

United States
Environmental Protection
Agency

Office of
Solid Waste and
Emergency Response



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| DIRECTIVE NUMBER: | 9610.7 |
| TITLE: | UST Program Indian Lands Strategy for FY88 & FY89 and Guidance for Regional Pilot Projects |
| DATE: | March 14, 1988 |
| ORIGINATING OFFICE: | OSWER |

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MAR 14, 1988

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MEMORANDUM

SUBJECT: OSWER Directive 9610.7: Final UST Program Indian Lands Strategy

FROM: Ron Brand, Director
Office of Underground Storage Tanks

TO: UST Regional Program Managers, Regions 5-6, 8-10

Attached please find the final "UST Program Indian Lands Strategy for FY 88 and FY 89 and Guidance for Regional Pilot Projects." This document defines UST Program activities on Indian Lands for the remainder of this fiscal year and for the next fiscal year. This strategy has evolved from two earlier draft strategies: the first was distributed by Ellie McCann, dated June 1987; and the second was distributed by Melanie Field, dated October 1987.

The focus of this strategy is on assessing the extent of UST-related human health and environmental problems on Indian Lands by conducting regional pilot projects in Regions 8 and 9. My decision to employ two pilots is based on resource constraints. These constraints involve not only resources to fund the pilots themselves, but also resources adequate to address the environmental problems that are likely to be uncovered as a result of the pilots. OUST is committed to seeing that releases from UST systems on Indian Lands will be addressed properly and with adequate resources.

This strategy will be revisited after the completion of the pilot projects in late-FY 89. At that time, a longer term UST Program Indian Lands strategy will be developed.

The next step is for Regions 8 and 9 to submit short (2-3 pages) revised pilot proposals, based on the information presented in this strategy. Revised proposals are due by April 25, 1988. The regional staff assigned to plan and manage these pilots should work closely with Josh Baylson of my staff (FTS 475-9725).

I am looking forward to seeing the results and lessons learned from these two pilot projects on Indian Lands.

Attachment

cc: Martin Topper, OFA
Carrie Wehling, OGC
Joe Retzer, OUST
Ellie McCann, OUST
Helga Butler, OUST
Charles Mooar, OUST
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Dana Tulis, OUST
Mark Waiwada, OUST
Josh Baylson, OUST

I. Abstract

This document identifies problems associated with implementing federal regulatory and clean-up requirements for UST systems on Indian Lands. A two-year strategy and implementation plan, utilizing two regional pilots, are defined. A schedule for the plan is then presented.

II. Problem Statement

Indian Tribes are sovereign governments subject to federal laws, but not necessarily state laws. Most states lack jurisdiction on Indian Lands and, therefore, do not provide environmental protection services on Indian Lands within their borders. Some tribes have chosen to enter into agreements with state governments to accept state regulatory authority and services for environmental protection. Most tribes, however, prefer to work directly with the federal government on most issues and do not recognize state authority on their lands.

A major goal of EPA's UST program is for states to effectively regulate UST systems and to ensure that releases from UST systems are cleaned up. However, since most state programs do not have jurisdiction on Indian Lands, a strategy for cleaning up releases and for regulating UST systems on Indian Lands is needed.

Based on current notification data, there are an estimated 3,000-4,000 UST systems on Indian Lands nationwide — about 0.2% of the regulated universe. This information, however, is limited and incomplete. The lack of complete and accurate information is a stumbling block to developing an effective, long-term strategy for addressing UST systems on Indian Lands. In addition, because there is a great deal of variation among tribes in terms of their relations with federal and state governments, and their interests and capabilities to operate environmental programs, a range of program options and responses need to be considered in the development of a long-term strategy for UST Program implementation on Indian Lands.

III. Strategy

A. Scope

This strategy covers the remainder of FY 88 and FY 89. Based on the information gathered as a result of the regional pilot projects described below, and other relevant considerations, a longer term UST program Indian Lands strategy also will be developed.

B. Objectives

The objectives of this two-year strategy are to:

- maximize involvement of Indian Tribes in all activities;
- provide compliance assistance, education, and outreach to owners/operators;
- assess the extent of the problem: data collection on number, location, and types of UST systems;

- identify opportunities for Indian run regulatory and clean-up programs: willingness, authorities, and funding;
- identify potential problems: leaking and abandoned tanks;
- clean up sites: oversight of responsible party financed cleanups and, if necessary, selected tribal- and/or federal-lead cleanups using the LUST Trust Fund; and
- promote the involvement of other agencies/organizations to leverage their resources on site.

IV. Implementation Plan: Pilot Projects Guidance

A. Purpose

The regional pilot projects are designed to determine the extent of UST-related human health and environmental problems on Indian Lands throughout each region, and to provide EPA's national program office with information on the level of work/resources necessary to address these problems nation-wide.

B. Structure

There will be two regional pilot projects, each utilizing one Circuit Rider to carry out the activities identified in Section C, below. Regions 8 and 9 have been chosen for the pilot projects based on the following information:

- Region 9: has 23% of the Indian population and 123 reservations, a larger Indian population and greater number of reservations than any other region.
- Region 8: has 14% of the Indian population, 24 reservations, is the EPA lead region on Indian Lands, and has identified environmental problems related to USTs (including an endangered major aquifer, the Ogallala).

The two pilot projects will be funded by grants, which will be overseen by Regions 8 and 9. Regions 8 and 9 will be responsible to identify and develop specific allocation mechanisms (for example grants to IHS, BIA, or Indian organizations). The grants will be for up to \$50K per pilot for the 12 month period July 1988 to June 1989.

Regions 8 and 9 will need to submit brief (2-3 pages) revised pilot proposals that identify the specific allocation mechanism to be used, the proposed budget, and a plan outlining how the Circuit Rider will carry out the activities listed below.

As part of the pilot projects, Regions 8 and 9 will submit to OUST/Headquarters brief quarterly progress reports and a final report/evaluation.

The pilots will be monitored by a newly formed Pilot Projects Review Committee. The committee will be chaired by Josh Baylson (OUST) and composed of representatives of Regions 5, 6, 8, 9, 10, OGC, and OFA. The committee will review, quarterly, the progress and direction of the pilot projects.

C. Priority Activities

The table on page 5 portrays the priority activities for the pilot projects (including the Circuit Riders) for FY 88 and FY 89. Note that these activities are presented in priority order. If an activity has already been conducted, for example by regional staff, there is no need for it to be carried out again. Should all of the

activities listed be completed before the end of the pilot projects, Regions 8 and 9 may determine what other activities will be performed during FY 89.

Priority Activities for Indian Lands — FY 88 & FY 89

| Activities (in priority order) | | Actor/s | | |
|--------------------------------|--|----------------|----------------|---------------|
| | | Regional Staff | Circuit Riders | Indian Tribes |
| 1. | Provide compliance assistance, information outreach, and build communication network | yes | yes | yes |
| 2. | Locate USTs and characterize regulated universe on all Indian Lands in the Region * | | yes | yes |
| 3. | Identify opportunities for Indian run programs (including Indian tribes, organizations, and associations) | yes | yes | yes |
| 4. | Identify leaking & abandoned tanks needing corrective action | | yes | yes |
| 5. | Pursue RP cleanups (including oversight) | ** | yes | yes |
| 6. | Monitor new tank installations | | yes | |
| 7. | Monitor tank closures | | yes | |
| 8. | Clean up selected sites using the LUST Trust Fund in accordance with guidance on Trust Fund corrective actions on Indian Lands | yes | yes | yes |
| 9. | Investigate potential violations of federal UST regulations | ** | yes | yes |

* Including: number of tanks, types of tanks, contents of tanks, ages and conditions of tanks, number of tank owners, number of abandoned tanks, identify responsible parties, number of tanks per owner, and number of tanks per facility (i.e., "notification" data plus data on abandoned tanks). Regions may back up the efforts of tribes and circuit riders as necessary, resources permitting.

** Regions may back up the efforts of tribes and circuit riders as necessary, resources permitting.

V. LUST Trust Fund

OUST will develop specific guidance on federal-lead corrective action on Indian Lands and on tribal access to the Trust Fund. This guidance will be issued in June 1988, before the pilot projects begin in July.

VI. Schedule

- 4/25/88 Regions 8 & 9 submit revised pilot proposals
- 5/9/88 OUST approves pilots and funding
- 7/11/88 Grants awarded
- 7/15/88 Issue guidance on federal-lead corrective action and tribal access to the Trust Fund
- 7/15/88 Pilot projects begin

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| 10/15/88 | First quarterly report due from regions |
| 1/15/89 | Second quarterly report due from regions |
| 4/15/89 | Third quarterly report due from regions |
| 4/15/89 | Begin development of strategy for FY 90 —> |
| 7/15/89 | Pilot projects completed |
| 8/15/89 | Final report/evaluation due from regions |
| 10/1/89 | Issue final strategy for FY 90 —> |