United States
Environmental Protection
Agency

Office of
Solid Waste and
Emergency Response

EPA

DIRECTIVE NUMBER: 9610.15

TITLE: UST/LUST National Native American Lands Policy Statement

APPROVAL DATE: JUL - 7 1993

EFFECTIVE DATE: JUL - 7 1993

ORIGINATING OFFICE: Office of Underground Storage Tanks

☒ **FINAL**

☐ **DRAFT**

STATUS:

REFERENCE (other documents): OSWER Directive 9610.07= UST Program Indian Lands Strategy for FY 88 and 89 and Guidance for Regional Pilot Projects, March 14, 1988. OSWER Directive 9610.9 = Interim Guidance on Conducting Federal-Lead Underground Storage Tank Corrective Actions for Petroleum Releases on Indian Lands, July 31, 1989.

OSWER OSWER OSWER
VE DIRECTIVE DIRECTIVE DI

United States
Environmental Protection
Agency

Office of
Solid Waste and
Emergency Response

EPA

DIRECTIVE NUMBER: 9610.15

TITLE: UST/LUST National Native American Lands Policy Statement

APPROVAL DATE: JUL - 7 1993

EFFECTIVE DATE: JUL - 7 1993

ORIGINATING OFFICE: Office of Underground Storage Tanks

☒ **FINAL**

☐ **DRAFT**

STATUS:

REFERENCE (other documents): OSWER Directive 9610.07= UST Program Indian Lands Strategy for FY 88 and 89 and Guidance for Regional Pilot Projects, March 14, 1988. OSWER Directive 9610.9 = Interim Guidance on Conducting Federal-Lead Underground Storage Tank Corrective Actions for Petroleum Releases on Indian Lands, July 31, 1989.

OSWER OSWER OSWER
'E DIRECTIVE DIRECTIVE DI

EPA

United States Environmental Protection Agency
Washington, DC 20460

OSWER Directive Initiation Request

1. Directive Number
9610.15

2. Originator Information

Name of Contact Person	Mail Code	Office	Telephone Code
William Liemesch	OS-410WF	OUST	703-308-8873

3. Title
UST/LUST National Native American Lands Policy Statement

4. Summary of Directive (include brief statement of purpose) The purpose of this directive is to state policy and provide guidance concerning the implementation of the UST/LUST program on Native American Lands. An implementation strategy is defined. A variety of activities that Regions and Native American Tribes can undertake are discussed.

5. Keywords
Native American Lands, Underground Storage Tanks

6a. Does This Directive Supersede Previous Directive(s)? [X] No [ ] Yes What directive (number, title)

b. Does It Supplement Previous Directive(s)? [X] No [ ] Yes What directive (number, title)

7. Draft Level
[ ] A – Signed by AA/DAA [X] B – Signed by Office Director [ ] C – For Review & Comment [ ] D – In Development

8. Document to be distributed to States by Headquarters? [ ] Yes [X] No

This Request Meets OSWER Directives System Format Standards.

9. Signature of Lead Office Directives Coordinator	Date
Deborah Rutherford for Beverly Thomas, OUST Directives Coordinator	7/7/93
10. Name and Title of Approving Official	**Date**
David Ziegele, Director, OUST	7/7/93

EPA Form 1315-17 (Rev. 5-87) Previous editions are obsolete.

OSWER OSWER OSWER O
VE DIRECTIVE DIRECTIVE DIRECTIVE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL - 7 1993

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

OSWER DIRECTIVE 9610.15

SUBJECT: UST/LUST National Native American Lands Policy Statement

FROM: David W. Ziegele, Director
Office of Underground Storage Tanks

TO: UST/LUST Regional Branch Chiefs
UST/LUST Regional Program Managers

Attached is the final policy statement concerning the implementation of the UST/LUST program on Native American Lands. We received comments on the draft policy statement from six regions, the Office of Enforcement and the Office of General Counsel. Based on those comments, we have made several changes to the draft policy statement. Most of these changes involve clarifying information in the draft policy statement, although entirely new information is provided in a few cases including a new section on funding.

Some of the comments dealt with issues broader than the UST/LUST program that are best addressed on an agency-wide basis. We will provide addition guidance, if necessary, as these issues are resolved.

Please let me or Bill Lienesch know if you have any questions. Bill can be reached at (703) 308-8873.

Printed on Recycled Paper

OSWER DIRECTIVE 9610.15:
UST NATIONAL NATIVE AMERICAN LANDS POLICY STATEMENT

Over the past five years, EPA and tribes have been implementing the Underground Storage Tank (UST) program[1] (RCRA Subtitle I) on Native American[2] lands. During that time, and consistent with the flexibility built into the design of the UST program, a variety of approaches have been used to implement various aspects of the UST program as it affects tribal lands. The purpose of this document is to build on that experience and provide direction and a set of priorities to EPA regional offices for the coming years.

At the federal level, the resources to implement the UST program on Native American lands have been limited and, given the current federal budget constraints, are unlikely to increase dramatically. Nevertheless, EPA is committed, as discussed below, to achieve the goal of protecting human health and the environment on tribal lands.

BACKGROUND

Federally recognized Native American tribes are sovereign entities subject to federal laws. Underground storage tanks located on tribal lands generally are not subject to state laws. As a result, unless a state acts as a tribe's agent pursuant to a formal agreement with a tribe, EPA and the tribe are responsible for implementing and enforcing the UST program on tribal lands.

There are approximately 6,000 tanks on Native American lands. While some USTs are found on tribal lands in every region except Region 3, the majority of tanks are found in Regions 5, 6, 8, 9, and 10. Region 8 has more tanks on tribal lands than any other region. Excluding Native American villages in Alaska, Region 9 has more Native American tribes than any other region. Approximately 60% of the tanks on Native American lands in Region 9 are on Navajo lands.

GOAL

The over-riding goal of the implementation of the UST program on tribal lands is to protect human health and the environment. More specifically, the goal is to bring all tanks on tribal lands into compliance so as to prevent future leaks and to cleanup existing leaks. As discussed in greater detail below, this will be accomplished through direct federal implementation,

---

[1] The term UST program as used throughout this document includes both the regulatory or preventative program and the leaking underground storage tank or LUST program.

[2] The terms Native American, Indian, tribal and reservation lands are used interchangeably in this document

by building the capability of selected tribes, and by facilitating agreements between tribes and states.

This goal is consistent with EPA's and OSWER's policy on environmental equity. As stated in the July 22, 1992 OSWER Environmental Equity Initiative: "OSWER strives to ensure that its programs provide protection from risk equitably across all populations." The Initiative further states that: "OSWER is committed to promoting awareness and sensitivity to environmental equity concerns and translating that awareness into positive action to address those concerns through the implementation of its programs."

OBJECTIVES

The objectives of the UST/LUST National Native American Lands Policy are to:

1. maximize coordination with Native American tribes in all activities in accordance with EPA's Indian Policy;

2. improve the existing data on tank populations and characteristics;

3. clean up sites primarily through oversight of responsible party financed cleanups and, where appropriate, through selected tribal-lead, state-lead, and/or federal-lead cleanups using the LUST Trust Fund;

4. as appropriate, provide direct federal implementation of the federal underground storage tank regulations;

5. facilitate development of tribally run self-sustaining regulatory and clean-up programs based on willingness, authorities and funding; and

6. promote the involvement of other agencies and organizations, including the Bureau of Indian Affairs and the Indian Health Service, to make their resources more available to Native American Tribes for environmental protection and to leverage their resources on site. This includes facilitating the negotiation of formal agreements between tribes and state UST programs.

IMPLEMENTATION STRATEGY

EPA Regional Offices are responsible for ensuring the implementation of the UST program on Indian Lands. In general, there are three approaches for implementing the UST program on Indian Lands. First, regions are encouraged to work with

selected tribes that have or can develop the capability to administer the UST program on their tribal lands. This approach is consistent with EPA's "Policy for the Administration of Environmental Programs" on Indian Reservations which was signed by Administrator William D. Ruckelshaus on November 8, 1984. The policy states in part: "The Agency will take affirmative steps to encourage and assist tribes in assuming regulatory and program management responsibilities for reservation lands. The Agency will assist interested tribal governments in developing programs and in preparing to assume regulatory and program management responsibilities for reservation lands." Underground Storage Tank program development work has already begun through Region 9 with the Navajo Nation and other regions have begun or are contemplating similar efforts. Region 6, for example, rather than focusing primarily on individual tribes has been working with a consortium of pueblos in New Mexico and with a consortium of tribes in Oklahoma.

Second, regions also are encouraged to facilitate the negotiation of tribal-state agreements where possible. This may be particularly advantageous in those cases where the tribe and state have or can develop a good working relationship and where there are relatively few tanks on tribal lands. Regions are responsible to ensure that such agreements result in protection of human health and the environment.

Finally, in those cases where it is not possible for the tribe to develop its own program or to negotiate a tribal-state agreement, the region will continue to be responsible for program implementation. In such cases, the regions have the responsibility to establish and manage a basic UST program using available resources.

Among the activities that a region must ensure get accomplished using one of the three methods outlined above are:

1. receive notifications and certifications of installations of new UST systems;

2. answer calls reporting releases, including suspected releases, spills and overfills, and confirmed releases;

3. receive reports of corrective actions taken or planned including initial abatement measures;

4. receive free product removal reports and determine the practicable extent for free product removal; and

5. receive notifications prior to permanent closure or change-in-service.

These and other activities are described in the Transition Strategy (OSWER Directive 9610.5) and Transition Task List (OSWER Directive 9610.5-1). Even in those cases where a tribal program is developed or a tribal-state agreement is signed, the region is still responsible to ensure that the basic UST requirements are met and all activities are conducted in accordance with EPA's Indian Policy.

ACTIVITIES

There are a wide variety of activities that can be undertaken to further implementation of the UST program on Native American lands. These activities will be pursued with appropriated LUST monies and with personnel funded by both the UST and LUST appropriations. The specific activities pursued in any region will depend on factors such as the number of tribes, their existing and potential ability to implement the program, number of tanks on tribal lands, and emergency response needs. Below is a list of activities that in general are high priority. Regions should select from among these and amend them as needed to achieve the highest possible success generally and specifically as applied to any tribal nation.

1. Tank Inventory: update the tank inventory on Native American lands consistent with the October 2, 1992 memorandum on the "Inventory of USTs on Indian Lands";

2. Outreach: continue and expand, where possible, efforts including circuit riders, information dissemination, training, and information seminars;

3. Corrective Action: ensure that corrective actions occur in a timely fashion. Regions are to oversee responsible party-lead corrective actions to ensure that appropriate corrective actions proceed at all sites. When necessary, regions also are responsible for directing federal-lead corrective actions on a priority basis consistent with OSWER Directive 9610.9 (Interim Guidance on Conducting Federal-Lead Underground Storage Tank Corrective Actions for Petroleum Releases on Indian Lands);

4. Streamlining: examine corrective action and other regional Indian lands-related processes to determine ways to streamline and make those processes more effective and efficient consistent with OSWER Directive 9650.13 (Streamlined Implementation of UST Corrective Action Requirements);

5. Enforcement: ensure adequate enforcement consistent with the UST program's emphasis on voluntary compliance. Regions are encouraged to use field citations where appropriate and to follow applicable guidance, including the Office of Enforcement's memorandum on "Interim Guidance on Review of Indian Lands Enforcement Actions" (October 21, 1992), concerning appropriate enforcement responses for tribally owned and/or operated facilities;

6. Program Development: identify opportunities for and facilitate development of tribally administered regulatory and clean-up programs, including those administered through tribal consortia, based on tribal willingness, authorities and funding; and

7. Tribal-State Agreements: facilitate negotiation of tribal-state agreements for those tribes expressing an interest in such agreements. Regions also should enter into three-party agreements with tribes and states as appropriate.

While a variety of activities can and will be undertaken, regions are still responsible for ensuring that program priorities are pursued. The priorities for the UST program are corrective action streamlining, leak detection compliance and enforcement, and state program approval. The first two of these are directly applicable to the UST/LUST program on tribal lands. Formal state program approval under Subtitle I of RCRA is not applicable in the form that it currently applies to states. Tribal program development, which was discussed under Implementation Strategies, is comparable to state program development prior to the approval process. Direct tribal program development is one of the implementation approaches listed above that regions are encouraged to pursue with interested tribes. The nature and extent of a tribal program will vary considerably depending on such factors as the number of tanks, funding sources, and experience with other environmental programs. Regions will need to work with tribes and tribal consortia to help develop a program most applicable to the tribes' needs, preferences and capabilities.

FUNDING

In recent years, Congress has been appropriating $500,000 to implement the UST program on Indian lands in the Leaking Underground Storage Tank Trust Fund appropriation. The vast majority of these funds have been spent by the regional offices for direct implementation activities such as registering tanks, overseeing corrective action by responsible parties, and

conducting cleanups where responsible parties were unknown or unable to do the corrective action. The Resource Conservation and Recovery Act, as amended, presently contains no provision for directly funding tribal UST programs in the same manner that state programs are funded.

CONCLUSION

This policy statement is consistent with the UST program's policy of flexibility in program development and implementation by state, local and tribal governments. Regions have the ability to achieve UST program goals and objectives by undertaking a variety of activities. The selection of specific activities is at the discretion of the region and will be based on the needs and capabilities of tribes and tribal consortia. Although existing and potential future federal resources for program implementation are limited, EPA is committed to achieving protection of human health and the environment. EPA also is committed to supporting tribally administered programs that can be operated with their own authorities and funding, working with tribal consortia, and serving as a facilitator for development of tribal-state agreements as appropriate.