

Memorandum of Agreement

Between the U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 10 and the
IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY For the Activities of the
UNDERGROUND STORAGE TANK PROGRAM

I. GENERAL

This Memorandum of Agreement (hereinafter "Agreement") establishes policies, responsibilities, and procedures pursuant to 40 CFR Part 281 for the State of Idaho's Underground Storage Tank Program (hereinafter "State Program") approved under Section 9004 of Subtitle I of the Resource Conservation and Recovery Act (hereinafter "RCRA" or "the Act") 42 USC 6991 et seq., as amended, and the United States Environmental Protection Agency (hereinafter "EPA") regional office for Region 10. This Agreement further sets forth the manner in which the State and EPA will coordinate in the State's administration of the State program.

This Agreement is entered into by the Director of the Idaho Department of Environmental Quality (hereinafter "Director") and the Regional Administrator, EPA Region 10 (hereinafter "Regional Administrator" or "EPA").

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

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

This Agreement will remain in effect until such time as State program approval is withdrawn by or is voluntarily transferred to EPA according to the criteria and procedures established in 40 CFR §§ 281.60 and 281.61.

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



II. POLICY STATEMENT

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

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

III. STATE PROGRAM REVIEW

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

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

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

IV. INFORMATION SHARING

A. General

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

B. EPA

1. EPA will keep the State informed of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives, and any other factors that affect the State program. EPA will also provide general technical guidance to the State. EPA will share with the State any national reports developed by EPA from the data submitted through State reporting requirements.
2. EPA will make available to the State other relevant information as requested that the State needs to implement its approved program.
3. EPA will allow the State to submit comments on proposed national legislation affecting the State program.

C. State

1. The State agrees to inform the Regional Administrator of any proposed or adopted program changes that would affect the State's ability to implement the approved program. Program changes of concern include modification of the State's legal authorities (for example, statutes, regulations, and judicial or legislative actions affecting those authorities); modifications of memoranda of agreement or understanding with other agencies; and modifications of resource levels (for example, available or budgeted personnel and funds). The State recognizes that program revisions must be made in accordance with the provisions of 40 CFR Part 281.
2. The State will provide compliance monitoring and enforcement information to the Regional Administrator, as specified in the annual grant guidance, on a semi-annual basis. The State agrees to provide EPA with copies of reports on data resulting from any compliance inspection and subsequent enforcement actions, if EPA requests such copies. EPA will give the State at least 14 days notice if they require such records.
3. If the State issues variances, it will do so in a manner that is no less stringent than the Federal program.
4. The State will establish policies, responsibilities, and procedures pursuant to the Underground Storage Tank Compliance Act of 2005.
5. State activities will further be described in detail in the State-EPA Agreement (UST Program) and Cooperative Agreement (LUST Program) work plans.

D. National Data

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

E. Confidentiality

The State agrees to furnish to the EPA information obtained or used in the administration of the State program which is not submitted under a claim of confidentiality. If information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing the information. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR Part 2.

V. COMPLIANCE MONITORING AND ENFORCEMENT

A. EPA

Nothing in this Agreement shall restrict EPA's right to inspect any underground storage tank facility or bring enforcement action against any person believed to be in violation of the approved State underground storage tank program. EPA will continue to do annual inspections for oversight monitoring. Before conducting an inspection of a facility, the Regional Administrator will normally give the State at least 30 days notice of the intent to inspect and provide the State an opportunity to participate in the inspection. Results of passed inspections will be shared with the State within 14 days of the completed inspection. Once compliance has been reached on non-passing inspections, EPA will send a copy to the State within 14 days of closing the enforcement action. The State agrees to not release such information to the public if it is exempt from public disclosure pursuant to 40 CFR Part 2. In the case of planned inspections at the start of the Federal fiscal year, EPA will provide the State with a list of the planned inspections as soon as the list is developed, but no later than 30 days before the first inspection. If the State performs a compliance inspection and submits a report and relevant data thereto within that time to EPA, no EPA inspection will be conducted, except under the following circumstances: (i) EPA has a reasonable basis to conclude that the State report and data is inadequate, (ii) EPA is conducting its annual oversight inspections, or (iii) EPA has determined that an EPA inspection is needed at a facility(ies) that may have a suspected or ongoing violation(s) that is, or may be, subject to a Federal enforcement action. In case of an imminent hazard to human health or the environment, the Regional Administrator may shorten or waive the notice period.

The Regional Administrator may take enforcement action against any person determined to be in violation of Subtitle I of RCRA in accordance with Section 9006. EPA also retains its right to issue orders and bring actions under Section 9003(h) or 9006 of Subtitle I of RCRA and any other applicable Federal statute. When issuing orders, EPA will cite the appropriate violation under IDAPA 58.01.07. The State will normally be given a chance to initiate enforcement prior to EPA involvement in an enforcement action. It is EPA's policy not to take such action where a State has taken appropriate enforcement action. Before issuing a compliance order under Section 9006, EPA will give notice to the State.

When the Department and EPA coordinate activities, as described in this Agreement, it is understood that the EPA Idaho Operations Office (IOO) shall be the initial point of contact between the Department and EPA.

This Agreement does not apply to UST activities in Indian Country. EPA retains responsibility for implementing the UST program in Indian Country.

B. State

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

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

The State agrees to retain all records relating to enforcement against all persons in violation of underground storage tank standards for at least 3 years unless there is an enforcement action pending. In that case all records will be retained until such action is resolved. Once the enforcement action is resolved the State will retain the records for at least 3 years.

The terms set forth in this Agreement are intended solely for the purpose of memorializing the parties' understanding of their respective roles and commitments in the administration of the Underground Storage Tank Program. They are not intended, and cannot be relied upon, to create any rights, substantive or procedural, enforceable by any other party in litigation with either of the parties to this Agreement. The parties reserve the right to modify this Agreement in accordance with its terms.



Dennis J. McLerran, Regional Administrator
U. S. Environmental Protection Agency
Region 10



Toni Hardesty, Director
State of Idaho Department of
Environmental Quality

11/22/11

Date

11/9/11

Date