991e of this title to order corrective action to clean up such releases. States acting pursuant to paragraph (7) of this subsection shall use the authorities provided in subparagraph (A) of paragraph (1) and paragraph (4) of this subsection to order corrective action to clean up such releases. Notwithstanding the provisions of this paragraph, the Administrator may use monies from the fund to take the corrective actions authorized by paragraph (5) of this subsection to protect human health at such facilities and shall seek full recovery of the costs of all such actions pursuant to the provisions of paragraph (6)(A) of this subsection and without consideration of the factors in paragraph (6)(B) of this subsection. Nothing in this paragraph shall prevent the Administrator (or a State pursuant to paragraph (7) of this subsection) from taking

corrective action at a facility where there is no solvent owner or operator or where immediate action is necessary to respond to an imminent and substantial endangerment of human health or the environment.

(12) Remediation of oxygenated fuel contamination

(A) In general

The Administrator and the States may use funds made available under section 6991m(2)(B) of this title to carry out corrective actions with respect to a release of a fuel containing an oxygenated fuel additive that presents a threat to human health or welfare or the environment.

(B) Applicable authority

The Administrator or a State shall carry out subparagraph (A) in accordance with paragraph (2), and in the case of a State, in accordance with a cooperative agreement entered into by the Administrator and the State under paragraph (7).

(i) Additional measures to protect groundwater from contamination

The Administrator shall require each State that receives funding under this subchapter to require one of the following:

(1) Tank and piping secondary containment

(A) Each new underground storage tank, or piping connected to any such new tank, installed after the effective date of this subsection, or any existing underground storage tank, or existing piping connected to such existing tank, that is replaced after the effective date of this subsection, shall be secondarily contained and monitored for leaks if the new or replaced underground storage tank or piping is within 1,000 feet of any existing community water system or any existing potable drinking water well.

(B) In the case of a new underground storage tank system consisting of one or more underground storage tanks and connected by piping, subparagraph (A) shall apply to all underground storage tanks and connected pipes comprising such system.

(C) In the case of a replacement of an existing underground storage tank or existing piping connected to the underground storage tank, subparagraph (A) shall apply only to the specific underground storage tank or piping being replaced, not to other underground storage tanks and connected pipes comprising such system.

(D) Each installation of a new motor fuel dispenser system, after the effective date of this subsection, shall include under-dispenser spill containment if the new dispenser is within 1,000 feet of any existing community water system or any existing potable drinking water well.

(E) This paragraph shall not apply to repairs to an underground storage tank, piping, or dispenser that are meant to restore a tank, pipe, or dispenser to operating condition.

(F) As used in this subsection:

(i) The term "secondarily contained" means a release detection and prevention system that meets the requirements of 40 CFR 280.43(g), but shall not include under-dispenser spill containment or control systems.

(ii) The term "underground storage tank" has the meaning given to it in section 6991 of this title, except that such term does not include tank combinations or more than a single underground pipe connected to a tank.

(iii) The term "installation of a new motor fuel dispenser

system" means the installation of a new motor fuel dispenser and the equipment necessary to connect the dispenser to the underground storage tank system, but does not mean the installation of a motor fuel dispenser installed separately from the equipment need to connect the dispenser to the underground storage tank system.

(2) Evidence of financial responsibility and certification

(A) Manufacturer and installer financial responsibility

A person that manufactures an underground storage tank or piping for an underground storage tank system or that installs an underground storage tank system is required to maintain evidence of financial responsibility under subsection (d) of this section in order to provide for the costs of corrective actions directly related to releases caused by improper manufacture or installation unless the person can demonstrate themselves (!1) to be already covered as an owner or operator of an underground storage tank under this section.

(B) Installer certification

The Administrator and each State that receives funding under this subchapter, as appropriate, shall require that a person that installs an underground storage tank system is -

(i) certified or licensed by the tank and piping manufacturer;

(ii) certified or licensed by the Administrator or a State, as appropriate;

(iii) has their (!1) underground storage tank system installation certified by a registered professional engineer with education and experience in underground storage tank system installation;

(iv) has had their (!1) installation of the underground storage tank inspected and approved by the Administrator or the State, as appropriate;

(v) compliant with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions; or

(vi) compliant with another method that is determined by the Administrator or a State, as appropriate, to be no less protective of human health and the environment.

(C) Savings clause

Nothing in subparagraph (A) alters or affects the liability of any owner or operator of an underground storage tank.

(j) Government-owned tanks

(1) State compliance report

(A) Not later than 2 years after August 8, 2005, each State that receives funding under this subchapter shall submit to the Administrator a State compliance report that -

(i) lists the location and owner of each underground storage tank described in subparagraph (B) in the State that, as of the date of submission of the report, is not in compliance with this section; and

(ii) specifies the date of the last inspection and describes the actions that have been and will be taken to ensure compliance of the underground storage tank listed under clause (i) with this subchapter.

(B) An underground storage tank described in this subparagraph is an underground storage tank that is -

- (i) regulated under this subchapter; and
- (ii) owned or operated by the Federal, State, or local government.

(C) The Administrator shall make each report, received under subparagraph (A), available to the public through an appropriate media.(!2)

(2) Financial incentive

The Administrator may award to a State that develops a report described in paragraph (1), in addition to any other funds that the State is entitled to receive under this subchapter, not more than \$50,000, to be used to carry out the report.

(3) Not a safe harbor

This subsection does not relieve any person from any obligation or requirement under this subchapter.

-SOURCE-

(Pub. L. 89-272, title II, Sec. 9003, as added Pub. L. 98-616, title VI, Sec. 601(a), Nov. 8, 1984, 98 Stat. 3279; amended Pub. L. 99-499, title II, Sec. 205(c), (d), Oct. 17, 1986, 100 Stat. 1697, 1698; Pub. L. 104-208, div. A, title II, Sec. 2503, Sept. 30, 1996, 110 Stat. 3009-468; Pub. L. 109-58, title XV, Secs. 1522(c), 1525, 1526(b), 1530(a), 1532(b)(1), (2), 1533(2), Aug. 8, 2005, 119 Stat. 1093, 1096, 1097, 1102, 1105; Pub. L. 109-168, Sec. 1(a)(2), Jan. 10, 2006, 119 Stat. 3580.)

-REFTEXT-

REFERENCES IN TEXT

The effective date of this subsection, referred to in subsec. (i)(1)(A), (D), is 18 months after Aug. 8, 2005. See Effective Date of 2005 Amendment note set out below.

The Federal Bankruptcy Code, referred to in subsec. (d)(2), probably means a reference to Title 11, Bankruptcy.

-MISC1-

AMENDMENTS

2006 - Subsecs. (i), (j). Pub. L. 109-168 redesignated subsec. (i), relating to government-owned tanks, as (j). Subsec. (j) was editorially transferred to the end of the section to reflect the probable intent of Congress.

2005 - Subsec. (f)(1). Pub. L. 109-58, Sec. 1533(2), substituted "subsections (c) and (d)" for "subsection (c) and (d)".

Pub. L. 109-58, Sec. 1532(b)(1)(A), substituted "6991(7)(B)" for "6991(2)(B)".

Subsec. (f)(2), (3). Pub. L. 109-58, Sec. 1532(b)(1)(B), substituted "6991(7)(A)" for "6991(2)(A)".

Subsec. (h)(1), (2)(C). Pub. L. 109-58, Sec. 1532(b)(2), substituted "Trust Fund" for "Leaking Underground Storage Tank Trust Fund".

Subsec. (h)(6)(E). Pub. L. 109-58, Sec. 1522(c), added subpar. (E).

Subsec. (h)(7)(A). Pub. L. 109-58, Sec. 1532(b)(2), substituted "Trust Fund" for "Leaking Underground Storage Tank Trust Fund" in

concluding provisions.

Pub. L. 109-58, Sec. 1525(1), in introductory provisions, substituted "paragraphs (1), (2), and (12)" for "paragraphs (1) and (2) of this subsection" and "and the authority under sections 6991j and 6991k of this title and paragraphs (4), (6), and (8)," for "and including the authorities of paragraphs (4), (6), and (8) of this subsection".

Subsec. (h)(11). Pub. L. 109-58, Sec. 1532(b)(2), substituted "Trust Fund" for "Leaking Underground Storage Tank Trust Fund".

Subsec. (h)(12). Pub. L. 109-58, Sec. 1525(2), added par. (12).

Subsec. (i). Pub. L. 109-58, Sec. 1530(a), added subsec. (i) relating to additional measures to protect groundwater from contamination.

Pub. L. 109-58, Sec. 1526(b), added subsec. (i) relating to government-owned tanks.

1996 - Subsec. (h)(9). Pub. L. 104-208 added par. (9) and struck out heading and text of former par. (9). Text read as follows: "As used in this subsection, the term 'owner' does not include any person who, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the owner's security interest in the tank."

1986 - Subsec. (c)(6). Pub. L. 99-499, Sec. 205(c)(1), added par. (6).

Subsec. (d)(1). Pub. L. 99-499, Sec. 205(c)(3), which directed that par. (1) be amended by "striking out 'or' after 'credit,' and by striking out the period at the end thereof and inserting in lieu thereof the following: 'or any other method satisfactory to the Administrator.' ", was executed by striking the period and making insertion at end of first sentence, rather than at end of par. (1), as the probable intent of Congress, because an earlier version of the amending legislation had provided that such amendment be made to first sentence.

Pub. L. 99-499, Sec. 205(c)(2), redesignated par. (2) as (1) and struck out former par. (1) which read as follows: "As he deems necessary or desirable, the Administrator shall promulgate regulations containing requirements for maintaining evidence of financial responsibility as he deems necessary and desirable for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank."

Subsec. (d)(2) to (5). Pub. L. 99-499, Sec. 205(c)(2), (4), added par. (5) and redesignated pars. (3) to (5) as (2) to (4), respectively. Former par. (2) redesignated (1).

Subsec. (h). Pub. L. 99-499, Sec. 205(d), added subsec. (h).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-58, title XV, Sec. 1530(b), Aug. 8, 2005, 119 Stat. 1104, provided that: "This subsection [probably means this section, which amended this section and section 6991e of this title and enacted provisions set out as notes under this section] shall take effect 18 months after the date of enactment of this subsection [Aug. 8, 2005]."

EFFECTIVE DATE OF 1996 AMENDMENT

Section 2505 of div. A of Pub. L. 104-208 provided that: "The

amendments made by this subtitle [subtitle E (Secs. 2501-2505) of title II of div. A of Pub. L. 104-208, amending this section and sections 9601 and 9607 of this title] shall be applicable with respect to any claim that has not been finally adjudicated as of the date of enactment of this Act [Sept. 30, 1996]."

REGULATIONS

Pub. L. 109-58, title XV, Sec. 1530(c), Aug. 8, 2005, 119 Stat. 1104, provided that: "The Administrator shall issue regulations or guidelines implementing the requirements of this subsection [probably means this section, which amended this section and section 6991e of this title and enacted provisions set out as notes under this section], including guidance to differentiate between the terms 'repair' and 'replace' for the purposes of section 9003(i)(1) of the Solid Waste Disposal Act [42 U.S.C. 6991b(i)(1)]."

ASSISTANCE AGREEMENTS WITH INDIAN TRIBES

Pub. L. 105-276, title III, Oct. 21, 1998, 112 Stat. 2497, provided in part: "That hereafter, the Administrator is authorized to enter into assistance agreements with Federally recognized Indian tribes on such terms and conditions as the Administrator deems appropriate for the same purposes as are set forth in section 9003(h)(7) of the Resource Conservation and Recovery Act [probably means section 9003(h)(7) of Pub. L. 89-272, 42 U.S.C. 6991b(h)(7)]."

POLLUTION LIABILITY INSURANCE

Section 205(h) of Pub. L. 99-499 provided that:

"(1) Study. - The Comptroller General shall conduct a study of the availability of pollution liability insurance, leak insurance, and contamination insurance for owners and operators of petroleum storage and distribution facilities. The study shall assess the current and projected extent to which private insurance can contribute to the financial responsibility of owners and operators of underground storage tanks and the ability of owners and operators of underground storage tanks to maintain financial responsibility through other methods. The study shall consider the experience of owners and operators of marine vessels in getting insurance for their liabilities under the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] and the operation of the Water Quality Insurance Syndicate.

"(2) Report. - The Comptroller General shall report the findings under this subsection to the Congress within 15 months after the enactment of this subsection [Oct. 17, 1986]. Such report shall include recommendations for legislative or administrative changes that will enable owners and operators of underground storage tanks to maintain financial responsibility sufficient to provide all clean-up costs and damages that may result from reasonably foreseeable releases and events."

-FOOTNOTE-

(!1) So in original.

(!2) So in original. Probably should be "medium."

-End-

-CITE-

42 USC Sec. 6991c

01/02/2006

-EXPCITE-

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 82 - SOLID WASTE DISPOSAL
SUBCHAPTER IX - REGULATION OF UNDERGROUND STORAGE TANKS

-HEAD-

Sec. 6991c. Approval of State programs

-STATUTE-

(a) Elements of State program

Beginning 30 months after November 8, 1984, any State may, (!1) submit an underground storage tank release detection, prevention, and correction program for review and approval by the Administrator. The program may cover tanks used to store regulated substances referred to in subparagraph (A) or (B) of section 6991(7) of this title. A State program may be approved by the Administrator under this section only if the State demonstrates that the State program includes the following requirements and standards and provides for adequate enforcement of compliance with such requirements and standards -

(1) requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;

(2) requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing system;

(3) requirements for reporting of any releases and corrective action taken in response to a release from an underground storage tank;

(4) requirements for taking corrective action in response to a release from an underground storage tank;

(5) requirements for the closure of tanks to prevent future releases of regulated substances into the environment;

(6) requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank;

(7) standards of performance for new underground storage tanks;

(8) requirements -

(A) for notifying the appropriate State agency or department (or local agency or department) designated according to section 6991a(b)(1) of this title of the existence of any operational or non-operational underground storage tank; and

(B) for providing the information required on the form issued

pursuant to section 6991a(b)(2) of this title; and

(9) State-specific training requirements as required by section 6991i of this title.

(b) Federal standards

(1) A State program submitted under this section may be approved only if the requirements under paragraphs (1) through (7) of subsection (a) of this section are no less stringent than the corresponding requirements standards promulgated by the Administrator pursuant to section 6991b(a) of this title.

(2)(A) A State program may be approved without regard to whether or not the requirements referred to in paragraphs (1), (2), (3), and (5) of subsection (a) of this section are less stringent than the corresponding standards under section 6991b(a) of this title during the one-year period commencing on the date of promulgation of regulations under section 6991b(a) of this title if State regulatory action but no State legislative action is required in order to adopt a State program.

(B) If such State legislative action is required, the State program may be approved without regard to whether or not the requirements referred to in paragraphs (1), (2), (3), and (5) of subsection (a) of this section are less stringent than the corresponding standards under section 6991b(a) of this title during the two-year period commencing on the date of promulgation of regulations under section 6991b(a) of this title (and during an additional one-year period after such legislative action if regulations are required to be promulgated by the State pursuant to such legislative action).

(c) Financial responsibility

(1) Corrective action and compensation programs administered by State or local agencies or departments may be submitted for approval under subsection (a)(6) of this section as evidence of financial responsibility.

(2) Financial responsibility required by this subsection may be established in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other method satisfactory to the Administrator. In promulgating requirements under this subsection, the Administrator is authorized to specify policy or other contractual terms including the amount of coverage required for various classes and categories of underground storage tanks pursuant to section 6991b(d)(5) of this title, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this subchapter.

(3) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in any State court of the Federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this paragraph such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator

if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(4) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this section. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 9607 or 9611 of this title or other applicable law.

(5) For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.

(6) Withdrawal of approval. - After an opportunity for good faith, collaborative efforts to correct financial deficiencies with a State fund, the Administrator may withdraw approval of any State fund or State assurance program to be used as a financial responsibility mechanism without withdrawing approval of a State underground storage tank program under subsection (a) of this section.

(d) EPA determination

(1) Within one hundred and eighty days of the date of receipt of a proposed State program, the Administrator shall, after notice and opportunity for public comment, make a determination whether the State's program complies with the provisions of this section and provides for adequate enforcement of compliance with the requirements and standards adopted pursuant to this section.

(2) If the Administrator determines that a State program complies with the provisions of this section and provides for adequate enforcement of compliance with the requirements and standards adopted pursuant to this section, he shall approve the State program in lieu of the Federal program and the State shall have primary enforcement responsibility with respect to requirements of its program.

(e) Withdrawal of authorization

Whenever the Administrator determines after public hearing that a State is not administering and enforcing a program authorized under this subchapter in accordance with the provisions of this section, he shall so notify the State. If appropriate action is not taken within a reasonable time, not to exceed one hundred and twenty days after such notification, the Administrator shall withdraw approval of such program and reestablish the Federal program pursuant to this subchapter.

(f) Trust Fund distribution

(1) In general

(A) Amount and permitted uses of distribution

The Administrator shall distribute to States not less than 80 percent of the funds from the Trust Fund that are made available to the Administrator under section 6991m(2)(A) of this title for each fiscal year for use in paying the reasonable costs, incurred under a cooperative agreement with

any State for -

(i) corrective actions taken by the State under section 6991b(h)(7)(A) of this title;

(ii) necessary administrative expenses, as determined by the Administrator, that are directly related to State fund or State assurance programs under subsection (c)(1) of this section; or

(iii) enforcement, by a State or a local government, of State or local regulations pertaining to underground storage tanks regulated under this subchapter.

(B) Use of funds for enforcement

In addition to the uses of funds authorized under subparagraph (A), the Administrator may use funds from the Trust Fund that are not distributed to States under subparagraph (A) for enforcement of any regulation promulgated by the Administrator under this subchapter.

(C) Prohibited uses

Funds provided to a State by the Administrator under subparagraph (A) shall not be used by the State to provide financial assistance to an owner or operator to meet any requirement relating to underground storage tanks under subparts B, C, D, H, and G of part 280 of title 40, Code of Federal Regulations (as in effect on August 8, 2005).

(2) Allocation

(A) Process

Subject to subparagraphs (B) and (C), in the case of a State with which the Administrator has entered into a cooperative agreement under section 6991b(h)(7)(A) of this title, the Administrator shall distribute funds from the Trust Fund to the State using an allocation process developed by the Administrator.

(B) Diversion of State funds

The Administrator shall not distribute funds under subparagraph (A)(iii) of subsection (f)(1) of this section to any State that has diverted funds from a State fund or State assurance program for purposes other than those related to the regulation of underground storage tanks covered by this subchapter, with the exception of those transfers that had been completed earlier than August 8, 2005.

(C) Revisions to process

The Administrator may revise the allocation process referred to in subparagraph (A) after -

(i) consulting with State agencies responsible for overseeing corrective action for releases from underground storage tanks; and

(ii) taking into consideration, at a minimum, each of the following:

(I) The number of confirmed releases from federally regulated leaking underground storage tanks in the States.

(II) The number of federally regulated underground storage tanks in the States.

(III) The performance of the States in implementing and enforcing the program.

(IV) The financial needs of the States.

(V) The ability of the States to use the funds referred to in subparagraph (A) in any year.

(3) Distributions to State agencies

Distributions from the Trust Fund under this subsection shall be made directly to a State agency that -

(A) enters into a cooperative agreement referred to in paragraph (2)(A); or

(B) is enforcing a State program approved under this section.

-SOURCE-

(Pub. L. 89-272, title II, Sec. 9004, as added Pub. L. 98-616, title VI, Sec. 601(a), Nov. 8, 1984, 98 Stat. 3282; amended Pub. L. 99-499, title II, Sec. 205(e), Oct. 17, 1986, 100 Stat. 1702; Pub. L. 109-58, title XV, Secs. 1522(a), (b), 1524(b), 1533(3), Aug. 8, 2005, 119 Stat. 1092, 1093, 1096, 1105.)

-REFTEXT-

REFERENCES IN TEXT

The Federal Bankruptcy Code, referred to in subsec. (c)(3), probably means a reference to Title 11, Bankruptcy.

-MISC1-

AMENDMENTS

2005 - Subsec. (a). Pub. L. 109-58, Sec. 1533(3), substituted "in subparagraph (A) or (B) of section 6991(7)" for "in 6991(2)(A) or (B) or both".

Subsec. (a)(9). Pub. L. 109-58, Sec. 1524(b), added par. (9).

Subsec. (c)(6). Pub. L. 109-58, Sec. 1522(b), added par. (6).

Subsec. (f). Pub. L. 109-58, Sec. 1522(a), added subsec. (f).

1986 - Subsec. (c)(1). Pub. L. 99-499, Sec. 205(e)(1), struck out "financed by fees on tank owners and operators and" after "compensation programs".

Subsec. (c)(2). Pub. L. 99-499, Sec. 205(e)(2), struck out "or" after "letter of credit," and inserted "or any other method satisfactory to the Administrator" and "including the amount of coverage required for various classes and categories of underground storage tanks pursuant to section 6991b(d)(5) of this title".

-FOOTNOTE-

(!1) So in original. The comma probably should not appear.

-End-

-CITE-

42 USC Sec. 6991d

01/02/2006

-EXPCITE-

TITLE 42 - THE PUBLIC HEALTH AND WELFARE

CHAPTER 82 - SOLID WASTE DISPOSAL

SUBCHAPTER IX - REGULATION OF UNDERGROUND STORAGE TANKS

-HEAD-

Sec. 6991d. Inspections, monitoring, testing, and corrective action

-STATUTE-

(a) Furnishing information

For the purposes of developing or assisting in the development of any regulation, conducting any study, taking any corrective action, or enforcing the provisions of this subchapter, any owner or operator of an underground storage tank (or any tank subject to study under section 6991h of this title that is used for storing regulated substances) shall, upon request of any officer, employee or representative of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer, employee, or representative of a State acting pursuant to subsection (h)(7) of section 6991b of this title or with an approved program, furnish information relating to such tanks, their associated equipment, their contents, conduct monitoring or testing, permit such officer at all reasonable times to have access to, and to copy all records relating to such tanks and permit such officer to have access for corrective action. For the purposes of developing or assisting in the development of any regulation, conducting any study, taking corrective action, or enforcing the provisions of this subchapter, such officers, employees, or representatives are authorized -

- (1) to enter at reasonable times any establishment or other place where an underground storage tank is located;
- (2) to inspect and obtain samples from any person of any regulated substances contained in such tank;
- (3) to conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water or ground water; and
- (4) to take corrective action.

Each such inspection shall be commenced and completed with reasonable promptness.

(b) Confidentiality

(1) Any records, reports, or information obtained from any persons under this section shall be available to the public, except that upon a showing satisfactory to the Administrator (or the State, as the case may be) by any person that records, reports, or information, or a particular part thereof, to which the Administrator (or the State, as the case may be) or any officer, employee, or representative thereof has access under this section if made public, would divulge information entitled to protection under section 1905 of title 18, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

(2) Any person not subject to the provisions of section 1905 of title 18 who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than \$5,000 or to imprisonment not to exceed one year, or both.

(3) In submitting data under this subchapter, a person required to provide such data may -

- (A) designate the data which such person believes is entitled to protection under this subsection, and
- (B) submit such designated data separately from other data submitted under this subchapter.

A designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe.

(4) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to, or otherwise obtained, by the Administrator (or any representative of the Administrator) under this chapter shall be made available, upon written request of any duly authorized committee of the Congress, to such committee (including records, reports, or information obtained by representatives of the Environmental Protection Agency).

(c) Inspection requirements

(1) Uninspected tanks

In the case of underground storage tanks regulated under this subchapter that have not undergone an inspection since December 22, 1998, not later than 2 years after August 8, 2005, the Administrator or a State that receives funding under this subchapter, as appropriate, shall conduct on-site inspections of all such tanks to determine compliance with this subchapter and the regulations under this subchapter (40 CFR 280) or a requirement or standard of a State program developed under section 6991c of this title.

(2) Periodic inspections

After completion of all inspections required under paragraph (1), the Administrator or a State that receives funding under this subchapter, as appropriate, shall conduct on-site inspections of each underground storage tank regulated under this subchapter at least once every 3 years to determine compliance with this subchapter and the regulations under this subchapter (40 CFR 280) or a requirement or standard of a State program developed under section 6991c of this title. The Administrator may extend for up to one additional year the first 3-year inspection interval under this paragraph if the State demonstrates that it has insufficient resources to complete all such inspections within the first 3-year period.

(3) Inspection authority

Nothing in this section shall be construed to diminish the Administrator's or a State's authorities under subsection (a) of this section.

-SOURCE-

(Pub. L. 89-272, title II, Sec. 9005, as added Pub. L. 98-616, title VI, Sec. 601(a), Nov. 8, 1984, 98 Stat. 3284; amended Pub. L. 99-499, title II, Sec. 205(f), Oct. 17, 1986, 100 Stat. 1702; Pub. L. 109-58, title XV, Secs. 1523(a), 1533(4), Aug. 8, 2005, 119 Stat. 1094, 1105.)

-MISC1-

AMENDMENTS

2005 - Subsec. (a). Pub. L. 109-58, Sec. 1533(4)(A), substituted "study, taking" for "study taking" in introductory provisions.

Subsec. (b)(1). Pub. L. 109-58, Sec. 1533(4)(B), substituted "relevant" for "relevent".

Subsec. (b)(4). Pub. L. 109-58, Sec. 1533(4)(C), substituted "Environmental" for "Evironmental".

Subsec. (c). Pub. L. 109-58, Sec. 1523(a), added subsec. (c).

1986 - Pub. L. 99-499, Sec. 205(f)(3), inserted reference to corrective action in section catchline.

Subsec. (a). Pub. L. 99-499, Sec. 205(f)(1), in first sentence, inserted "taking any corrective action" after "conducting any study", inserted "acting pursuant to subsection (h)(7) of section 6991b of this title or", struck out "and" before "permit such officer", and inserted "and permit such officer to have access for corrective action", and in second sentence, inserted "taking corrective action," after "study,". The amendment directing insertion of "taking any corrective action" after "study" in first sentence was executed by inserting that language after "conducting any study" rather than after "subject to study", as the probable intent of Congress.

Subsec. (a)(4). Pub. L. 99-499, Sec. 205(f)(2), added par. (4).

-End-

-CITE-

42 USC Sec. 6991e

01/02/2006

-EXPCITE-

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 82 - SOLID WASTE DISPOSAL
SUBCHAPTER IX - REGULATION OF UNDERGROUND STORAGE TANKS

-HEAD-

Sec. 6991e. Federal enforcement

-STATUTE-

(a) Compliance orders

(1) Except as provided in paragraph (2), whenever on the basis of any information, the Administrator determines that any person is in violation of any requirement of this subchapter, the Administrator may issue an order requiring compliance within a reasonable specified time period or the Administrator may commence a civil action in the United States district court in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(2) In the case of a violation of any requirement of this subchapter where such violation occurs in a State with a program approved under section 6991c of this title, the Administrator shall give notice to the State in which such violation has occurred prior to issuing an order or commencing a civil action under this section.

(3) If a violator fails to comply with an order under this subsection within the time specified in the order, he shall be liable for a civil penalty of not more than \$25,000 for each day of continued noncompliance.

(b) Procedure

Any order issued under this section shall become final unless, no later than thirty days after the order is served, the person or persons named therein request a public hearing. Upon such request the Administrator shall promptly conduct a public hearing. In connection with any proceeding under this section the Administrator may issue subpoenas for the attendance and testimony of witnesses

and the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.

(c) Contents of order

Any order issued under this section shall state with reasonable specificity the nature of the violation, specify a reasonable time for compliance, and assess a penalty, if any, which the Administrator determines is reasonable taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.

(d) Civil penalties

(1) Any owner who knowingly fails to notify or submits false information pursuant to section 6991a(a) of this title shall be subject to a civil penalty not to exceed \$10,000 for each tank for which notification is not given or false information is submitted.

(2) Any owner or operator of an underground storage tank who fails to comply with -

(A) any requirement or standard promulgated by the Administrator under section 6991b of this title;

(B) any requirement or standard of a State program approved pursuant to section 6991c of this title;

(C) the provisions of section 6991b(g) of this title (entitled "Interim Prohibition"); or (!1)

(D) (!2) the requirements established in section 6991b(i) of this title, (!3)

(D) (!2) the training requirements established by States pursuant to section 6991i of this title (relating to operator training); or

(E) the delivery prohibition requirement established by section 6991k of this title,

shall be subject to a civil penalty not to exceed \$10,000 for each tank for each day of violation. Any person making or accepting a delivery or deposit of a regulated substance to an underground storage tank at an ineligible facility in violation of section 6991k of this title shall also be subject to the same civil penalty for each day of such violation.

(e) Incentive for performance

Both of the following may be taken into account in determining the terms of a civil penalty under subsection (d) of this section:

(1) The compliance history of an owner or operator in accordance with this subchapter or a program approved under section 6991c of this title.

(2) Any other factor the Administrator considers appropriate.

-SOURCE-

(Pub. L. 89-272, title II, Sec. 9006, as added Pub. L. 98-616, title VI, Sec. 601(a), Nov. 8, 1984, 98 Stat. 3285; Pub. L. 109-58, title XV, Secs. 1524(c), 1526(d), 1527(b), 1530(d), Aug. 8, 2005, 119 Stat. 1096, 1098, 1099, 1104.)

-MISC1-

AMENDMENTS

2005 - Subsec. (d)(2). Pub. L. 109-58, Sec. 1527(b)(2), inserted

at end "Any person making or accepting a delivery or deposit of a regulated substance to an underground storage tank at an ineligible facility in violation of section 6991k of this title shall also be subject to the same civil penalty for each day of such violation."

Subsec. (d)(2)(B). Pub. L. 109-58, Sec. 1530(d)(1), which directed amendment of subpar. (B) by striking out "or" at end, could not be executed because "or" did not appear subsequent to amendment by Pub. L. 109-58, Sec. 1524(c)(1). See below.

Pub. L. 109-58, Sec. 1524(c)(1), struck out "or" at end.

Subsec. (d)(2)(C). Pub. L. 109-58, Sec. 1530(d)(2), inserted "; or" at end.

Subsec. (d)(2)(D). Pub. L. 109-58, Sec. 1530(d)(3), added subpar. (D) relating to requirements established in section 6991b(i) of this title.

Pub. L. 109-58, Sec. 1524(c)(2), added subpar. (D) relating to training requirements established by States pursuant to section 6991i of this title.

Subsec. (d)(2)(E). Pub. L. 109-58, Sec. 1527(b)(1), added subpar. (E).

Subsec. (e). Pub. L. 109-58, Sec. 1526(d), added subsec. (e).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 1530(d) of Pub. L. 109-58 effective 18 months after Aug. 8, 2005, see section 1530(b) of Pub. L. 109-58, set out as a note under section 6991b of this title.

-FOOTNOTE-

(!1) So in original. The word "or" probably should not appear.

(!2) So in original. Two subpars. (D) have been enacted.

(!3) So in original. The comma probably should be a semicolon.

-End-

-CITE-

42 USC Sec. 6991f

01/02/2006

-EXPCITE-

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 82 - SOLID WASTE DISPOSAL
SUBCHAPTER IX - REGULATION OF UNDERGROUND STORAGE TANKS

-HEAD-

Sec. 6991f. Federal facilities

-STATUTE-

(a) In general

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any underground storage tank or

underground storage tank system, or (2) engaged in any activity resulting, or which may result, in the installation, operation, management, or closure of any underground storage tank, release response activities related thereto, or in the delivery, acceptance, or deposit of any regulated substance to an underground storage tank or underground storage tank system shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting underground storage tanks in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this subsection include, but are not limited to, fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local underground storage tank regulatory program. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court with respect to the enforcement of any such injunctive relief. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local law concerning underground storage tanks with respect to any act or omission within the scope of the official duties of the agent, employee, or officer. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or imprisonment) under any Federal or State law concerning underground storage tanks, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to any such sanction. The President may exempt any underground storage tank of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of 1 year, but additional exemptions may be granted for periods not to exceed 1 year upon the President's making a new determination. The President shall report each January

to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(b) Review of and report on Federal underground storage tanks

(1) Review

Not later than 12 months after August 8, 2005, each Federal agency that owns or operates one or more underground storage tanks, or that manages land on which one or more underground storage tanks are located, shall submit to the Administrator, the Committee on Energy and Commerce of the United States House of Representatives, and the Committee on the Environment and Public Works of the Senate a compliance strategy report that -

(A) lists the location and owner of each underground storage tank described in this paragraph;

(B) lists all tanks that are not in compliance with this subchapter that are owned or operated by the Federal agency;

(C) specifies the date of the last inspection by a State or Federal inspector of each underground storage tank owned or operated by the agency;

(D) lists each violation of this subchapter respecting any underground storage tank owned or operated by the agency;

(E) describes the operator training that has been provided to the operator and other persons having primary daily on-site management responsibility for the operation and maintenance of underground storage tanks owned or operated by the agency; and

(F) describes the actions that have been and will be taken to ensure compliance for each underground storage tank identified under subparagraph (B).

(2) Not a safe harbor

This subsection does not relieve any person from any obligation or requirement under this subchapter.

-SOURCE-

(Pub. L. 89-272, title II, Sec. 9007, as added Pub. L. 98-616, title VI, Sec. 601(a), Nov. 8, 1984, 98 Stat. 3286; amended Pub. L. 109-58, title XV, Sec. 1528, Aug. 8, 2005, 119 Stat. 1100.)

-MISC1-

AMENDMENTS

2005 - Pub. L. 109-58 amended section generally. Prior to amendment, section required each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any underground storage tank to comply with all Federal, State, interstate, and local requirements, applicable to such tank, both substantive and procedural, in the same manner, and to the same extent, as any other person is subject to such requirements, including payment of reasonable service charges, provided that neither the United States, nor any agent, employee, or officer thereof, was immune or exempt from any process or sanction of any State or Federal court with respect to the enforcement of any such injunctive relief, and authorized the President to exempt any tank from compliance with such requirements upon certain determinations.

-End-

-CITE-

42 USC Sec. 6991g

01/02/2006

-EXPCITE-

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 82 - SOLID WASTE DISPOSAL
SUBCHAPTER IX - REGULATION OF UNDERGROUND STORAGE TANKS

-HEAD-

Sec. 6991g. State authority

-STATUTE-

Nothing in this subchapter shall preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance respecting underground storage tanks that is more stringent than a regulation, requirement, or standard of performance in effect under this subchapter or to impose any additional liability with respect to the release of regulated substances within such State or political subdivision.

-SOURCE-

(Pub. L. 89-272, title II, Sec. 9008, as added Pub. L. 98-616, title VI, Sec. 601(a), Nov. 8, 1984, 98 Stat. 3286; amended Pub. L. 99-499, title II, Sec. 205(g), Oct. 17, 1986, 100 Stat. 1702.)

-MISC1-

AMENDMENTS

1986 - Pub. L. 99-499 amended section generally. Prior to amendment, section read as follows: "Nothing in this subchapter shall preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement or standard of performance respecting underground storage tanks that is more stringent than a regulation, requirement, or standard of performance in effect under this subchapter."

-End-

-CITE-

42 USC Sec. 6991h

01/02/2006

-EXPCITE-

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 82 - SOLID WASTE DISPOSAL
SUBCHAPTER IX - REGULATION OF UNDERGROUND STORAGE TANKS

-HEAD-

Sec. 6991h. Study of underground storage tanks

-STATUTE-

(a) Petroleum tanks
Not later than twelve months after November 8, 1984, the

Administrator shall complete a study of underground storage tanks used for the storage of regulated substances defined in section 6991(7)(B) of this title.

(b) Other tanks

Not later than thirty-six months after November 8, 1984, the Administrator shall complete a study of all other underground storage tanks.

(c) Elements of studies

The studies under subsections (a) and (b) of this section shall include an assessment of the ages, types (including methods of manufacture, coatings, protection systems, the compatibility of the construction materials and the installation methods) and locations (including the climate of the locations) of such tanks; soil conditions, water tables, and the hydrogeology of tank locations; the relationship between the foregoing factors and the likelihood of releases from underground storage tanks; the effectiveness and costs of inventory systems, tank testing, and leak detection systems; and such other factors as the Administrator deems appropriate.

(d) Farm and heating oil tanks

Not later than thirty-six months after November 8, 1984, the Administrator shall conduct a study regarding the tanks referred to in subparagraphs (A) and (B) of section 6991(10) of this title. Such study shall include estimates of the number and location of such tanks and an analysis of the extent to which there may be releases or threatened releases from such tanks into the environment.

(e) Reports

Upon completion of the studies authorized by this section, the Administrator shall submit reports to the President and to the Congress containing the results of the studies and recommendations respecting whether or not such tanks should be subject to the preceding provisions of this subchapter.

(f) Reimbursement

(1) If any owner or operator (excepting an agency, department, or instrumentality of the United States Government, a State or a political subdivision thereof) shall incur costs, including the loss of business opportunity, due to the closure or interruption of operation of an underground storage tank solely for the purpose of conducting studies authorized by this section, the Administrator shall provide such person fair and equitable reimbursement for such costs.

(2) All claims for reimbursement shall be filed with the Administrator not later than ninety days after the closure or interruption which gives rise to the claim.

(3) Reimbursements made under this section shall be from funds appropriated by the Congress pursuant to the authorization contained in section 6916(g) (!) of this title.

(4) For purposes of judicial review, a determination by the Administrator under this subsection shall be considered final agency action.

-SOURCE-

(Pub. L. 89-272, title II, Sec. 9009, as added Pub. L. 98-616, title VI, Sec. 601(a), Nov. 8, 1984, 98 Stat. 3287; amended Pub. L. 109-58, title XV, Sec. 1532(b)(3), Aug. 8, 2005, 119 Stat. 1105.)

-REFTEXT-

REFERENCES IN TEXT

Section 6916(g) of this title, referred to in subsec. (f)(3), probably means section 6916(f) of this title which authorizes appropriations for this subchapter. There is no subsec. (g) of section 6916.

-MISC1-

AMENDMENTS

2005 - Subsec. (a). Pub. L. 109-58, Sec. 1532(b)(3)(A), substituted "6991(7)(B)" for "6991(2)(B)".

Subsec. (d). Pub. L. 109-58, Sec. 1532(b)(3)(B), substituted "subparagraphs (A) and (B) of section 6991(10)" for "section 6991(1)(A) and (B)".

-FOOTNOTE-

(!1) See References in Text note below.

-End-

-CITE-

42 USC Sec. 6991i

01/02/2006

-EXPCITE-

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 82 - SOLID WASTE DISPOSAL
SUBCHAPTER IX - REGULATION OF UNDERGROUND STORAGE TANKS

-HEAD-

Sec. 6991i. Operator training

-STATUTE-

(a) Guidelines

(1) In general

Not later than 2 years after August 8, 2005, in consultation and cooperation with States and after public notice and opportunity for comment, the Administrator shall publish guidelines that specify training requirements for -

(A) persons having primary responsibility for on-site operation and maintenance of underground storage tank systems;

(B) persons having daily on-site responsibility for the operation and maintenance of underground storage tanks systems; and

(C) daily, on-site employees having primary responsibility for addressing emergencies presented by a spill or release from an underground storage tank system.

(2) Considerations

The guidelines described in paragraph (1) shall take into account -

(A) State training programs in existence as of the date of publication of the guidelines;

(B) training programs that are being employed by tank owners

and tank operators as of August 8, 2005;

(C) the high turnover rate of tank operators and other personnel;

(D) the frequency of improvement in underground storage tank equipment technology;

(E) the nature of the businesses in which the tank operators are engaged;

(F) the substantial differences in the scope and length of training needed for the different classes of persons described in subparagraphs (A), (B), and (C) of paragraph (1); and

(G) such other factors as the Administrator determines to be necessary to carry out this section.

(b) State programs

(1) In general

Not later than 2 years after the date on which the Administrator publishes the guidelines under subsection (a)(1) of this section, each State that receives funding under this subchapter shall develop State-specific training requirements that are consistent with the guidelines developed under subsection (a)(1) of this section.

(2) Requirements

State requirements described in paragraph (1) shall -

(A) be consistent with subsection (a) of this section;

(B) be developed in cooperation with tank owners and tank operators;

(C) take into consideration training programs implemented by tank owners and tank operators as of August 8, 2005; and

(D) be appropriately communicated to tank owners and operators.

(3) Financial incentive

The Administrator may award to a State that develops and implements requirements described in paragraph (1), in addition to any funds that the State is entitled to receive under this subchapter, not more than \$200,000, to be used to carry out the requirements.

(c) Training

All persons that are subject to the operator training requirements of subsection (a) of this section shall -

(1) meet the training requirements developed under subsection (b) of this section; and

(2) repeat the applicable requirements developed under subsection (b) of this section, if the tank for which they have primary daily on-site management responsibilities is determined to be out of compliance with -

(A) a requirement or standard promulgated by the Administrator under section 6991b of this title; or

(B) a requirement or standard of a State program approved under section 6991c of this title.

-SOURCE-

(Pub. L. 89-272, title II, Sec. 9010, as added Pub. L. 98-616, title VI, Sec. 601(a), Nov. 8, 1984, 98 Stat. 3287; amended Pub. L. 109-58, title XV, Sec. 1524(a), Aug. 8, 2005, 119 Stat. 1095.)

-REFTEXT-

REFERENCES IN TEXT

August 8, 2005, referred to in subsec. (b)(2)(C), was in the

original "the date of enactment of this section", which was translated as meaning the date of enactment of Pub. L. 109-58, which amended this section generally, to reflect the probable intent of Congress.

-MISC1-

AMENDMENTS

2005 - Pub. L. 109-58 amended section catchline and text generally. Prior to amendment, text read as follows: "For authorization of appropriations to carry out this subchapter, see section 6916(g) of this title."

-End-

-CITE-

42 USC Sec. 6991j

01/02/2006

-EXPCITE-

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 82 - SOLID WASTE DISPOSAL
SUBCHAPTER IX - REGULATION OF UNDERGROUND STORAGE TANKS

-HEAD-

Sec. 6991j. Use of funds for release prevention and compliance

-STATUTE-

Funds made available under section 6991m(2)(D) of this title from the Trust Fund may be used to conduct inspections, issue orders, or bring actions under this subchapter -

(1) by a State, in accordance with a grant or cooperative agreement with the Administrator, of (!) State regulations pertaining to underground storage tanks regulated under this subchapter; and

(2) by the Administrator, for tanks regulated under this subchapter (including under a State program approved under section 6991c of this title).

-SOURCE-

(Pub. L. 89-272, title II, Sec. 9011, as added Pub. L. 109-58, title XV, Sec. 1526(a), Aug. 8, 2005, 119 Stat. 1097.)

-FOOTNOTE-

(!1) So in original.

-End-

-CITE-

42 USC Sec. 6991k

01/02/2006

-EXPCITE-

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 82 - SOLID WASTE DISPOSAL
SUBCHAPTER IX - REGULATION OF UNDERGROUND STORAGE TANKS

-HEAD-

Sec. 6991k. Delivery prohibition

-STATUTE-

(a) Requirements

(1) Prohibition of delivery or deposit

Beginning 2 years after August 8, 2005, it shall be unlawful to deliver to, deposit into, or accept a regulated substance into an underground storage tank at a facility which has been identified by the Administrator or a State implementing agency to be ineligible for such delivery, deposit, or acceptance.

(2) Guidance

Within 1 year after August 8, 2005, the Administrator shall, in consultation with the States, underground storage tank owners, and product delivery industries, publish guidelines detailing the specific processes and procedures they will use to implement the provisions of this section. The processes and procedures include, at a minimum -

(A) the criteria for determining which underground storage tank facilities are ineligible for delivery, deposit, or acceptance of a regulated substance;

(B) the mechanisms for identifying which facilities are ineligible for delivery, deposit, or acceptance of a regulated substance to the underground storage tank owning and fuel delivery industries;

(C) the process for reclassifying ineligible facilities as eligible for delivery, deposit, or acceptance of a regulated substance;

(D) one or more processes for providing adequate notice to underground storage tank owners and operators and supplier industries that an underground storage tank has been determined to be ineligible for delivery, deposit, or acceptance of a regulated substance; and

(E) a delineation of, or a process for determining, the specified geographic areas subject to paragraph (4).

(3) Compliance

States that receive funding under this subchapter shall, at a minimum, comply with the processes and procedures published under paragraph (2).

(4) Consideration

(A) Rural and remote areas

Subject to subparagraph (B), the Administrator or a State may consider not treating an underground storage tank as ineligible for delivery, deposit, or acceptance of a regulated substance if such treatment would jeopardize the availability of, or access to, fuel in any rural and remote areas unless an urgent threat to public health, as determined by the Administrator, exists.

(B) Applicability

Subparagraph (A) shall apply only during the 180-day period following the date of a determination by the Administrator or the appropriate State under subparagraph (A).

(b) Effect on State authority

Nothing in this section shall affect or preempt the authority of a State to prohibit the delivery, deposit, or acceptance of a regulated substance to an underground storage tank.

(c) Defense to violation

A person shall not be in violation of subsection (a)(1) of this section if the person has not been provided with notice pursuant to subsection (a)(2)(D) of this section of the ineligibility of a facility for delivery, deposit, or acceptance of a regulated substance as determined by the Administrator or a State, as appropriate, under this section.

-SOURCE-

(Pub. L. 89-272, title II, Sec. 9012, as added Pub. L. 109-58, title XV, Sec. 1527(a), Aug. 8, 2005, 119 Stat. 1098; amended Pub. L. 109-168, Sec. 1(a)(1), Jan. 10, 2006, 119 Stat. 3580.)

-MISC1-

AMENDMENTS

2006 - Subsec. (a)(2)(D). Pub. L. 109-168 substituted "of a regulated" for "or a regulated".

-End-

-CITE-

42 USC Sec. 69911

01/02/2006

-EXPCITE-

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 82 - SOLID WASTE DISPOSAL
SUBCHAPTER IX - REGULATION OF UNDERGROUND STORAGE TANKS

-HEAD-

Sec. 69911. Tanks on tribal lands

-STATUTE-

(a) Strategy

The Administrator, in coordination with Indian tribes, shall, not later than 1 year after August 8, 2005, develop and implement a strategy -

(1) giving priority to releases that present the greatest threat to human health or the environment, to take necessary corrective action in response to releases from leaking underground storage tanks located wholly within the boundaries of

-

(A) an Indian reservation; or

(B) any other area under the jurisdiction of an Indian tribe;
and

(2) to implement and enforce requirements concerning underground storage tanks located wholly within the boundaries of

-

(A) an Indian reservation; or

(B) any other area under the jurisdiction of an Indian tribe.

(b) Report

Not later than 2 years after August 8, 2005, the Administrator shall submit to Congress a report that summarizes the status of implementation and enforcement of this subchapter in areas located wholly within -

- (1) the boundaries of Indian reservations; and
- (2) any other areas under the jurisdiction of an Indian tribe.

The Administrator shall make the report under this subsection available to the public.

(c) Not a safe harbor

This section does not relieve any person from any obligation or requirement under this subchapter.

(d) State authority

Nothing in this section applies to any underground storage tank that is located in an area under the jurisdiction of a State, or that is subject to regulation by a State, as of August 8, 2005.

-SOURCE-

(Pub. L. 89-272, title II, Sec. 9013, as added Pub. L. 109-58, title XV, Sec. 1529(a), Aug. 8, 2005, 119 Stat. 1101.)

-End-

-CITE-

42 USC Sec. 6991m

01/02/2006

-EXPCITE-

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 82 - SOLID WASTE DISPOSAL
SUBCHAPTER IX - REGULATION OF UNDERGROUND STORAGE TANKS

-HEAD-

Sec. 6991m. Authorization of appropriations

-STATUTE-

There are authorized to be appropriated to the Administrator the following amounts:

(1) To carry out this subchapter (except sections 6991b(h), 6991d(c), 6991j, and 6991k of this title) \$50,000,000 for each of fiscal years 2006 through 2011.

(2) From the Trust Fund, notwithstanding section 9508(c)(1) of title 26 -

(A) to carry out section 6991b(h) of this title (except section 6991b(h)(12) of this title) \$200,000,000 for each of fiscal years 2006 through 2011;

(B) to carry out section 6991b(h)(12) of this title, \$200,000,000 for each of fiscal years 2006 through 2011;

(C) to carry out sections 6991b(i), 6991c(f), and 6991d(c) of this title \$100,000,000 for each of fiscal years 2006 through 2011; and

(D) to carry out sections 6991i, 6991j, 6991k, and 6991l of this title \$55,000,000 for each of fiscal years 2006 through 2011.

-SOURCE-

(Pub. L. 89-272, title II, Sec. 9014, as added Pub. L. 109-58, title XV, Sec. 1531(a), Aug. 8, 2005, 119 Stat. 1104; amended Pub. L. 109-168, Sec. 1(a)(3), Jan. 10, 2006, 119 Stat. 3580.)

-MISC1-

AMENDMENTS

2006 - Pub. L. 109-168 substituted "2006 through 2011" for "2005 through 2009" wherever appearing.

-End-