# Program Description

## A. Program Description

### 1. Type of Approval Requested

The State of Idaho is requesting **final** approval for a **complete** underground storage tank (UST) program regulating both petroleum and hazardous substance UST systems.

### 2. Does the State have any existing agreements with Indian tribes? If so, attach agreements and briefly describe.

The State of Idaho does not have any existing agreements with Indian tribes to regulate UST systems.

## B. Program Scope

The State of Idaho has adopted the Federal regulations by reference, so its program scope is similar to that of the Federal government’s. The State program differs from the Federal program in the following areas (see Appendix A for the full text of IDAPA 58.01.07):

* The State’s UST program requires secondary containment and monitoring of any UST system installed or replaced after February 23, 2007, that is within 1,000 feet of a potable drinking water source. See Idaho’s “Rules Regulating Underground Storage Tank Systems,” IDAPA 58.01.07.100.
* The State’s UST program requires owners and/or operators to report the source and cause of a release. See IDAPA 58.01.07.200.
* The State’s UST program requires operator training. See IDAPA 58.01.07.300.
* The State’s UST program requires that every UST facility be inspected at least every 3 years. See IDAPA 58.01.07.400.
* The State’s UST program allows for delivery prohibition. See IDAPA 58.01.07.500.
* The State’s UST program requires the Department to create and maintain a public UST database. See IDAPA 58.01.07.600.

The following table outlines Idaho statutes and rules that are referenced in this Application for the UST program and the appendix where they can be found after the body of this document. Note that some references are subparts to a larger authority but are included specifically because of their pertinence to the State’s UST program.

|  |  |  |  |
| --- | --- | --- | --- |
| **Statute** | **Rule** | **Description** | **Appendix** |
|  | **IDAPA 58.01.02** | Water Quality Standards | A |
|  | * IDAPA  58.01.02.851 | * Petroleum Release Reporting, Investigation, and Confirmation |  |
|  | * IDAPA  58.01.02.852 | * Petroleum Release Response and Corrective Action |  |
|  | **IDAPA 58.01.07** | Rules Regulating Underground Storage Tank Systems | A |
|  | **IDAPA 58.01.18** | Idaho Land Remediation Rules | A |
|  | **IDAPA 58.01.23** | Rules of Administrative Procedure before the Board of Environmental Quality | A |
|  | **IDAPA 58.01.24** | Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites | A |
| **Idaho Code  Title 39 Chapter 1** |  | Idaho Environmental Protection and Health Act | B |
| * Idaho Code  § 39-107 |  | * The composition of the Department’s Board and rule-making powers |  |
| * Idaho Code  § 39-108 |  | * Investigation, Inspection, Right of Entry, Violation, Enforcement, Penalty, Injunctions |  |
| * Idaho Code  § 39-109 |  | * Commencement of Civil Enforcement Actions, Criminal Actions Authorized, Duties of Attorney General |  |
| **Idaho Code Title 39 Chapter 72** |  | Idaho Land Remediation Act | B |
| **Idaho Code  Title 39 Chapter 88** |  | Idaho Underground Storage Tank Act | B |
| **Idaho Rules of  Civil Procedures, Rule 24(a)** |  | Intervention of Right | C |

**UST Program Statistics**

As of March 2011, the total Department-regulated UST population includes the following facilities and systems:

|  |  |
| --- | --- |
| Total regulated UST facilities (active) | 1,178 |
| Total regulated UST facilities (closed) | 3,848 |
| Total regulated UST systems (active) | 3,294 |
| Total hazardous substance UST systems (active) | 0 |
| Total temporarily out-of-use UST systems (active) | 173 |

Approximately 90% of the State’s UST facilities are single-owner entities.

## C. Organization and Structure of State Program

The Idaho Department of Environmental Quality (Department) is the lead agency for facilitating communications between the U.S. Environmental Protection Agency (EPA) and the State of Idaho. The Department is the only state agency that implements the UST program. The Department’s mission statement is to “Protect human health and preserve the quality of Idaho’s air, land, and water for use and enjoyment today and in the future.” To carry out its mission statewide, the Department has a state office located in Boise and six regional offices. Appendix V contains an organizational chart.

Within the Department’s state office, there is a Waste Management and Remediation Division, which operates all waste-related programs such as UST, leaking underground storage tanks (LUST), solid waste, Resource Conservation and Recovery Act (RCRA), Voluntary Cleanup Program (VCP), Brownfields, and mining.

The Department’s state office and the regional offices work cooperatively to implement the UST program. The Department’s state office UST program is responsible for the following tasks:

* Creating and amending regulations
* Developing policies
* Managing EPA assistance grants
* Issuing enforcement orders
* Training corporate operators
* Spot-checking field inspections
* Supporting the six regional offices
* Managing the UST database
* Responding to public records requests
* Setting the general direction of the UST program

The six regional offices are responsible for the following tasks:

* Conducting field inspections
* Performing follow-up for field inspections
* Training owners and operators
* Issuing enforcement orders
* Overseeing tank installations
* Overseeing tank closures
* Overseeing site cleanups
* Responding to public complaints
* Responding to public records requests
* Recording performance measures

The Department also has deputy attorney generals from the Idaho Attorney General’s Office assigned as in-house counsel. The Attorney General’s Office provides legal advice to the UST program and represents the Department in court actions. The Attorney General’s Office can pursue civil, criminal, and/or administrative enforcement when cases are referred for enforcement.

Idaho’s Petroleum Storage Tank Fund (PSTF) provides low-cost insurance to most of Idaho’s UST facilities. The Department notifies PSTF administrators of the compliance status of each UST facility so that they may investigate their continuing insurance coverage.

## D. Release Response, Reporting and Corrective Action

### 1. Overview

The Department’s LUST program is responsible for the oversight of investigations of confirmed petroleum releases and any required site cleanup. Currently, the LUST staff is addressing approximately 150 petroleum release events and is using Federal resources to resolve problems on LUST sites that have no responsible party (RP) or have an RP with limited, if any, resources. The Department has been able to close at least 20 sites annually over the last 5 years and has continuously met EPA cleanup goals. The Department enforces the release reporting and corrective action requirements of the UST regulations and seeks cost recovery where required. The Department finalized its *Cost Recovery Guidance Manual* in February 2008 (Appendix W).

The process of release reporting and corrective action follows 40 CFR Part 280 as identified in Subparts E and F. Although the State adopted 40 CFR Part 280 by reference on April 2, 2008, the State has been enforcing IDAPA 58.01.02 Subsections 851 and 852 since July 1, 1993, which are consistent with 40 CFR Part 280 Subparts E and F.

The Department’s state office LUST program is responsible for the following actions:

* Creating and amending regulations
* Developing policies
* Managing EPA assistance grants
* Issuing enforcement actions
* Maintaining enforcement records
* Supporting the six regional offices
* Managing the LUST database
* Responding to public records requests
* Setting the general direction of the LUST program

The six regional offices are responsible for the following tasks:

* Conducting field inspections related to complaints
* Performing follow-up on reported confirmed releases
* Providing owners and operators with comments on LUST site issues
* Requesting enforcement actions
* Overseeing and reviewing LUST site information
* Overseeing and approving LUST corrective action plans
* Overseeing site cleanups based on corrective action plans
* Responding to public records requests
* Recording performance measures

The following are typical steps that occur during release reporting and corrective action circumstances:

1. All suspected releases must be reported by the owner or operator to the Department within 24 hours.
2. All suspected releases must be investigated and confirmed by the Department within 7 days.
3. If the release is confirmed, the UST owner or operator must perform the initial response actions within 24 hours of confirmation. Such actions prevent further releases and mitigate fire hazards.
4. Within 20 days or another reasonable time period after release confirmation, the owner or operator must submit to the Department a report summarizing the initial response steps.
5. A site characterization report needs to be submitted within 45 days of release confirmation. This would include a free product removal report, if needed.
6. The owner or operator must submit a corrective action plan for the Department’s approval that responds to the contaminated soils, surface water, and/or ground water.
7. The regional office LUST staff must submit a consent order referral package to the state office for evaluation, and if necessary, prepare and submit a consent order to the responsible party.
8. The responsible party must negotiate terms and/or sign the consent order within 30 days of receiving the consent order.
9. The regional LUST staff, with support from the state office, approves the corrective action plan, which becomes an enforceable part of the consent order.
10. A schedule and criteria will be issued if owners and operators cannot reach an agreement with the Department on the terms of the consent order and can be issued within 30 days after issuance of the consent order.
11. If a corrective action plan is prepared, the Department must provide notice to the affected public and receive comments and address them before the corrective action plan can be approved.
12. Within 90 days of a confirmed release, the owner or operator must submit a report to the Department identifying the release source and cause.

Department LUST staff address the reporting and cleanup of spills and overfills in the same manner as other confirmed releases unless this activity results in a release of less than 25 gallons, does not cause a sheen on nearby surface water, and is cleaned up within 24 hours. Hazardous substance releases are managed by the Department’s hazardous waste management staff.

The Department’s UST and LUST staff work together on site discovery and confirming suspected releases. Reporting of suspected releases not due to offsite impacts is handled by the UST staff, while reporting of suspected releases due to offsite impacts is handled by the LUST staff. If an UST inspector suspects a release during an inspection, the inspector will work with the owner or operator to confirm or deny the suspected release. If the release is confirmed, the UST inspector will turn the case over to the LUST staff.

Department LUST staff are on site during tank closure activities and require environmental contractors to sample in certain locations such as the former tank basin, every 20 feet of a piping run, and dispenser areas. The LUST staff document and map the tank closure activities in their field book.

The Department’s LUST staff use the UST/LUST database to track LUST site progress. The database contains known information on the release, such as the cleanup project manager; who reported the release; how the release was detected; the source, cause, and amount of the release; which tank / piping run / dispenser had the release; what the receptors are; what cleanup method was used; and all corresponding dates for when the release occurred, when cleanup started, and when cleanup ended. For an example of a LUST event database entry, see Appendix X.

### 2. Risk Evaluation Manual for Petroleum Releases (Petroleum REM)

In May 2009, the Idaho Legislature approved rules promulgated by the Department and entitled “Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites” (IDAPA 58.01.24) (Appendix A). The rules required the Department to prepare a risk evaluation manual for petroleum releases that will be used as guidance for implementation of the rules. Development of this manual has been in progress since August 2009 and has involved the formation of a work group. It is anticipated that the guidance will be completed and provided to the public for comment and implementation in fall 2011, along with minor revisions to the rules. The following website includes the latest draft of the petroleum REM: [www.deq.idaho.gov/risk-evaluation-manual](http://www.deq.idaho.gov/risk-evaluation-manual). The draft petroleum REM presents a roadmap for evaluating risk—from discovery through cleanup—at petroleum release sites.

The petroleum REM is used to determine whether ground water, surface water, soil, or soil vapor at a particular location is contaminated to the extent it poses a human health risk. The manual guides Department employees and others in responding when chemicals are released into the environment. It helps the Department evaluate whether an investigation or cleanup is needed and, if so, what its scope and nature should be. The manual provides a brief description of the steps in the risk evaluation process, gives general information related to the data requirements and implementation of the risk evaluation process, and then describes in detail each of the steps in the risk evaluation process including corrective action plans and activity and use limitations.

The manual includes appendices which contain information to assist in implementing the risk evaluation process. This information includes the following elements:

* Residential use screening levels (RUSLs) for selected chemicals
* Physical, chemical, and toxicological values for these chemicals
* Rationale for the selection of screening default fate and transport and exposure factor parameter values
* Equations used in the calculations, guidance on natural attenuation, and evaluation of the vapor intrusion pathway
* Interpretation of practical quantitation limits as cleanup criteria
* Estimation of exposure point concentrations
* Examples of reporting formats
* Activity and use limitations and environmental covenant discussion

Three software applications are provided to complement and assist in implementation of the risk evaluation process. All three are Microsoft Excel spreadsheets:

* A computational application to calculate risks and targets levels
* A utility to conduct a Mann-Kendall analysis of trend for up to five chemicals and ten sampling events
* A utility to calculate the 95% upper confidence limit (95% UCL) of the mean for chemical concentration data. The utility calculates the 95% UCL for normal and log-normal distributed sample data, as well as a bootstrap-t estimate.

The Department’s website provides contact information for those persons wanting to take part in the REM training. Upon finalization of the draft guidance, the Department anticipates offering training to Department staff and the regulated community.

### 3. Voluntary Cleanup Program (VCP)

In 1996, the Idaho Legislature created the [Idaho Land Remediation Act](http://www.deq.idaho.gov/Applications/Brownfields/download%5Ctitle39.pdf) (Title 39 Chapter 72, Idaho Code), which authorized the Department’s VCP. The VCP encourages innovation and cooperation between the State, local communities, and private parties working to revitalize properties with hazardous substance or petroleum contamination. In 1997, the Department developed the “[Idaho Land Remediation Rules](http://www.deq.idaho.gov/Applications/Brownfields/download%5CIDAPA58.pdf)” (IDAPA 58.01.18) detailing implementation of the VCP. The Department also created an application to participate in the program and [guidance](http://www.deq.idaho.gov/Applications/Brownfields/download/guidance.pdf) for completing the application.

A person may apply to participate in the VCP. If accepted into the program, the applicant is provided benefits from the VCP, including the following:

* An expedited remediation process
* Avoiding an adversarial enforcement action
* A 7-year partial property tax exemption
* A “Covenant Not to Sue” from the Department
* The use of institutional controls in cleanup plans
* “Lender liability” protections that are similar to the protections for “indicia of ownership” interests as in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

The State of Idaho offers financial incentives for those willing to clean up a LUST site through the Community Reinvestment Pilot Initiative if the property owner did not cause the contamination. The VCP also allows for a 7-year partial property tax exemption wherein the owner can exempt 50% of the remediated land value for 7 tax years.

### 4. Community Reinvestment Pilot Initiative (Pilot)

The Community Reinvestment Pilot Initiative (Pilot) makes available up to $1,500,000 in State funds to private and non-profit entities completing Department-approved cleanups at up to 10 properties selected as Pilot sites. To be eligible for Pilot funds, the applicant must be selected to be in the VCP and must not have been the responsible party to have caused the contamination. Pilot sites are vacant or underutilized properties whose reuse is complicated by contamination.  Upon cleanup completion, the State issues the participant a Community Reinvestment Rebate equal to 70% of the cleanup costs incurred, with a maximum rebate of $150,000 per Pilot site.

The participant submits to the Department for review and approval a proposed remediation work plan. Once the Department approves the work plan, the participant conducts the Department-approved cleanup with Departmental oversight. When identified cleanup goals are reached, the participant submits to the Department a work plan completion report and the Department issues a certificate of completion. Within 60 days of receiving the certificate of completion, participants may request their community reinvestment rebate. The Department will review the rebate request and certify the amount of qualifying remediation costs. Within 30 days of certifying these costs, the Department will issue the participant a community reinvestment rebate.

## E. UST Closure

When closing an UST, owners or operators are required to notify the Department 30 days prior to closure. They do this on the Department’s notification form. The form is turned in to the Department’s state office, which then contacts the local regional inspector and informs him or her that a closure is occurring. The form stipulates that if the closure date changes, the Department must be notified. All UST closures are attended by a Department inspector. The inspector directs the environmental contractor in finding the best locations to sample and in taking the appropriate number of samples. In addition to Department personnel, closures are also usually attended by the local fire department and a representative from the State’s Petroleum Storage Tank Fund.

Although closing tanks in place is an acceptable method of closure, the Department discourages such actions unless the removal of the tank will compromise a structure. Lending institutions will rarely lend on a property with tanks still present, even if they are properly closed in place. The Department conveys this information to all owners and operators who want to close a tank in place. The Department reaches out to realtors on this subject as well.

Once a closure occurs and the site assessment report is reviewed, the Department issues a no further action (NFA) letter. This letter states the owner or operator does not need to perform remediation in connection with the UST closure. If contaminants are discovered in unacceptable amounts, the UST site becomes a LUST site.

## F. Financial Responsibility

The State of Idaho has created the Idaho Petroleum Clean Water Trust Fund, administered by the Petroleum Storage Tank Fund (PSTF). It is a not-for-profit insurance organization that provides coverage for approved petroleum cleanup costs and valid third-party claims resulting from covered accidental releases commencing during the policy period. PSTF offers coverage for USTs, above ground storage tanks (ASTs), and residential, farm, and heating oil tanks. PSTF offers the following benefits:

* Coverage on an "occurrence" basis, which means that once a tank is insured, accidental releases that occur while the policy is in force may be covered even if the release is not discovered until a later date.
* The insurance contract may be transferable to a new owner upon sale of the property without any lapse in coverage if all underwriting requirements are met.
* A reimbursable deductible allows the PSTF to pay the first dollar of cleanup costs and compensatory damages to third parties for valid bodily injury or property damage claims. This enables the PSTF to react quickly to monitor the cleanup process and to pay cleanup costs as they are incurred. Tank owners or operators are not required to pay the cost and then wait for reimbursement.

The cost for PSTF insurance is $25 per tank per year. The PSTF provides for the following coverage for USTs:

* For petroleum marketers operating 1 to 100 covered underground petroleum storage tanks, no more than $1 million in costs per occurrence and no more than $1 million annual aggregate
* For petroleum marketers operating 101 or more covered underground petroleum storage tanks, no more than $1 million in costs per occurrence and no more than $2 million annual aggregate
* For non-marketers of petroleum products who are owners or operators of ASTs and USTs and who consume 10,000 gallons or less of petroleum products each month, no more than $500,000 per occurrence and no more than $1 million annual aggregate
* $10,000 deductible per annum
* Annual inspection

EPA evaluated the PSTF coverage and found it to be equivalent to the 40 CFR Part 280.93 (amount and scope of required financial responsibility) requirements under 40 CFR Part 280.100 (use of state-required mechanism).

The State of Idaho has an “Idaho Prime Loan Program” for small business owners who want to improve or expand their businesses (Appendix Y). Department inspectors hand out the Idaho Prime Loan Program brochures to UST owners and operators who may need some financial help in purchasing new UST equipment. UST owners can borrow up to $750,000 and have the interest rate set at prime.

## G. Resource Information

Currently, the Department’s UST/LUST program has approximately 11 full-time employees; 3 in the state office and 8 in the six regional offices. The UST/LUST program has the following sources of funding:

1. The Federal State and Tribal Assistance Grant (STAG)

The Federal STAG provides funding for database maintenance, program management, UST inspections, state program approval, outreach, and general program oversight. As of fiscal year 2011, this annual grant includes $88,207 in Federal funds (75%) and $29,402 in State funds (25%) for a total of $117,609. Administrative costs account for $31,721 (27%) of the total grant amount. The grant funds 1.17 full-time employees.

2. The Federal LUST Prevention Grant

The Federal LUST Prevention Grant provides funding for Underground Storage Tank Compliance Act implementation, database maintenance, program management, and UST inspections. As of fiscal year 2011, this annual grant includes $306,372 in Federal funds (75%) and $102,124 in state funds (25%) for a total of $408,496. Administrative costs account for $111,546 (27%) of the total grant amount. The grant funds 4.54 full-time employees.

3. The Federal LUST Trust Fund Grant

The Federal LUST Trust Fund Grant provides funding for site investigations, enforcement and corrective action, emergency and complaint response, database maintenance, rulemaking, and public outreach. As of fiscal year 2011, this annual grant includes $565,000 in Federal funds (90%) and $62,778 in state funds (10%) for a total of $627,778. Administrative costs account for $145,934 (23%) of the total grant amount. The grant funds 5.25 full-time employees.

The total amount the State of Idaho has in UST and LUST assistance grants is $1,153,883. Occasionally, the State may receive additional grants for special projects. For example, the State currently has a LUST stimulus grant in the amount of $1,284,000, a grant to investigate temporarily out-of-use or abandoned UST systems for $250,000, and a grant to assist in cleaning up LUST sites in the Boise regional office’s jurisdiction for $250,000.

## H. Energy Policy Act of 2005

The Idaho Underground Storage Tank Act (Idaho Code Title 39, Chapter 88) was enacted on February 23, 2007 (Appendix B). This act allowed the Department to make rules regarding the Energy Policy Act of 2005. It also allowed the Department to start enforcing on many measures in the Energy Policy Act of 2005. On April 2, 2008, the “Rules Regulating Underground Storage Tank Systems” (IDAPA 58.01.07) were enacted (Appendix A). The rules contain the following sections, as discussed in more detail below:

* Incorporation of the Federal Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks, 40 CFR Part 280
* Additional Measures to Protect Ground Water from Contamination
* Release Reporting Requirements
* Training Requirements
* Inspections
* Delivery Prohibition
* Maintenance of the Petroleum Underground Storage Tank Database

**Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks, 40 CFR Part 280 (Section 004)**

This section incorporates, by reference, the Federal UST laws that have been in effect since December 22, 1988.

**Additional Measures to Protect Ground Water from Contamination (Section 100)**

This section explains new notification requirements for all tank systems and requirements for UST systems installed or replaced after February 23, 2007. Some of those requirements include the following:

* The Department must be notified 30 days prior to installing a new piping system or a new or replacement tank.
* The Department must be notified 24 hours prior to replacing a piping system.
* Each new tank and/or piping system installed or replaced after February 23, 2007, that is within 1,000 feet of a potable drinking water source must have secondary containment (an inner and outer barrier) installed, and the space between the inner and outer barrier must be monitored.
* Each new motor fuel dispenser system that is within 1,000 feet of a potable drinking water source and is installed after February 23, 2007, must have under-dispenser containment.

**Release Reporting Requirements (Section 200)**

When a release occurs, the owner or operator must report the source and cause of the release. Sources may include, but are not limited to, the following:

* An underground storage tank
* Piping
* Dispensers
* Submersible turbine pump area
* Delivery problem

Causes may include, but are not limited to, the following:

* Spills
* Overfills
* Physical or mechanical damage
* Corrosion
* Installation problems

**Operator Training Requirements (Section 300)**

This section describes both the Department’s and owners’ and operators’ obligations to training.

Some of those requirements include the following:

* The Department will adopt an owner and operator training program.
* The training will be provided at no cost.
* The training will be conducted at the owner or operator’s UST site.
* The owner or operator must designate a class A, class B, and class C operator. The class A and class B operators must be reported to the department within 30 days of the designation and then be trained according to their class.
* Class A operator—has primary responsibility for the UST system (i.e., the owner)
* Class B operator—has daily on-site responsibility for the UST system (i.e., the manager)
* Class C operator—has daily on-site responsibility for addressing UST emergencies (i.e., the clerk)
* The class A or B operator may train the class C operator.
* If their UST system is out of compliance, the trained operators must repeat the training within 30 days of the noncompliance event.
* Unattended or unmanned sites need a sign in a visible location indicating emergency shut-off procedures and contact information.

**Inspections (Section 400)**

This section describes what UST equipment, actions, and paperwork a Department inspector will use to assess compliance, including the following:

* Notification
* Corrosion protection
* Overfill prevention in place and operational
* Spill prevention in place and operational
* Tank and piping release detection
* Reporting suspected releases
* Records of tank and piping repairs
* Secondary containment where required
* Financial responsibility
* Temporary closure

An inspection will be conducted at least once every 3 years and all inspections will be conducted on site.

**Delivery Prohibition (Section 500)**

This section states that it is unlawful to deliver to, deposit into, or accept a regulated substance into an ineligible UST. A tank *will* be ineligible if any of the following statements are true:

* Required spill equipment is not installed
* Required overfill protection equipment is not installed
* Required leak detection equipment is not installed
* Required corrosion protection equipment is not installed

A tank *may* be ineligible if any of the following situations occur:

* Failure to properly operate or maintain leak detection equipment
* Failure to properly operate or maintain spill, overfill, or corrosion protection equipment
* Failure to maintain financial responsibility

The owner will be notified prior to prohibiting deliveries and will have the opportunity to appeal. A tamper-proof red tag will be attached to each ineligible fuel tank’s fill pipe.

A current list of all ineligible fuel tanks will be posted on the Department’s website.

**UST Database Maintenance (Section 600)**

This section states that the Department will maintain a quarterly-updated database that contains information on the status of all UST systems. The database is available on the Department’s website at [www.deq.idaho.gov/applications/ust-lust](http://www.deq.idaho.gov/applications/ust-lust).