

United States
Environmental Protection
Agency

Office of
Solid Waste and
Emergency Response



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SEP 29, 1994

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MEMORANDUM

SUBJECT: OSWER Directive 9630.10: Revised State UST Program Grant
Guidance

FROM: Lisa Lund, Acting Director
Office of Underground Storage Tanks

TO: UST Regional Program Managers

Thank you for your input and comments on the revised UST Program Grant Guidance. Attached is a copy of the Guidance, which is OSWER Directive 9630.10. The following areas were either added or modified in the revised Guidance: Corrective Action, State Program Approval, Environmental Justice, Comprehensive State Ground Water Protection Program, 1998 Deadline, Regional Strategic Overview (RSO) Process, and Leak Detection Compliance and Enforcement Measures. Other editorial changes were also made to the document.

The UST Guidance is written to cover State grant negotiations in FY95 and beyond, however, if the publication of the guidance falls after your Region completes its FY95 grant negotiations, please use the UST guidance for future State negotiations beginning in FY96. If you have any questions or comments concerning the guidance, please contact Josh Baylson at (703) 308-8887 or Any Haseltine at (703) 308--8898. Thank you again for your participation in revising the State UST Program Grant Guidance.

Attachment

cc: OUST Management Team
Lisa Hunter
OUST Desk Officers

I. PURPOSE OF GRANT GUIDANCE

This guidance provides the criteria and procedures for allocation of grant funds for State Underground Storage Tank (UST) program activities. Instead of sending out guidance every year, this guidance will serve for all future UST Grant awards, unless it is superseded by an amendment or another document. As a supplement to the grant regulations under 40 CFR Sections 31 and 35, this guidance is to be used in developing and reviewing grant Applications, awarding grants, and monitoring grant activities.

EPA Regional offices are responsible for negotiating grant agreements with States in accordance with national guidance adapted to individual State situations in order to stimulate and assist State program development (if needed) and implementation, monitor progress, and evaluate grant fund expenditures. In the interest of s g, the Regions are encouraged to award multi-year grants to the States by setting up two- to three-year performance periods and amending budget periods annually.

Additional implementation guidance may be found in: 1) OSWER Directive 9650.13 "Streamlined Implementation of UST Corrective Action Requirements;" 2) "UST/LUST Program Draft Strategic Framework' (March 1993); 3) OSWER Directive 9610.5 'FY 1989-1990 Transition Strategy for the UST Program;" and 4) OSWER Directive 9610.5-1 "Transition Tasks List."

II. PURPOSE OF STATE UST PROGRAM GRANTS

The purpose of the UST grant program is to assist States in implementing effective State-run UST regulatory programs for the prevention, detection, and correction of leaking underground storage containing petroleum and hazardous substances.

It should be noted that Congress intended that Federal grant funds in the UST program be used as "seed" money to assist States with the development and implementation of State programs. Many States have already developed or are developing alternative or supplemental funding mechanisms (e.g., tank fees or gas taxes) to provide a consistent funding base for their prevention programs.

In addition to State program grants, EPA has and continues to develop a variety of implementation tools for use by States, and hosts an annual national forum for States to share information and experiences concerning their UST programs. EPA is also providing Leaking Underground Storage Tanks (LUST) Trust Fund monies to States to assist in the oversight and clean up of contamination caused by leaking petroleum tanks. States that have not yet applied for State Program Approval are expected to make reasonable progress toward submitting a completed application to EPA for approval of their UST prevention, corrective action, and financial responsibility programs under Section 9004 of RCRA. A Region may decide to reward a State's success in receiving State Program Approval with funds from the LUST Trust Fund.

The solution to the problem of leaking USTs is for States to implement prevention programs and to streamline their cleanup programs which, over time, will result in a drastic reduction in the number of leaking USTs. The emphasis of EPA's long-term implementation strategy is to develop strong State and local programs. EPA focuses its resources and efforts on building and improving State programs while providing flexibility in approaches and striving for constant improvement. EPA will work in tandem with States to improve performance, streamline procedures, promote Total Quality Management and ensure,

environmental justice in specific program areas, such as enforcement, inspections, site assessments, and corrective actions.

III. NATIONAL PRIORITIES, GOALS, AND FUNDABLE TASKS

A. National Priorities

EPA has identified four priority areas that are critical to successful implementation of the national UST program. These priority areas highlight activities that States should conduct. The four priorities are: Corrective Action Streamlining, Leak Detection Compliance and Enforcement, State Program Approval, and early compliance with the 1998 Upgrading Deadline. The goals and fundable tasks for each of the priority areas are discussed below.

The Office of Underground Storage Tanks (OUST) and EPA Regions will continue to hold annual strategic planning discussions on the status of State programs, and progress in the priority areas. These discussions will result in a document called the "regional strategic overview" (RSO). The RSO, along with this guidance, are expected to provide the basis for grant negotiations with States.

B. Goals

1) Corrective Action Streamlining

To promote scientifically-sound, rapid, and cost-effective action at all UST sites requiring corrective action through the use of streamlined processes, effective technologies, and improved cross-program coordination.

Note: OUST recognizes that accomplishment of the streamlining corrective action goal will be addressed primarily under the LUST Trust Fund cooperative agreements because of a greater level of resources available from the fund. Corrective action quality improvements includes administrative and field processes, promoting the use of alternative technologies to traditional pump and treat and excavation, employing risk-based decision making in the corrective action process, and building strong state assurance funds. While these activities are eligible activities under an UST grant, they will not be addressed specifically in this guidance. Nevertheless, corrective action quality improvement activities are in concert with prevention program activities and will augment the growth and effectiveness of State UST prevention programs.

2) Leak Detection Compliance and Enforcement

To ensure owners and operators routinely and correctly monitor all regulated and piping for leaks in accordance with the regulations.

3) State Program Approval

To encourage and ensure that all State programs develop sufficient authorities and enforcement capabilities (to apply for approval from EPA) to operate in lieu of the Federal program.

4) Encouraging Early Compliance with 1998 Requirements

To encourage owners and operators to upgrade or replace their of the December 1998 deadline.

C. Fundable Tasks

EPA recognizes that completion of many of these tasks is a process requiring a multiyear effort. For each task specific outputs for individual States will be decided by negotiations between the State and the EPA Regional Office. Required activities are only those actually negotiated between an EPA Region and State. Negotiated tasks will take into account the nature and extent of program needs in each State and the national priorities. The following tasks are eligible uses of UST grant funds.

1) Corrective Action Streamlining

- develop adequate statutory and regulatory authorities
- establish cleanup policies and write clear guidance for owners and operators
- streamline corrective action procedures
- establish mechanisms to determine and process high, medium and low-risk sites
- consider environmental justice as a qualitative factor in developing priority ranking systems for state-lead cleanup and enforcement strategies
- maintain data management system for notification information and STARS reporting
- conduct outreach (e.g., training/technical assistance) for State and local personnel, consultants, owners and operators
- conduct formal and informal corrective action enforcement
- track the solvency of State funds (refer to document "Monitoring the Financial Soundness of Approved State Assurance Funds," OSWER Directive 9650.14)
- identify need for streamlining and opportunities for non-traditional technologies and risk based approaches
- consider the use of qualified minority contractors and consultants on state-lead cleanups

2) Leak Detection Compliance and Enforcement

- develop adequate authorities and procedures
- identify, investigate, and enforce State/Federal regulations
- establish a well-trained field presence
- develop and use alternative compliance mechanisms (e.g., field citations)
- establish and maintain a leak detection compliance tracking system
- maintain a data management system for notification information and STARS reporting
- develop and use an enforcement targeting scheme
- consider environmental justice in developing compliance/enforcement strategies
- conduct effective outreach (e.g., training and technical assistance) to local agencies and owners and operators
- streamline enforcement procedures

3) State Program Approval

- implement transition tasks (for States that have not yet received State program approval)
- develop/revise State authorities and regulations to meet Federal standards
- establish enforcement capabilities and procedures
- develop draft State Program Approval application
- complete final State Program Approval application
- investigate additional mechanisms to fund State programs

4) Encouraging Early Compliance with 1998 Requirements

- Obtain statutory authority and develop and promulgate regulations necessary to monitor and enforce compliance with State or Federal requirements (whichever are applicable) to upgrade or replace UST systems by December 1998-including authority and regulations under which substantial penalties can be imposed for failure to meet the deadline
- Design programs to monitor and enforce compliance with the upgrade/replace requirements-including programs involving cooperation with State agencies responsible for enforcing compliance with other health, environmental, and consumer protection requirements applicable to UST owners and operators
- Conduct outreach activities (either alone or in collaboration with trade associations serving UST owners and operators, equipment vendors, and other stakeholders) to ensure that UST owners and operators are aware of the upgrade/replace requirements,, help them understand what they must do and what options they have, and encourage them to come into compliance as early as possible at all facilities, including those in environmental justice communities
- Build or improve State capability to track compliance with the upgrade/replace requirements, maintain complete and accurate data on compliance, and use the data to periodically summarize and assess the status of compliance state-wide.
- Explore the potential value and feasibility of setting up State financial assistance programs for upgrading or replacement of UST systems
- Design programs to ensure that UST systems that are not upgraded or replaced are properly closed

Other Tasks

The national program supports efforts on the State level to integrate Comprehensive State Groundwater Protection Program efforts with UST prevention program activities. The primary of this plan is to avoid duplication of effort and identify common information needs.

The national program also supports State efforts to achieve environmental justice by developing outreach materials and targeting programs to low income and minority communities.

IV. ALLOCATION OF STATE GRANT FUNDS

For planning purposes, assume that the total State grant allocations remain at \$9 million a year. If this changes in this year or in future years, a memorandum regarding Regional UST grant allocations will be sent to the Regional Program Managers.

Assuming \$ 9 million is the total allocation, the grant funds will be allocated to the Regions at the rate of \$162.5 thousand per State (plus Puerto Rico and the District of Columbia) and \$137.5 thousand for the Virgin Islands and Pacific Trust Territories. Regions have the ability to move funds among their States and territories. The following table illustrates how much each Region will be allotted based upon this formula.

Regional Allotments for State UST Program Grants

Region 1	\$ 975k
Region 2	625k
Region 3	975k
Region 4	1300k
Region 5	975k
Region 6	812.51k
Region 7	650k
Region 8	975k
Region 9	1062.5k
Region 10	650k
Total	\$9000k

V. STATE MATCH

State UST program grants will continue to require a minimum of 25 % grant match from the States. Of course, the State match may include in-kind contributions. States are encouraged to provide information on the size of their commitment of total resources to the program, even when this exceeds 25%.

VI. GRANT ADMINISTRATION

Grant Application

The State or Region may initiate the grant process. A State may submit a draft grant application to the Region, or the Region may provide a draft work plan to its States for consideration.

Grant Negotiations

Specific activities funded under each State's grant work plan will be determined through negotiations with the Region. In accordance with the Agency's policy on performance-based grants, each State will be expected to make specific task and resource commitments as part of its grant agreement. Commitments should reflect the priorities stated in the RSO and in this guidance.

Designated State agencies may enter into intergovernmental agreements with sub-state or local government agencies and thereby provide funds for the performance of specific (40 CFR Section 31.36). The designated State agency retains the ultimate responsibility for ensuring that such funds are expended properly, in accordance with Federal requirements. Sub-state agencies that intend to contract out for services must comply with applicable procurement requirements (40 CFR Part 31), and should also consider the use of qualified minority contractors and consultants.

Grant Awards

All available grant funds should be obligated to the State in the fiscal year in which the grant is awarded. States should make every effort to use grant monies during the allotted period. Otherwise, carryover funds may be awarded at the Regional Administrator's discretion, but only for the purposes specified in this guidance.

UST program grant funds may be used only for eligible activities, e.g., those which are: (1) necessary to develop and implement an approvable State UST program, and (2) activities which are allowable for funding (see OMB circular A-87 and 31.22).

When a State does not seek program approval or make sufficient progress toward State Program Approval, the Regional Administrator may use funds not awarded or committed to that State to supplement awards to other States or to support a Federal program to be conducted in a state in which an acceptable State program does not exist.

Suggested Grant Award Schedule

(may vary by Region)

As scheduled by the Region	Hold RSO discussions with HQ
April-June	Develop draft grant applications (Regions and States)
July	Regions begin grant negotiations with States
August	States submit final grant applications
By Sept. 30	Regions have processed grant up to point of award
October	Regions begin to award grants

Grant Oversight

In accordance with Agency policy, the Region must conduct at least one on-site review. Regions should plan a mid-year and/or end-of-year review with each State, and forward to OUST/HQ a copy of each State's performance evaluation final report. Regions may arrange for more frequent reviews with States.

The comprehensive program review for each State should discuss progress toward completion of funded tasks. Reviews should identify:

1. areas of success including approaches that could be shared with other States
2. areas for improvement in the UST program;
3. areas where EPA assistance could be helpful, including a plan for action;
4. areas where EPA or other Federal agencies are a barrier or create problems for the State program, creating a need for EPA to address such areas.

Copies of all State program evaluation reports and end-of-year grant reports should be sent to Dana Tulis, Chief, Operations Branch, OUST, within 30 days of completion of the report.

State Reporting Requirements and Schedule

States must report required program activities to the Regions (see Attachments 1 & 2). In addition, all states are to report in a timely and accurate fashion the data needed for quarterly activities reports and the STARS reports for the EPA UST program. Regions will need to relay this data to OUST/HQ within 10 working days of the end of each fiscal quarter. Regions and States must develop reporting schedules that allow them to meet these deadlines. Regions shall request that States add annual data concerning total number of petroleum tanks and number of hazardous substance tanks (existing and closed) to the quarterly activities report. States only need to report the information concerning the number of tanks (G-4) once a year on the second quarter report.

OUST is requesting that Regions validate that States are updating their UST database information, including the total number of federally-regulated tanks and the number of hazardous substance USTs,

prior to submittal of STARS data. Please refer to February 19, 1993 memorandum: "Follow-up to the IG Audit on the National Tank Inventory" for further details.

**ATTACHMENT 1: UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF UNDERGROUND STORAGE TANKS STARS REPORT**

State _____	Region _____	Quarter _____
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OUST	STARS	DESCRIPTION	CUMULATIVE LAST QUARTER	ACTIONS THIS QUARTER	CORRECTIONS TO PREVIOUS DATA	CUMULATIVE TOTAL
G-1	UST-1A	States submitting complete applications for State program approval.				
G-2	UST-1B	Number of states with authorized programs.				
G-4		Number of closed tanks.				
TF-1		Number of reported confirmed releases.				
TF-2		Number of emergency responses taken.				
TF-3	UST-2A1	LUST cleanups initiated: petroleum, Responsible Party lead.				
TF-3	UST-2A2	LUST cleanups initiated: petroleum, State lead with TF money.				
TF-3	UST-2A3	LUST cleanups initiated: petroleum, State lead with State money.				
TF-5	UST-2C1	Site cleanups completed: petroleum, Responsible party lead.				
TF-5	UST-2C2	Site cleanups completed: petroleum, State lead with TF money.				
TF-5	UST-2C3	Site cleanups completed: petroleum, State lead with State money.				
TF-5		Sites with enforcement actions.				

ATTACHMENT 2: U.S. ENVIRONMENTAL PROTECTION AGENCY OFFICE OF UNDERGROUND STORAGE TANKS LEAK DETECTION COMPLIANCE AND ENFORCEMENT REPORTING

Fiscal Quarter	1	2	3	4	Region ____	State _____
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MEASURES	Corrected numbers for last quarter	Actions taken this quarter
Number of Leak Detection Inspections		
Number of Informal Enforcement Cases		
Number of Formal Enforcement Cases		

Items of note

Count actions which occurred during the current quarter.

Regional and State information will be reported separately - States continue to report to the Regions, which will then forward separate Regional and State totals to OUST.

LD Measures' Definitions:

1. *Number of Leak Detection Inspections:* An inspection is defined as a visit to a single facility by a State employee or designated State agent who checks equipment performance and condition, as well as the quality of records management. Count general compliance inspections as long as leak detection methods and records are checked. Count installation inspections if leak detection systems are checked as part of the inspection. Do not count inspections for piping only. Count the number of facilities inspected, not the number of UST systems. (Must be used by all States and Regions).
2. *Number of Informal Enforcement Cases:* These are any series of actions that are taken to notify an owner/operator (O/O) of the O/O's responsibilities after the State has made a preliminary determination that an UST system(s) is out of compliance. These may cite a punitive authority or potential penalty, but do not actually exercise that authority to require the O/O to return to compliance. Generally these informal cases may include a series of warning letters, field citations without penalties, show-cause meetings, re-inspections, etc. For the Regions, these informal cases include warning letters, NOV's, and 9005 Information Request all other tools should be considered formal. If this informal case is later escalated to become a formal enforcement case (as

defined below), it should be counted twice: once as informal and once as formal. (Must be used by all Regions, States may either use or negotiate a modified definition with the Region, which must be submitted to HQ in writing).

3. *Number of Formal Enforcement Cases:* These are any series of formal administrative, civil, or criminal notices or regulatory actions (depending on the State's authority) that rely on punitive authority (e.g. penalty, arrest, permit revocation, etc.) to require an O/O to return to compliance. Generally these formal cases may include a series of notices of violation, administrative complaints, field citations with penalties, formal referral to State counsel, arrest, etc. (Must be used by all Regions, States may either use or negotiate a modified definition with the Region, which must be submitted to HQ in writing).

REPORTS DUE TO OUST: Within 10 working days of the end of each fiscal quarter.