Calendar No. 25

108TH CONGRESS, *1st Session* | SENATE | REPORT 108–13

UNDERGROUND STORAGE TANK COMPLIANCE ACT OF 2003

MARCH 5, 2003.—Ordered to be printed

Mr. INHOFE, from the Committee on Environment and Public Works, submitted the following

REPORT

[to accompany S. 195]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 195) to amend the Solid Waste Disposal Act to bring underground storage tanks into compliance with subtitle I of that Act, to promote cleanup of leaking underground storage tanks, to provide sufficient resources for such compliance and cleanup, and for other purposes, having considered the same reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

The Environmental Protection Agency (EPA) estimates that there are currently over 705,000 active underground storage tanks (USTs) containing petroleum products. Many of these tanks have leaks, causing potential harm to human health and the environment.

In 1984, Congress enacted, as Subtitle I of the Solid Waste Disposal Act, a comprehensive program to address the problem of leaking underground storage tanks. The program required EPA to develop leak detection and prevention standards for underground storage tanks (USTs), and authorized the Agency to compel tank owners and operators to take corrective action to clean up leaking tanks and comply with standards for USTs, or to close them. States

have largely taken the lead in implementing and enforcing the program requirements, including corrective action requirements.

States receive Federal funds from the LUST Trust Fund, which is paid for by a one-tenth of one cent tax on all petroleum products, to carry out the requirements. This tax generates approximately $183 million per year, and the interest on the principal in the fund generates approximately $85 million annually (roughly $13 million more than annual appropriations from the LUST Trust Fund). Amounts are appropriated each year from the Trust Fund for the States and EPA to implement and enforce the UST corrective action requirements; to conduct cleanups in certain limited situations where there is no financially viable responsible party or where a responsible party fails to undertake the appropriate corrective action; to take corrective action in cases of emergency; and to bring cost recovery actions against parties to seek reimbursement of costs expended from the Fund to clean up sites. The balance of the Trust Fund is approximately $1.8 billion. The annual appropriation from the LUST Trust Fund for fiscal year 2003 is $72 million. In addition to the Federal LUST Trust Fund, many States have also established funds, capitalized through State gas taxes, fees, and other mechanisms, to pay for cleanups and to provide assistance to tank owners in complying with other requirements. States spend approximately $1 billion per year from their Trust Funds. However, in recent years, the claims against those funds have risen dramatically.

While over a million leaking USTs have been closed under this program, EPA estimates that there are currently over 705,000 active USTs containing petroleum products. Some of these tanks have leaks, causing potential harm to human health and the environment. A number of recent, high profile contamination cases have highlighted the problem. Methyl tertiary butyl ether (MTBE) has been detected at thousands of leaking UST sites. In some cases, drinking water wells have been closed due to these releases of MTBE. According to EPA, States have reported more than 400,000 confirmed releases from USTs. Cleanups have been initiated for approximately 357,000 releases and almost 242,000 cleanups have been completed. In spite of this progress, many thousands of cleanups remain to be completed. EPA, States, and the private sector have suggested that lack of resources, both for cleanup and for inspections and enforcement, have limited efforts to fully address MTBE contamination and leaking USTs.

S. 195 strengthens the existing statutory framework for underground storage tanks. The bill amends Subtitle I to require that EPA distribute at least 80 percent of its annual appropriation from the Leaking Underground Storage Tank Trust Fund to States under cooperative agreements. The bill also gives States greater flexibility to use the funds for enforcement of the program, administrative costs, and corrective action and compensation programs. Finally, the bill affirms that EPA may use funds from the Trust Fund for enforcement of the UST program.

OBJECTIVES OF THE LEGISLATION

On May 4, 2001, the U.S. General Accounting Office (GAO) released a report entitled "Environmental Protection: Improved In-

spections and Enforcement Would Better Ensure the Safety of Underground Storage Tanks." This report found that 89 percent of the total number of regulated tanks, or 616,865 tanks, received federally required equipment upgrades by the end of fiscal year 2000. In addition, GAO estimated that about 29 percent of the regulatedtanks, or 201,001 tanks, were not being operated or maintained properly, increasing the risk of soil and groundwater contamination.

S. 195 was crafted to improve the compliance of underground storage tanks nationwide. The legislation provides resources for the cleanup of tanks that have already leaked, but more importantly provides increased emphasis on leak prevention so communities can be spared from the problems and expense that are often associated with leaking tanks, especially when drinking water supplies become contaminated.

This legislation improves the current law by: requiring that all regulated underground storage tanks undergo onsite inspections every 2 years; requiring EPA to issue guidance on how to train operators of USTs; requiring States to develop operator training strategies; providing enforcement flexibility for UST owners that have operator training programs in place; providing EPA authority to prohibit fuel delivery to tanks that are not in compliance; requiring States to prepare implementation reports for bringing tanks owned by State and local governments into compliance; requiring Federal agencies to prepare implementation reports for bringing federally owned tanks into compliance; and increasing funding for UST programs.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

Sets forth the short title of the bill as the "Underground Storage Tank Compliance Act of 2003."

Sec. 2. Leaking Underground Storage Tanks

SUMMARY

Section 2 gives States greater flexibility to implement the underground storage tank program. First, the new subsection (f)(1) provides that EPA must distribute to the States at least 80 percent of the funds appropriated each year from the Leaking Underground Storage Tank Trust Fund. The States may use these funds to pay for the reasonable costs of: (1) actions to carry out and enforce corrective actions; (2) necessary administrative costs of State assurance funds; (3) enforcement of a State program; (4) State or local corrective actions; and (5) corrective action or compensation programs under a State program if there is no financially viable owner or operator of an UST. This section also provides for the allocation of funds to States by the Administrator.

DISCUSSION

This section adds a new subsection (f) to Section 9004 of the Solid Waste Disposal Act to guarantee that States will receive a minimum of 80 percent of the annual appropriation from the LUST

Trust Fund. This percentage is intended to be a floor; the actual percentage distributed to the States in any given year may exceed that level. Historically, EPA has distributed varying amounts to the States, ranging from as little as 81 percent of the annual appropriation to as much as 89 percent. The average distribution has been in the range of 85 percent. The committee expects EPA to distribute more than the statutory minimum of 80 percent of the appropriated LUST funds annually if the Agency's annual budgetary needs, including needs for implementation of the LUST program with respect to tanks within Tribal jurisdiction, are less than 20 percent of appropriated funds.

New subsection (f)(1)(A)(iii) authorizes a State to make the determination of whether an owner or operator of an underground storage tank is financially viable (i.e., whether the owner or operator has sufficient resources to pay for a corrective action without significantly impairing the ability of the owner or operator to continue in business), in accordance with guidelines to be developed by EPA and the States. In making the determination of whether an owner or operator has the ability to pay, the State must take into consideration any funding received by the tank owner from the State.

In addition to expanding the uses of the Trust Fund, this section reaffirms that States may not use these funds to provide financial assistance to owners and operators of tanks to comply with existing regulations governing USTs, including the requirements for upgrading of existing tanks.

While the bill allows for several new uses of the LUST Trust Fund, the legislation does not prioritize among uses. Funding for existing uses (including enforcement of corrective action requirements, corrective actions taken by State and local governments at responsible party sites, and cost recovery actions) most effectively serves the needs for protection of human health and the environment. The committee intends that the distribution of Federal funding recognize the importance of enforcement and corrective action requirements to the protection of human health and the environment.

Subsection (f)(2) sets forth the process to be used to allocate funds among States. In general, EPA is directed to distribute funds in accordance with the existing allocation process utilized by the Agency. The process may be revised only after consulting with the States. Any revisions must take into consideration a number of factors, including: the total tax revenue contributed to the Trust Fund from all sources within the State; the number of confirmed releases from federally regulated USTs; the number of federally regulated USTs in a State; groundwater use in a State; program performance in a State; the financial needs of a State; and the ability of a State to use its allocated funds in any given year. According to EPA, the current allocation process takes into consideration these factors. The committee intends that any revisions to the current allocation process should maintain an inclusive process for EPA consultation with States to ensure that EPA obtains necessary information from States.

Subsection (f)(3) requires distributions from the Trust Fund be made directly to the State agency and distributed in accordance with the cooperative agreement with EPA. Subsection (f)(4) pro-

hibits the use of funds from the Trust Fund distributed under subsection (f)(1)(A)(iii) from being used for cost recovery by the Administrator under section 9006(h)(6).

Sec. 3. Inspection of Underground Storage Tanks

SUMMARY

Section 3 directs the Administrator, or a State with an approved program, to require that all USTs regulated under Subtitle I undergo onsite inspections every 2 years. A June 2000 report released by EPA entitled "Report to Congress on a Compliance Plan for the Underground Storage Tank Program" estimates that the cost of this bi-annual inspection requirements will be $35 million for each of the first 2 years and $20 million for subsequent years. Section 10 authorizes that level of funding to pay for this inspection requirement.

DISCUSSION

Section 3 creates a new section 9005(a) which requires the Administrator or a State with an approved UST program to inspect each UST not later than 2 years after the date of enactment and at least once every 2 years thereafter. The committee does not intend that this section prevent States from adopting more stringent or frequent UST inspection programs or from permitting States to maintain existing inspection programs that are more stringent or frequent than the requirements of subtitle I. Rather, this section establishes a minimum level of frequency, although States may require more frequent inspections provided a State's inspection program is not inconsistent with the provisions of the subtitle. States are encouraged to implement innovative methods to carry out the requirements of this section.

The committee intends that the onsite inspections required under this section must include a comprehensive inspection of all readily accessible portions of each UST system, including equipment and records. The committee recognizes that a substantial portion of each UST system is installed below grade with a concrete covering. The committee does not intend that the onsite inspections required under this section involve inspection of these inaccessible components of each UST system, although visible above-ground signs of leakage from below-ground fixtures should be sought. At the same time, a review of paperwork and records without physically inspecting the equipment would not satisfy the requirement in this section that the inspections be undertaken "onsite."

Sec. 4. Operator Training

SUMMARY

Section 4 requires the Administrator to publish guidelines, after notice and comment, which specify methods for training operators of underground storage tanks. The guidelines must take into account existing training programs put into place by States and operators, the high turnover rate of operators, the frequent improvements in tank technology, and the nature of the businesses in which operators are engaged.

From the date on which the Administrator publishes the guidelines, States have 2 years to develop and implement a strategy for the training of operators of underground storage tanks that are consistent with the guidelines that are developed in cooperation with owners and operators, and that take into consideration existing operator training programs. This section allows the Administrator to provide a grant up to $50,000 if the State develops and implements a State operator training strategy.

DISCUSSION

The May 2001 GAO report concludes that 29 percent of USTs regulated under subtitle I are not being operated or maintained properly. After millions of dollars have been spent bringing USTs into compliance with Federal standards in order to reduce the threat of leaking and the resulting problems, leaking tanks due to operator error is unacceptable. Human errors will always occur, but steps must be taken to minimize their occurrence.

The committee has received testimony that there are some operator training programs in effect at the retail level, but a 29 percent failure rate demands that more emphasis be placed on this very important aspect. Section 4 creates a new section 9010 in subtitle I to ensure that greater emphasis is placed on operator training. Section 9010(a) requires the Administrator to promulgate, within 2 years of enactment, guidelines that specify methods for training tank operators. The guidelines must 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 owners and operators as of the date of enactment of this paragraph; (C) the high turnover rate of operators; (D) the frequency of improvement in underground storage tank equipment technology; (E) the nature of the businesses in which the operators are engaged; and (F) such other factors as the Administrator determines to be necessary to carry out this section.

The considerations explicitly direct the Administrator to take into account existing State and operator training programs because this program will be most successful if it builds on successful models that may exist. Also, the Administrator must take into consideration the nature of the business in which operators are engaged. The guidelines must take into consideration the high turnover rate of employees at retail gasoline stations and not require a level of training that would be impractical given the nature of the business.

Section 9010(b) requires each State to develop and implement a strategy for the training of operators within 2 years after the date in which the Administrator publishes the operator training guidelines required in subsection (a). The State strategies must be consistent with the EPA guidelines promulgated under subsection (a) and must take into consideration the training programs implemented by owners and operators as of the date of enactment of this subsection. Rather than penalizing States for not complying with this section, it is the intent of this new section to provide States with performance bonuses of up to $50,000 for compliance with this section.

Sec. 5. Remediation of MTBE Contamination

SUMMARY

Section 5 authorizes the Administrator and States to carry out remediation of methyl tertiary butyl ether (MTBE) releases that present a threat to human health or welfare or the environment. Section 10 authorizes $125 million for each of fiscal years 2004 through 2008 for this purpose, for a total of $625 million over 5 years.

DISCUSSION

Relatively low levels of MTBE can be detected in groundwater. The detection of MTBE, by taste and smell, can make the water unpalatable, but not necessarily harmful. Section 5 amends Section 9003 of the Solid Waste Disposal Act to clarify that the Administrator and the States may undertake corrective actions whenever the presence of MTBE in groundwater presents a threat to public welfare, even in situations where the level of MTBE is not so high as to present a threat to human health or when the release is not from an underground storage tank.

New section 9003(h)(12) reconfirms the authority of the Administrator and the States to use funds from the LUST Trust Fund for the cleanup of sites contaminated by MTBE from leaking USTs. In addition, section 9003(h)(12) authorizes the Administrator and the States to conduct such cleanup activities using designated funds made available under new section 9014(2)(B) from the LUST Trust Fund. In order to undertake a corrective action under this subsection, the Administrator or a State must still comply with the requirements of Section 9003(h)(2) of the Solid Waste Disposal Act. States are to exercise this authority in accordance with their cooperative agreements.

Sec. 6. Release Compliance and Prevention

SUMMARY

Section 6 provides a range of measures intended to promote and enhance the compliance and prevention of releases from underground storage tanks through a combination of mechanisms. Those mechanisms include increased funding for enforcement activities, increased focus on tanks owned by State and local governments, enforcement incentives for owners and operators, authority for the Environmental Protection Agency to prohibit the delivery of regulated substances to underground storage tanks, and the creation of a public record.

DISCUSSION

Section 6(a) amends Subtitle I of the Solid Waste Disposal Act by creating a new Section 9011 giving States greater flexibility in their use of LUST funds. New Section 9011 authorizes EPA and the States to use funds appropriated from the LUST Trust Fund to conduct inspections, issue orders, or bring actions under Subtitle I. Funding authorized under this section is for both formal enforcement actions, such as judicial actions and administrative orders, and related measures to secure compliance, such as notices of viola-

tion or warnings. This increased funding for inspections and enforcement-related activities will enable States and EPA to secure greater compliance with UST standards. Increased compliance will prevent future releases and resulting cleanup costs. Funds authorized under this provision may be used for cost recovery.

This section does not affect current law on State authority under authorized programs or Federal authority to enforce the requirements of Subtitle I. Nor does this provision affect EPA's authority to use other funds to enforce the UST program. EPA receives funding from sources other than the LUST Trust Fund to undertake inspection and enforcement related activities for leak detection and other preventive requirements. Any LUST Trust Fund appropriations used for such enforcement activities by EPA are expected to supplement funds that the Agency has been receiving, and will continue to receive, from sources other than the LUST Trust Fund.

In addition to authorizing funding for States and EPA for federally authorized programs, this section authorizes States to use funds to undertake inspection and enforcement related actions for State tank leak detection, prevention, and other requirements through State programs with requirements that are similar or identical to Subtitle I. State agencies currently receive funding from EPA from sources other than the LUST Trust Fund to undertake such activities for leak detection and other preventive requirements. It is expected that States will continue to receive funding from EPA from these other sources, as well as from the LUST Trust Fund, for these activities. Any LUST Trust Fund appropriations used for enforcement-related activities by States should supplement funds that the States have been receiving, and will continue to receive.

Section 6(b) adds new subsection (i) to section 9003 which requires States to submit to EPA a strategy to ensure compliance of tanks owned by State or local governments with the provisions of the subtitle. This section allows the Administrator to provide a grant up to $50,000 if the State develops the implementation report. Every UST in the Nation, whether owned by a private party or a State or local government, was required under Federal law to be upgraded or closed by December 22, 1998. According to the 2001 report by the General Accounting Office, a sizable portion of the USTs which have not been upgraded, as of 2001, were owned by State and local governments. The committee intends this section to provide incentives for these governmental entities to comply with the Federal UST requirements at the earliest possible date.

Section 6(b) does not provide these governmental entities with an extension of the 1998 upgrade deadline. Rather, it mandates that these governmental entities provide EPA with a detailed report on the status of all publicly owned UST systems under their jurisdiction within 2 years of enactment, including a list of the locations of all non-compliant government-owned USTs. It is the committee's expectation that these governmental entities will strive to comply with the tank requirements rather than submit lengthy lists of noncompliant tanks.

Section 6(c) provides enforcement flexibility to EPA when determining the terms of a compliance orders or the amount of a civil penalty. The Administrator may provide this leniency if the owner

or operator has a history of operating underground storage tanks in accordance with applicable law or if they have implemented an operator training program. Conversely, the Administrator shall not provide leniency to owners and operators that have repeatedly violated Federal and State UST requirements. The intent of this section is not to penalize owners and operators for paperwork violations deemed to be minor.

Section 6(d) provides the Administrator, or States with an approved program, with authority to prohibit the delivery of regulated substances to underground storage tanks that are not in compliance with a requirement or standard promulgated by the Administrator or a State. Prior to exercising this authority, EPA must promulgate regulations that describe the circumstances under which the authority may be used and the process by which the authority will be used consistently and fairly. The intent of this section is not to penalize owners and operators for paperwork violations deemed to be minor.

New section 9006(f) authorizes the Administrator or a State to prohibit deliveries of motor fuels to USTs that are not in compliance with Federal or State UST regulations (so-called "red-tag" authority). Such delivery prohibitions are an important tool in UST enforcement, as it imposes potential liability not just on the UST owner/operator but also on the supplier of the motor fuels being delivered to a non-compliant tank. States that have adopted such delivery prohibitions have witnessed an increase in UST compliance.

It is possible that such delivery prohibitions, as well as the 1998 requirement to upgrade or close USTs, could result in the closure of motor fuel outlets in remote locations where alternative fueling locations are not readily at hand. Consequently, section 9006(f) adopts a temporary limitation on the use of delivery prohibitions for locations in areas where the closure of the outlet with the non-compliant UST would leave motorists with no other fueling alternative.

This limitation, however, is not intended to prohibit the Administrator or a State from enforcing the 1998 UST standards against the owners and operators of such remote USTs. These UST owners/operators have had since 1986 to upgrade these USTs and have now been in violation of Federal and State law for more than 4 years. The remote location of the UST is not an excuse for failure to upgrade the UST fuel leaking from such a tank is just as likely as any other UST to contaminate local water supplies.

Therefore, the 180-day limitation on this authority is not intended to limit the Administrator's or a State's authority to close such remote location tanks immediately for failure to comply with Federal or State UST standards. Rather, the limitation restricts the Administrator's or a State's use of the delivery prohibition authority authorized by this section with respect to such remote USTs, and gives these UST owner/operators an opportunity to bring tanks into compliance with the statute. This limitation only applies for 180 days after the Administrator or a State has given the UST owner/operator notice of non-compliance. After 180 days, the committee encourages the Administrator or a State to use delivery prohibition against the UST owner/operator if the UST has

not yet been brought into compliance with Federal and State UST standards.

The Administrator is directed to issue guidelines which define the term "specified geographic areas" and it is expected that the term would be defined narrowly. The committee expects that few USTs would qualify for this limitation and that the burden must be on the subject UST owner/operator to show that the closure of the subject UST would make motor fuel unavailable to motorists in a small town or area.

Section 6(e) directs the Administrator to require States and Indian tribes to maintain, update at least annually, and make available to the public, a record of USTs regulated under this subtitle. EPA shall make each public record available to the public electronically.

Sec. 7. Federal Facilities

SUMMARY

Section 7 requires the Administrator, in cooperation with Federal agencies which own or operate USTs or which manage land on which USTs are located, to review the status of compliance of those tanks within 1 year of enactment. Within 2 years of enactment, each Federal agency which owns or operates USTs or which manage land on which USTs are located must develop strategies to bring their tanks into compliance with applicable law.

DISCUSSION

Compliance of all UST systems with the requirements of subtitle I is of paramount importance. The provisions of the bill focus equally on privately owned tanks and tanks owned by government entities. A tank owned by a unit of government or a tank which is located on Federal land must be held to the same standards as those tanks owned by private entities.

To address this balance, section 7 adds a new section 9007(c) which requires the Administrator, in cooperation with each Federal agency that owns or operates USTs or that manages land on which USTs are located to review and report on the compliance status of federally regulated tanks. While the outcome of the Federal UST program must be full compliance, it is important that sufficient information be collected in order to ensure that limited resources are being channeled toward the problem areas. Therefore, within 1 year of enactment, the Federal agencies are required to review and report on their compliance status. In addition, those same agencies must also submit to the Administrator an implementation report which lists each UST, which they own or which is located on their land, which is not in compliance with subtitle I and describe the actions that have been and will be taken to ensure compliance. This information must be made available to the public. The information will not shield tank owners from any penalties or actions to which they are subject under subtitle I.

The bill also replaces section 9007(a) with a provision which requires each Federal UST and UST system (as defined in 40 CFR 280.12) to be subject to the provisions of 6001(a). For the purposes of section 9007(a), the requirements respecting the control and

abatement of solid waste or hazardous waste disposal and management referred to in section 6001(a) shall include the control, installation, operation, management, or closure of any underground storage tank or underground storage tank system containing any regulated substance and related release response activities. This new provision is intended to ensure that the requirements under the Solid Waste Disposal Act apply equally to private entities and Federal entities.

Sec. 8. Tanks Under the Jurisdiction of Indian Tribes

SUMMARY

Section 8 requires the Administrator, in cooperation with Indian tribes, to develop and implement a strategy within 1 year of enactment that prioritizes UST releases on Indian lands and takes necessary corrective actions with respect to those prioritized releases. Within 2 years of enactment, and every 2 years thereafter, the Administrator shall submit to Congress a report that summarizes the status of implementation of the UST program on Indian lands.

DISCUSSION

Section 8 directs EPA, in coordination with Indian Tribes, to develop and implement a strategy to undertake the necessary corrective actions and to implement and enforce other requirements in connection with USTs within Tribal jurisdiction. Within 2 years of the date of enactment of S. 195, and every 2 years thereafter, EPA is to submit to Congress a report on the progress of the Agency in implementing the UST program with respect to tanks within Tribal jurisdiction.

According to EPA, implementation of the leaking underground storage tank program with respect to tanks within Tribal jurisdiction has presented a number of unique challenges. The large number of Indian Tribes and their geographic diversity can make implementation difficult. In addition, unlike most States that have established separate State cleanup funds that contribute to the cleanup of releases from underground storage tanks, Indian Tribes generally have not established cleanup funds to offset remediation costs. This bill is intended to promote the timely and effective response to contamination from leaking underground storage tanks within Tribal jurisdiction.

Sec. 9. State Authority

SUMMARY

Section 9 clarifies that States have the authority to establish requirements that are more stringent than the requirements of Subtitle I.

DISCUSSION

The Federal underground storage tank program has proven very effective at carrying out the goals of subtitle I. The success is often attributed to the effective relationship between the Federal Government and the States, whereby all but a few States implement the Federal program in a way that is consistent with the Federal pro-

gram, but designed to be successful in a particular State. Section 9 adds a new section 9013 to subtitle I which seeks to clarify the status quo, in which nothing prohibits a State from establishing a standard or requirement that is more stringent than Federal law. It is intended that this section supplement, and not supersede, existing authorities.

Sec.10. Authorization of Appropriations

SUMMARY

Section 10 authorizes appropriations for each of the various functions that are required in the legislation.

DISCUSSION

Section 10 adds a new section 9014 to subtitle I of the Solid Waste Disposal Act. Section 9014(1) provides from general revenues an authorization of $25,000,000 for each of fiscal years 2004 through 2008 to carry out subtitle I (except the leaking underground storage tank program).

New section 9014(2) provides an authorization for appropriation from the Leaking Underground Storage Tank Trust Fund for various purposes. The legislation authorizes $150,000,000 to carry out the leaking underground storage tank program for each of fiscal years 2004 through 2008; $125,000,000 for each of fiscal years 2004 through 2008 for the remediation of MTBE contamination; $35,000,000 for each of fiscal years 2004 and 2005 and $20,000,000 for each of fiscal years 2006 through 2009 to carry out the biannual inspections required in new section 9005(a); and $50,000,000 for fiscal years 2004 and $30,000,000 for each of fiscal years 2005 through 2009 to carry out new section 9011.

The authorization levels in this section are a significant increase from the levels which have been appropriated over the past several years. The increase in the authorization levels signifies the complexity and number of UST releases that exist currently and the shortfall of funding with which to address the problems. The balance in the Leaking Underground Storage Tank Trust Fund has grown every year. Not only does the Trust Fund continue to grow with receipts from the petroleum tax, the interest on the principal continues to pad the balance of the Fund. In fact, the historic appropriations for this program are roughly equal to the interest generated by the principal. It is the intent of this legislation to bring funding levels to a level that is more even with the annual inputs into the Fund.

Sec. 11. Conforming Amendments

Sec. 12. Technical Amendments

These sections of the bill make conforming and technical amendments to the Solid Waste Disposal Act.

LEGISLATIVE HISTORY

On January 17, 2003, Senators Chafee, Inhofe, Jeffords, Carper and Warner introduced S. 195, a bill to amend the Solid Waste Disposal Act to bring underground storage tanks into compliance with

subtitle I of that Act, to promote cleanup of leaking underground storage tanks, to provide sufficient resources for such compliance and cleanup, and for other purposes. There were no hearings on S. 195 in the 108th Congress. In the 107th Congress, the Committee on Environment and Public Works conducted a hearing on S. 1850, the predecessor to S. 195, on February 25, 2002 and the Subcommittee on Superfund, Toxics, Risk, and Waste Management conducted a hearing on May 8, 2002.

S. 195, as amended, was reported by the Committee on Environment and Public Works on February 24, 2003.

HEARINGS

There were no hearings on S. 195 in the 108th Congress. In the 107th Congress, two hearings were held on S. 1850, the predecessor to S. 195. On February 25, 2002, the Committee on Environment and Public Works conducted a field hearing in Pascoag, Rhode Island to receive testimony on S. 1850, the Underground Storage Tank Compliance Act of 2001, and the impact of leaking underground storage tanks on local communities. The committee received testimony from Mr. George Reilly, Pascoag, RI; Mr. Michael Wallace, Pascoag, RI; Mr. Jan Reitsma, Director, Rhode Island Department of Environmental Management, Providence, RI; Hon. Scott Rabideau, Rhode Island State Representative, Harrisville, RI; Mr. Arthur J. DeBlois III, President & CEO, DB Companies, Inc., Providence, RI, on behalf of the Society of Independent Gasoline Marketers of America (SIGMA) and the National Association of Convenience Stores (NACS); and Mr. Jeff Kos, President, Environmental Council of Rhode Island, Providence, RI.

On May 8, 2002, the Subcommittee on Superfund, Toxics, Risk, and Waste Management conducted a hearing to receive testimony on S. 1850, the Underground Storage Tank Compliance Act of 2001. The subcommittee received testimony from Hon. Marianne Horinko, Assistant Administrator, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency, Washington, DC; Mr. John Stephenson, Director, Natural Resources and Environment, U.S. General Accounting Office, Washington, DC; Mr. Craig Perkins, Director of Environmental & Public Works Management, city of Santa Monica, Santa Monica, CA; Mr. Grant Cope, Staff Attorney, U.S. Public Interest Research Group, Washington, DC; Ms. Kathleen Stiller, ASTSWMO Tanks Subcommittee Chair, Delaware Department of Natural Resources and Environmental Control, New Castle, DE, on behalf of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO); Mr. Arthur J. DeBlois III, President & CEO, DB Companies, Inc., Providence, RI, on behalf of the Society of Independent Gasoline Marketers of America (SIGMA) and the National Association of Convenience Stores (NACS); and Mr. Roger Brunner, Profits Center Manager, Zurich North America, East Lansing, MI.

ROLLCALL VOTES

On February 24, 2003, the Committee on Environment and Public Works met to consider S. 195, the Underground Storage Tank Compliance Act of 2003. A technical amendment offered by Sen-

ators Inhofe, Jeffords, Chafee, and Boxer was agreed to by voice vote.

REGULATORY IMPACT STATEMENT

Section 11(b) of rule XXVI of the Standing Rules of the Senate requires publication of the report of the committee's estimate of the regulatory impact made by the bill as reported. No regulatory impact is expected by the passage of S. 195. The bill will not affect the personal privacy of others.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (P.L. 104-4), the committee finds that the bill would impose no Federal intergovernmental unfunded mandates on State, local, or tribal governments. All of its governmental directives are imposed on Federal agencies. The bill does not directly impose any private sector mandates.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 28, 2003.

Hon. JAMES M. INHOFE, *Chairman,*
Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 195, the Underground Storage Tank Compliance Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman (for Federal costs), who can be reached at 226–2860, and Greg Waring (for State and local impact), who can be reached at 225–3220.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 195, Underground Storage Tank Compliance Act of 2002, as ordered reported by the Senate Committee on Environment and Public Works on February 24, 2003

Summary

S. 195 would authorize the appropriation of funds to promote the cleanup of leaking underground storage tank (LUST) sites and the prevention of leaks at underground storage tank (UST) sites. The bill would authorize the appropriation of $1.675 billion from the LUST Trust Fund over the 2004–2008 period for those purposes.

This funding would be used by the Environmental Protection Agency (EPA) for grants to States for the cleanup and treatment of contamination at LUST sites, including contamination from methyl tertiary butyl ether (known as MTBE and used as an additive in some gasoline), and for enforcement and inspection activities at UST sites. In addition, S. 195 would authorize the appropriation of $125 million over the next 5 years for EPA to support compliance efforts at UST sites, including grants to States to develop leak detection programs.

Assuming appropriation of the specified amounts, CBO estimates that implementing this legislation would cost about $1.7 billion over the 2004–2008 period. CBO also estimates that enactment of S. 195 would have a negligible effect on receipts because the bill would allow EPA to impose civil penalties on certain UST operators that do not comply with EPA or State standards. However, because States are mostly responsible for implementing the LUST program, CBO estimates that any additional collection of civil penalties under the bill would insignificant each year.

Section 7 of this bill would explicitly waive any Federal immunity from fines and penalties assessed by States enforcing underground storage tank law, and it would clarify that Federal facilities are subject to charges if they are not in compliance. Payment of any fines and penalties could be made from the Judgment Fund, and in that case, such payments would be considered direct spending. It is, however, possible that such payments could be made from appropriated funds. CBO cannot predict either the number or the dollar amount of judgments against the Government that could result from enactment of this bill. Further, we cannot predict whether such potential judgments would be paid from the Judgment Fund or from appropriated funds.

S. 195 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the costs would be significantly below the threshold established by UMRA ($59 million in 2003, adjusted annually for inflation). Further the Federal Government would likely provide additional grants to offset some of the costs of the requirements. S. 195 contains no private-sector mandates as defined in UMRA.

Estimated Cost to the Federal Government

The estimated budgetary impact of S. 195 is shown in the following table. For this estimate, CBO assumes that the authorized amounts will be appropriated for each year and that outlays will follow historical spending patterns for similar activities. The costs of this legislation fall within budget function 300 (natural resources and environment).

Estimated Impact on State, Local, and Tribal Governments

S. 195 contains intergovernmental mandates as defined in the UMRA because each State would be required to develop and implement a training strategy for operators of underground storage tanks that is consistent with guidelines established by EPA.

The bill also would require each State to develop an implementation report that lists each State and locally owned underground storage tank not in compliance with regulations, the past actions

taken toward the listed tanks, and the future steps that will be taken to bring those tanks into compliance.

CBO estimates that the costs of the mandates, taken together, would fall significantly below the threshold established by UMRA ($59 million in 2003, adjusted annually for inflation). Further, States would be eligible for grants from EPA to implement the requirements. Other provisions of the bill would be voluntary and would benefit State, local, and tribal governments.

By Fiscal Year, in Millions of Dollars

	2003	2004	2005	2006	2007	2008
SPENDING SUBJECT TO APPROPRIATION						
LUST and UST Spending Under Current Law:						
Budget Authority[1]	89	0	0	0	0	0
Estimated Outlays	93	60	33	13	5	0
Proposed Changes LUST Grants to States:						
Authorization Level	0	150	150	150	150	150
Estimated Outlays	0	128	150	150	150	150
EPA Support for UST:						
Authorization Level	0	25	25	25	25	25
Estimated Outlays	0	21	25	25	25	25
Biannual Inspections of USTs:						
Authorization Level	0	35	35	20	20	20
Estimated Outlays	0	30	35	22	20	20
MTBE Remediation:						
Authorization Level	0	125	125	125	125	125
Estimated Outlays	0	106	125	125	125	125
Prevention and Compliance Grants:						
Authorization Level	0	50	30	30	30	30
Estimated Outlays	0	43	33	30	30	30
Total Proposed Changes:						
Authorized Level	0	385	365	350	350	350
Estimated Outlays	0	328	368	352	350	350
LUST and UST Spending Under S. 195:						
Authorization Level	89	385	365	350	350	350
Estimated Outlays	93	388	401	365	355	350

[1]The 2003 level is the amount appropriated for EPA's LUST and UST programs in that year.

Estimated Impact on the Private Sector

S. 195 contains no intergovernmental or private-sector mandates as defined in UMRA.

Estimate Prepared By: Federal Costs: Susanne S. Mehlman (226–2860); Impact on State, Local, and Tribal Governments: Greg Waring (225–3220); Impact on the Private Sector: Jean Talarico (226–2940).

Estimate Approved By: Peter H. Fontaine Deputy Assistant Director for Budget Analysis.

Changes in Existing Law

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in italic, existing law in which no change is proposed is shown in roman:

SOLID WASTE DISPOSAL ACT

[As Amended Through P.L. 106–580, Dec. 29, 2000]

TITLE II—SOLID WASTE DISPOSAL

Subtitle A—General Provisions

SHORT TITLE AND TABLE OF CONTENTS

SEC. 1001. This title (hereinafter in this title referred to as "this Act"), together with the following table of contents, may be cited as the "Solid Waste Disposal Act":

DEFINITIONS AND EXEMPTIONS

SEC. 9001. [For the purposes of this subtitle—] *In this subtitle:*

(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.).

[(1)] *(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—

(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, United States Code, or

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

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).

[(2)**]** *(7)* The term "regulated substance" means—

(A) any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under subtitle C), and

(B) petroleum.

[(3)**]** *(4)* The term "owner" means—

(A) in the case of an underground storage tank in use on the date of enactment of the Hazardous and Solid Waste Amendments of 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 **[**sustances**]** *substances*, and

(B) in the case of any underground storage tank in use before the date of enactment of the Hazardous and Solid Waste Amendments of 1984, but no longer in use on the date of enactment of such Amendments, any person who owned such tank immediately before the discontinuation of its use.

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

[(5)**]** *(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.

[(6)**]** *(5)* The term "person" has the same meaning as provided in section 1004(15), except that such term includes a consortium, a joint venture, and a commercial entity, and the United States Government.

[(7)**]** *(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 the date of the enactment of the Hazardous and Solid Waste Amendments of 1984.

[(8)] *(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).

(9) TRUST FUND.—The term "Trust Fund" means the Leaking Underground Storage Tank Trust Fund established by section 9508 of the Internal Revenue Code of 1986.

* * * * * * *

NOTIFICATION *AND PUBLIC RECORDS*

SEC. 9002. (a) UNDERGROUND STORAGE TANKS.—(1) Within 18 months after the date of enactment of the Hazardous and Solid Waste Amendments of 1984, each owner of an underground storage tank shall notify the State or local agency or department designated pursuant to subsection (b)(1) 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 the date of enactment of the Hazardous and Solid Waste Amendments of 1984, notify the State or local agency, or department designated pursuant to subsection (b)(1) 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 103(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(5) Beginning thirty days after the Administrator prescribes the form of notice pursuant to subsection (b)(2) 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 9003(e) of this subtitle, any person who sells a tank intended to be used as an un-

derground 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 the enactment of the Hazardous and Solid Waste Amendments of 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).

(2) Within twelve months after the date of enactment of the Hazardous and Solid Waste Amendments of 1984, the Administrator, in consultation with State and local officials designated pursuant to subsection (b)(1), 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). 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 the enactment of the Superfund Amendments and Reauthorization Act of 1986.

(d) PUBLIC RECORD.—

(1) IN GENERAL.—The Administrator shall require each State and Indian tribe that receives Federal funds to carry out this subtitle 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 and Indian tribes), a record of underground storage tanks regulated under this subtitle.

(2) CONSIDERATIONS.—To the maximum extent practicable, the public record of a State or Indian tribe, respectively, shall include, for each year—

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

(B) the record of compliance by underground storage tanks in the State or tribal area with—

(i) this subtitle; or

(ii) an applicable State program approved under section 9004; and

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

(3) AVAILABILITY.—The Administrator shall make the public record of each State and Indian tribe under this section available to the public electronically.

RELEASE DETECTION, PREVENTION, AND CORRECTION REGULATIONS

SEC. 9003. (a) * * *

* * * * * * *

(f) EFFECTIVE DATES.—(1) Regulations issued pursuant to [subsections (c) and (d) of this section] *subsections (c) and (d)*, and standards issued pursuant to subsection (e) of this section, for underground storage tanks containing regulated substances defined in section [9001(2)(B)] *9001(7)(B)* (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 the date of enactment of the Hazardous and Solid Waste Amendments of 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 [9001(2)(A)] *9001(7)(A)* shall be effective not later than thirty-six months after the date of enactment of the Hazardous and Solid Waste Amendments of 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 [9001(2)(A)] *9001(7)(A)* shall be effective not later than forty-eight months after the date of enactment of the Hazardous and Solid Waste Amendments of 1984.

* * * * * * *

(h) EPA RESPONSE PROGRAM FOR PETROLEUM.—

(1) BEFORE REGULATIONS.—Before the effective date of regulations under subsection (c), 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 by this paragraph shall be such as may be necessary to protect human health and the environment. The Administrator shall use funds in the [Leaking Underground Storage Tank Trust Fund] *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), 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 ⟦Leaking Underground Storage Tank Trust Fund⟧ *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 9006 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). 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 9004 of this subtitle. Such orders shall be issued and enforced in the same manner and subject to the same requirements as orders under section 9006.

(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 311 of the Federal Water Pollution Control Act.

(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).

(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).

(7) STATE AUTHORITIES.—

(A) GENERAL.—A State may exercise the authorities in paragraphs [(1) and (2) of this subsection] *paragraphs (1), (2), and (12)*, subject to the terms and conditions of paragraphs (3), (5), (9), (10), and (11)[, and including the authorities of paragraphs (4), (6), and (8) of this subsection] *and the authority under sections 9005(a) and 9011 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 [Leaking Underground Storage Tank Trust Fund] *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 subtitle, 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 101(20) and the provisions regarding fiduciaries at section 107(n) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 shall apply in determining a person's liability as an owner or operator of an underground storage tank for the purposes of this subtitle.

(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 the date of enactment of this subparagraph shall prevail over any inconsistent provision regarding holders of security interests in subparagraphs (E) through (G) of section 101(20) or any incon-

sistent provision regarding fiduciaries in section 107(n) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Any amendment to the final rule shall be consistent with the provisions regarding holders of security interests in subparagraphs (E) through (G) of section 101(20) and the provisions regarding fiduciaries in section 107(n) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. This subparagraph does not preclude judicial review of any amendment of the final rule made after the date of enactment of this subparagraph.

(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 [Leaking Underground Storage Tank Trust Fund] *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 9006 of this subtitle 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 MTBE CONTAMINATION.—

(A) IN GENERAL.—The Administrator and the States may use funds made available under section 9014(2)(B) to carry out corrective actions with respect to a release of methyl tertiary butyl ether 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)—

(i) in accordance with paragraph (2), except that a release with respect to which a corrective action is carried out under subparagraph (A) shall not be required to be from an underground storage tank; and

(ii) in the case of a State, in accordance with a cooperative agreement entered into by the Administrator and the State under paragraph (7).

(i) GOVERNMENT-OWNED TANKS.—

(1) IMPLEMENTATION REPORT.—

(A) IN GENERAL.—Not later than 2 years after the date of enactment of this subsection, each State shall submit to the Administrator an implementation report that—

(i) lists 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 subtitle; and

(ii) describes the actions that have been and will be taken to ensure compliance by the underground storage tank listed under clause (i) with this subtitle.

(B) UNDERGROUND STORAGE TANK.—An underground storage tank described in this subparagraph is an underground storage tank that is—

(i) regulated under this subtitle; and

(ii) owned or operated by the State government or any local government.

(C) PUBLIC AVAILABILITY.—The Administrator shall make each report received under subparagraph (A) available to the public on the Internet.

(2) FINANCIAL INCENTIVE.—The Administrator may award to a State that develops an implementation report described in paragraph (1), in addition to any funds that the State is entitled to receive under this subtitle, not more than $50,000, to be used to carry out the implementation report.

(3) NOT A SAFE HARBOR.—This subsection does not relieve any person from any obligation or requirement under this subtitle.

* * * * * * *

APPROVAL OF STATE PROGRAMS

SEC. 9004. (a) ELEMENTS OF STATE PROGRAM.—Beginning 30 months after the date of enactment of the Hazardous and Solid Waste Amendments of 1984, any State may, 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 9001(2) (A) or (B) or both] *in subparagraph (A) or (B) of section 9001(7)*. 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—

* * * * * * *

(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 9014(2)(A) for each fiscal year for use in paying the reasonable costs, incurred under a cooperative agreement with any State, of—

(i) actions taken by the State under section 9003(h)(7)(A);

(ii) necessary administrative expenses, as determined by the Administrator, that are directly related to corrective action and compensation programs under subsection (c)(1);

(iii) any corrective action and compensation program carried out under subsection (c)(1) for a release from an underground storage tank regulated under this subtitle to the extent that, as determined by the State in accordance with guidelines developed jointly by the Administrator and the State, the financial resources of the owner or operator of the underground storage tank (including resources provided by a program in accordance with subsection (c)(1)) are not adequate to pay the cost of a corrective action without significantly impairing the ability of the owner or operator to continue in business;

(iv) enforcement by the State or a local government of State or local regulations pertaining to underground storage tanks regulated under this subtitle; or

(v) State or local corrective actions carried out under regulations promulgated under section 9003(c)(4).

(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 subtitle.

(C) PROHIBITED USES.—Except as provided in subparagraph (A)(iii), under any similar requirement of a State program approved under this section, or in any similar State or local provision as determined by the Administrator, 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 part 280 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this subsection).

(2) ALLOCATION.—

(A) PROCESS.—Subject to subparagraph (B), in the case of a State with which the Administrator has entered into a cooperative agreement under section 9003(h)(7)(A), the Administrator shall distribute funds from the Trust Fund to the State using the allocation process developed by the Administrator.

(B) REVISIONS TO PROCESS.—The Administrator may revise the allocation process referred to in subparagraph (A) with respect to a State only after—

(i) consulting with—

(I) State agencies responsible for overseeing corrective action for releases from underground storage tanks;

(II) owners; and

(III) operators; and

(ii) taking into consideration, at a minimum—

(I) the total tax revenue contributed to the Trust Fund from all sources within the State;

(II) the number of confirmed releases from federally regulated underground storage tanks in the State;

(III) the number of federally regulated underground storage tanks in the State;

(IV) the percentage of the population of the State that uses groundwater for any beneficial purpose;

(V) the performance of the State in implementing and enforcing the program;

(VI) the financial needs of the State; and

(VII) the ability of the State 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.

(4) COST RECOVERY PROHIBITION.—Funds from the Trust Fund provided by States to owners or operators under paragraph (1)(A)(iii) shall not be subject to cost recovery by the Administrator under section 9003(h)(6).

INSPECTIONS, MONITORING, TESTING, AND CORRECTIVE ACTION

SEC. 9005. *(a) INSPECTION REQUIREMENTS.—Not later than 2 years after the date of enactment of the Underground Storage Tank Compliance Act of 2003, and at least once every 2 years thereafter, the Administrator or a State with a program approved under section 9004, as appropriate, shall require that all underground stor-*

age tanks regulated under this subtitle undergo onsite inspections for compliance with regulations promulgated under section 9003(c).

[(a)] *(b)* FURNISHING INFORMATION.—For the purposes of developing or assisting in the development of any regulation, conducting any [study taking] *study, taking* any corrective action, or enforcing the provisions of this subtitle, any owner or operator of an underground storage tank (or any tank subject to study under section 9009 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 parsuant to subsection (h)(7) of section 9003 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 subtitle, 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)] *(c)* 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 of the United States Code, 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 Act, or when [relevent] *relevant* in any proceeding under this Act.

(2) Any person not subject to the provisions of section 1905 of title 18 of the United States Code 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 subtitle, 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 subtitle.

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 Act 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 **[**Evironmental**]** *Environmental* Protection Agency).

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FEDERAL ENFORCEMENT

SEC. 9006. (a) * * *

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(e) INCENTIVES FOR PERFORMANCE.—In determining the terms of a compliance order under subsection (a), or the amount of a civil penalty under subsection (d), the Administrator, or a State under a program approved under section 9004, may take into consideration whether an owner or operator—

(1) has a history of operating underground storage tanks of the owner or operator in accordance with—

(A) this subtitle; or

(B) a State program approved under section 9004;

(2) has repeatedly violated—

(A) this subtitle; or

(B) a State program approved under section 9004; or

(3) has implemented a program, consistent with guidelines published under section 9010, that provides training to persons responsible for operating any underground storage tank of the owner or operator.

(f) AUTHORITY TO PROHIBIT CERTAIN DELIVERIES.—

(1) IN GENERAL.—Subject to paragraph (2), beginning 180 days after the date of enactment of this subsection, the Administrator or a State may prohibit the delivery of regulated substances to underground storage tanks that are not in compliance with—

(A) a requirement or standard promulgated by the Administrator under section 9003; or

(B) a requirement or standard of a State program approved under section 9004.

(2) LIMITATIONS.—

(A) SPECIFIED GEOGRAPHIC AREAS.—Subject to subparagraph (B), under paragraph (1), the Administrator or a State shall not prohibit a delivery if the prohibition would jeopardize the availability of, or access to, fuel in any specified geographic area.

(B) APPLICABILITY OF LIMITATION.—The limitation under subparagraph (A) shall apply only during the 180-

day period following the date of a determination by the Administrator that exercising the authority of paragraph (1) is limited by subparagraph (A).

(C) GUIDELINES.—Not later than 18 months after the date of enactment of this subsection, the Administrator shall issue guidelines that define the term 'specified geographic area' for the purpose of subparagraph (A).

(3) AUTHORITY TO ISSUE GUIDELINES.—Subject to paragraph (2)(C), the Administrator, after consultation with States, may issue guidelines for carrying out this subsection.

(4) ENFORCEMENT, COMPLIANCE, AND PENALTIES.—The Administrator may use the authority under the enforcement, compliance, or penalty provisions of this subtitle to carry out this subsection.

(5) EFFECT ON STATE AUTHORITY.—Nothing in this subsection affects the authority of a State to prohibit the delivery of a regulated substance to an underground storage tank.

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FEDERAL FACILITIES

SEC. 9007. [(a) APPLICATION OF SUBTITLE.—Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any underground storage tank shall be subject to and 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. 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.]

(a) APPLICABILITY OF SUBTITLE.—

(1) IN GENERAL.—Section 6001(a) shall apply to each department, agency, and instrumentality in the executive, legislative, or judicial branch of the Federal Government having jurisdiction over—

(A) any underground storage tank or underground storage tank system (as defined in section 280.12 of title 40, Code of Federal Regulations (or any successor regulation)); or

(B) any release response activity relating to an underground storage tank or underground storage tank system.

(2) REQUIREMENTS.—For purposes of this section, requirements respecting the control and abatement of solid waste or hazardous waste disposal and management referred to in section 6001(a) include requirements respecting—

(A) control, installation, operation, management, or closure of any underground storage tank or underground storage tank system containing any regulated substance; and

(B) release response activities relating to an activity described in subparagraph (A).

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(c) REVIEW OF, AND REPORT ON, FEDERAL UNDERGROUND STORAGE TANKS.—

(1) REVIEW.—Not later than 1 year after the date of enactment of this subsection, the Administrator, in cooperation with each Federal agency that owns or operates 1 or more underground storage tanks or that manages land on which 1 or more underground storage tanks are located, shall review the status of compliance of those underground storage tanks with this subtitle.

(2) IMPLEMENTATION REPORT.—

(A) IN GENERAL.—Not later than 2 years after the date of enactment of this subsection, each Federal agency described in paragraph (1) shall submit to the Administrator and to each State in which an underground storage tank described in paragraph (1) is located an implementation report that—

(i) lists each underground storage tank described in paragraph (1) that, as of the date of submission of the report, is not in compliance with this subtitle; and

(ii) describes the actions that have been and will be taken to ensure compliance by the underground storage tank with this subtitle.

(B) PUBLIC AVAILABILITY.—The Administrator shall make each report received under subparagraph (A) available to the public on the Internet.

(3) NOT A SAFE HARBOR.—This subsection does not relieve any person from any obligation or requirement under this subtitle.

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STUDY OF UNDERGROUND STORAGE TANKS

SEC. 9009. (a) PETROLEUM TANKS.—Not later than twelve months after the date of enactment of the Hazardous and Solid Waste Amendments of 1984, the Administrator shall complete a study of underground storage tanks used for the storage of regulated substances defined in section **[**9001(2)(B)**]** *9001(7)(B)*.

(b) OTHER TANKS.—Not later than thirty-six months after the date of enactment of the Hazardous and Solid Waste Amendments of 1984, the Administrator shall complete a study of all other underground storage tanks.

(c) ELEMENTS OF STUDIES.—The studies under subsections (a) and (b) 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 the date of enactment of the Hazardous and Solid Waste Amendments of 1984, the Administrator shall conduct a study regarding the tanks referred to in section [9001(1) (A) and (B)] *subparagraphs (A) and (B) of section 9001(10)*. 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.

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SEC. 9010. OPERATOR TRAINING.

(a) GUIDELINES.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of the Underground Storage Tank Compliance Act of 2003, in cooperation with States, owners, and operators, the Administrator shall publish in the Federal Register, after public notice and opportunity for comment, guidelines that specify methods for training operators of underground storage tanks.

(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 owners and operators as of the date of enactment of this paragraph;

(C) the high turnover rate of operators;

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

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

(F) 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), each State shall develop and implement a strategy for the training of operators of underground storage tanks that is consistent with paragraph (2).

(2) REQUIREMENTS.—A State strategy described in paragraph (1) shall—

(A) be consistent with subsection (a);

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

(C) take into consideration training programs implemented by owners and operators as of the date of enactment of this subsection.

(3) FINANCIAL INCENTIVE.—The Administrator may award to a State that develops and implements a strategy described in paragraph (1), in addition to any funds that the State is entitled to receive under this subtitle, not more than $50,000, to be used to carry out the strategy.

SEC. 9011. USE OF FUNDS FOR RELEASE PREVENTION AND COMPLIANCE.

Funds made available under section 9014(2)(D) from the Trust Fund may be used to conduct inspections, issue orders, or bring actions under this subtitle—

(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 subtitle; and

(2) by the Administrator, under this subtitle (including under a State program approved under section 9004).

SEC. 9012. TANKS UNDER THE JURISDICTION OF INDIAN TRIBES.

(a) IN GENERAL.—The Administrator, in coordination with Indian tribes, shall—

(1) not later than 1 year after the date of enactment of this section, develop and implement a strategy—

(A) 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—

(i) an Indian reservation; or

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

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

(i) an Indian reservation; or

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

(2) not later than 2 years after the date of enactment of this section and every 2 years thereafter, submit to Congress a report that summarizes the status of implementation and enforcement of the underground storage tank program in areas located wholly within—

(A) the boundaries of Indian reservations; and

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

(3) make the report described in paragraph (2) available to the public on the Internet.

(b) NOT A SAFE HARBOR.—This section does not relieve any person from any obligation or requirement under this subtitle.

(c) 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 the date of enactment of this section.

SEC. 9013. STATE AUTHORITY.

Nothing in this subtitle precludes a State from establishing any requirement that is more stringent than a requirement under this subtitle.

SEC. 9014. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Administrator—

(1) to carry out subtitle I (except sections 9003(h), 9005(a), and 9011) $25,000,000 for each of fiscal years 2004 through 2008; and

(2) from the Trust Fund, notwithstanding section 9508(c)(1) of the Internal Revenue Code of 1986—

(A) to carry out section 9003(h) (except section 9003(h)(12)) $150,000,000 for each of fiscal years 2004 through 2008;

(B) to carry out section 9003(h)(12), $125,000,000 for each of fiscal years 2004 through 2008;

(C) to carry out section 9005(a)—

(i) $35,000,000 for each of fiscal years 2004 and 2005; and

(ii) $20,000,000 for each of fiscal years 2006 through 2009; and

(D) to carry out section 9011—

(i) $50,000,000 for fiscal year 2004; and

(ii) $30,000,000 for each of fiscal years 2005 through 2009.

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