

LEAKING UNDERGROUND STORAGE TANK TRUST FUND  
AMENDMENTS ACT OF 1997

---

APRIL 17, 1997.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

---

Mr. BLILEY, from the Committee on Commerce,  
submitted the following

R E P O R T

[To accompany H.R. 688]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 688) to amend the Solid Waste Disposal Act to require at least 85 percent of funds appropriated to the Environmental Protection Agency from the Leaking Underground Storage Tank Trust Fund to be distributed to States for cooperative agreements for undertaking corrective action and for enforcement of subtitle I of such Act, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS

	Page
Purpose and Summary .....	2
Background and Need for Legislation .....	2
Hearings .....	3
Committee Consideration .....	3
Rollcall Votes .....	4
Committee Oversight Findings .....	4
Committee on Government Reform and Oversight .....	4
New Budget Authority and Tax Expenditures .....	4
Committee Cost Estimate .....	4
Congressional Budget Office Estimate .....	4
Federal Mandates Statement .....	6
Advisory Committee Statement .....	6
Constitutional Authority Statement .....	6
Applicability to Legislative Branch .....	6
Committee Correspondence .....	7
Section-by-Section Analysis of the Legislation .....	9
Changes in Existing Law Made by the Bill, as Reported .....	11

## PURPOSE AND SUMMARY

H.R. 688 strengthens the Underground Storage Tank program by providing more flexibility to States in the use of Federal funding, and helps States meet rising enforcement needs brought about by the U.S. Environmental Protection Agency's (EPA) leak detection and prevention regulations.

H.R. 688 amends Subtitle I of the Solid Waste Disposal Act to require that the EPA give out at least 85 percent of its annual appropriation from the Leaking Underground Storage Tank Trust Fund to States under cooperative agreements, and authorizes several new uses for that funding. Those uses include enforcement of EPA's leak detection and prevention regulations; administration of State financial assurance funds; and payments into State financial assurance funds for reimbursements to owners and operators of leaking tanks in cases where the cost of corrective action would create a financial hardship.

## BACKGROUND AND NEED FOR LEGISLATION

The Underground Storage Tank (UST) program was enacted as part of the Resource Conservation and Recovery Act (RCRA) in 1984, and has been codified as Subtitle I. The program requires the EPA to set forth leak detection and prevention standards for USTs and gives the agency authority to compel tank owners and operators to take corrective action to clean up leaking tanks or to close the tanks. It also gives the agency authority to set financial assurance requirements for tank owners, i.e., requirements that they have insurance or some other form of financial backing to pay for cleanup and third-party claims in case of a leak.

In 1986, as part of the Superfund Amendments and Reauthorization Act, Congress passed the Leaking Underground Storage Tank (LUST) Trust Fund, paid for with a one-tenth of one cent tax on motor fuel sales. The trust fund is to be used by EPA or the States, in accordance with Federal law, to enforce the UST corrective action requirements; to conduct cleanups where no solvent responsible party can be found, where there is a known but recalcitrant responsible party, or where a responsible party does not have enough financial assurance to pay for the entire cleanup; to take corrective action in cases of emergency; and to take cost recovery actions against parties.

In the wake of the Federal legislation, many States also created trust funds, capitalized through State gas taxes, fees, and other mechanisms, to pay for cleanups. The Federal statute envisioned that States would create these financial assurance trust funds to act as a dedicated source for tank cleanups, and that those funds could serve as evidence that a tank owner or operator had adequate funds to pay for a cleanup and/or third-party claims. States spend about \$1 billion per year from their trust funds. However, in recent years, the claims against those funds have risen dramatically, so that nationwide, annual claims now exceed payments into the State funds by some \$300 million. Numerous States now have claims against their funds that exceed fund balances.

In accordance with statutory requirements, EPA issued leak detection and prevention standards in 1988. The leak prevention

standards for USTs that were in the ground in 1988 do not become effective until December 22, 1998. However, a survey conducted last year by the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) of 24 States revealed that only 26 percent of existing active tanks currently meet the 1998 technical compliance standards. Both ASTSWMO and the EPA testified this year that only about 30 percent of underground storage tanks currently meet the standards. There are approximately 1.2 million operating tanks nationwide, and 315,000 leaks that have been detected, in many cases as a result of the upgrading process.<sup>1</sup> This leaves regulators facing a large bulge over the next two years, both in terms of the number of sites where corrective action will be required and the number of tanks for which upgrades will be required. Although the Committee does not have data on the issue, it is likely that many of those who have not yet complied with the 1998 regulations are small owners and operators whose ability to comply is questionable.

The LUST tax has raised roughly \$1.7 billion since 1987, and just \$655 million or 38 percent has been spent, leaving an accumulated balance of more than \$1 billion. The LUST tax expired on December 31, 1995. The accumulation of a large balance in the LUST Trust Fund has provided motivation to industry members on whose product the tax is levied to seek higher appropriation levels for the LUST program.

H.R. 688 is identical to H.R. 3391 which passed the House in the 104th Congress under Suspension of the Rules by a voice vote on September 25, 1996.

#### HEARINGS

The Subcommittee on Finance and Hazardous Materials held a hearing on H.R. 688 on March 20, 1997. Testimony was received from the following witnesses: Mr. Michael Shapiro, Acting Deputy Assistant Administrator, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency; Ms. Mary Jean Yon, President, Association of State and Territorial Solid Waste Management Officials; Mr. Jeffrey L. Leiter, Counsel, Collier, Shannon Rill & Scott, PLLC, representing the Society of Independent Gasoline Marketers of America and the National Association of Convenience Stores; Mr. Jeff Lykins, Vice President, The Lykins Companies, on behalf of the Ohio Petroleum Marketers Association and the Petroleum Marketers Association of America; and Mr. Jim Daskal, Counsel, National Coalition of Petroleum Retailers.

#### COMMITTEE CONSIDERATION

On March 20, 1997, the Subcommittee on Finance and Hazardous Materials met in open markup session and approved H.R. 688, the Leaking Underground Storage Tank Trust Fund Amendments Act of 1997, for Full Committee consideration, without amendment, by a voice vote.

<sup>1</sup> EPA Office of Underground Storage Tanks 1996 data.

On April 16, 1997, the Full Committee met in open markup session and ordered H.R. 688 reported to the House, without amendment, by a voice vote.

#### ROLLCALL VOTES

Clause 2(1)(2)(B) of rule XI of the Rules of the House requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. There were no recorded votes taken in connection with ordering H.R. 688 reported. A motion by Mr. Bliley to order H.R. 688 reported to the House, without amendment, was agreed to by a voice vote, a quorum being present.

#### COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee held a legislative hearing and made findings that are reflected in this report.

#### COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 688 would result in no new or increased budget authority or tax expenditures or revenues.

#### COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974 with the following clarification: The Committee notes that the Congressional Budget Office finds that enactment of H.R. 688 could lead to an increase in discretionary spending because of new uses established by the bill. The Committee notes that H.R. 688 does not require any new spending. New uses authorized by the bill will compete with existing uses for any funds made available through appropriations. Whether additional funds are provided for the program continues to be a discretionary function of the appropriations process.

#### CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
 CONGRESSIONAL BUDGET OFFICE,  
 Washington, DC, April 17, 1997.

Hon. TOM BLILEY,  
 Chairman, Committee on Commerce,  
 House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 688, the Leaking Underground Storage Tank Trust Fund Amendments Act of 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kim Cawley (for federal costs), and Pepper Santalucia (for the state and local impact).

Sincerely,

JUNE E. O'NEILL, *Director*.

Enclosure.

*H.R. 688—Leaking Underground Storage Tank Trust Fund Amendments Act of 1997*

Summary: H.R. 688 would direct the Environment Protection Agency (EPA) to distribute to states at least 85 percent of the money appropriated to the agency from the Leaking Underground Storage Tank (LUST) Trust Fund each fiscal year. The bill also would allow two new uses for federal funds appropriated from the LUST fund, which could lead to a significant increase in discretionary spending. CBO has no basis for predicting whether or to what extent the Congress might increase appropriations to accommodate the possible new uses of balances in the LUST fund.

Enacting H.R. 688 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill. The bill contains no private-sector or intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 and would not impose any costs on state, local, or tribal governments.

Estimated cost to the Federal Government: Under this bill, states could use LUST grant money to help fund state programs that pay for the cost of cleaning up leaks from regulated underground storage tanks, or to compensate tank owners for the cost of conducting such cleanups. States also would be authorized to use federal funds to enforce federal standards for preventing leaks from underground storage tanks. The federal cost to assist states with these efforts would depend on the amount of appropriations provided. Because the gap between existing resources and state cleanup needs is large, there could be significant demand for federal assistance under this bill.

In 1997, \$60 million was appropriated from the LUST fund for EPA's administration and oversight of the program, and for funding cooperative agreements with state LUST programs. (Outlays for these purposes in 1996 were \$68 million.) Under these cooperative agreements, most funds are spent on oversight of cleanups conducted by private parties, although some funds may be used to finance cleanups directly when no financially viable private party exists. Most states operate state assurance funds, separate from the federal LUST program, to conduct cleanups and to reimburse owners and operators of underground tanks for cleanup costs. The most

recent data collected by the states indicates that annual receipts to state assurance funds are about \$1.2 billion, and current balances in these funds amount to about \$1.3 billion. The assurance funds face outstanding claims of \$2.8 billion from tank owners and operators seeking compensation for cleanups already conducted. According to EPA, the average cleanup under the LUST program costs \$125,000 and there are over 170,000 underground tanks currently undergoing or awaiting cleanup over the next decade. Thus, current cleanup needs may exceed \$20 billion, and the demand for additional monies from the federal LUST fund could total hundreds of millions of dollars annually for many years.

Estimated impact on State, local, and tribal governments: By requiring EPA to distribute to the states at least 85 percent of the money appropriated to the agency from the LUST fund each year, the bill would assure states of a specified minimum proportion of available funds. (According to EPA, states have received between 81 percent and 89 percent of the funds appropriated since 1989.) The bill would also grant states more flexibility in using those funds.

Previous CBO estimate: On September 20, 1996, CBO prepared a cost estimate for H.R. 3391, a similar bill in the 104th Congress. The estimated budgetary impact of H.R. 688, as ordered reported by the Commerce Committee, is the same as that projected last year for H.R. 3391.

Estimate prepared by: Federal Cost: Kim Cawley. Impact on State, Local, and Tribal Governments: Pepper Santalucia.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

Pursuant to section 423 of the Unfunded Mandates Reform Act, the Committee finds that the bill contains no private-sector or intergovernmental mandates and agrees with the Director of the Congressional Budget Office that the bill would not impose any cost on State, local or tribal governments.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## COMMITTEE CORRESPONDENCE

U.S. HOUSE OF REPRESENTATIVES,  
 COMMITTEE ON WAYS AND MEANS,  
 Washington, DC, April 17, 1997.

Hon. THOMAS J. BLILEY, Jr.,  
 Chairman, House Committee on Commerce, Rayburn House Office  
 Building, Washington, DC.

DEAR CHAIRMAN BLILEY: I understand that on Wednesday, April 16, 1997, the Committee on Commerce ordered reported H.R. 688, the Leaking Underground Storage Tank Trust Fund Amendments of 1997. The bill, as introduced, was referred to the Committee on Ways and Means. The legislation contains a conforming amendment to Section 9508 of the Internal Revenue Code, which is necessary to allow expenditures from the Leaking Underground Storage Tank Trust Fund for purposes not included under present law. As you know, the Trust Fund provisions, including expenditures purposes and dedication of excise tax revenues, are within the jurisdiction of the Committee on Ways and Means.

I have been informed that the House is due to consider this bill on the Floor as early as next week. In order to expedite the consideration of this legislation, and because the provision in question is noncontroversial and was approved by the House of Representatives in the 104th Congress (as part of H.R. 3391), I do not believe that a markup by the Committee on Ways and Means will be necessary. However, this is being done with the understanding that the Committee will be treated without prejudice in the future as to its jurisdictional prerogatives on this or similar provisions, and it should not be considered as precedent for consideration of matters of jurisdictional interest to the Committee on Ways and Means in the future.

This is also being done with the understanding that when the House considers H.R. 688, an amendment will be incorporated on the Floor to include clarifying statutory language which I am transmitting with this letter. I am also transmitting an accompanying technical explanation. Finally, I would appreciate your response to this letter, confirming this understanding with respect to H.R. 688, and would ask that all of these materials be included in the Commerce Committee's report on H.R. 688.

Thank you for your cooperation and assistance on this matter. With best personal regards.

Sincerely,

BILL ARCHER, *Chairman.*

## AMENDMENT TO H.R. 688

Page 2, strike line 6, and insert the following:

TITLE I—DISTRIBUTIONS FROM LEAKING  
 UNDERGROUND STORAGE TANK TRUST FUND

SEC. 101. LEAKING UNDERGROUND STORAGE TANKS.

Page 5, strike lines 15 through 18.

Page 5, line 19, strike "(c)" and insert "(b)".

At the end of the bill, insert the following new title:

TITLE II—EXTENSION OF TRUST FUND PURPOSES

**SEC. 201. EXTENSION OF TRUST FUND PURPOSES.**

Paragraph (1) of section 9508(c) of the Internal Revenue Code of 1986 (relating to expenditures) is amended by striking “to carry out section 9003(h)” and all that follows and inserting “to carry out—

“(A) section 9003(h) of the Solid Waste Disposal Act (as in effect on the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986), and

“(B) section 9004(f) of the Solid Waste Disposal Act (as in effect on the date of the enactment of the Leaking Underground Storage Tank Trust Fund Amendments Act of 1997).”

TECHNICAL EXPLANATION OF PROPOSED TITLE II OF H.R.  
688

Proposed Title II of H.R. 688 amends the Leaking Underground Storage Tank (“LUST”) Trust Fund provisions of the Internal Revenue Code (the “Code”) (sec. 9508) to permit the expenditures authorized by Title I of the bill. The LUST Trust Fund balance currently is approximately \$1 billion. This balance is considered adequate to fund both the existing and new expenditure purposes of the LUST program at anticipated levels for the foreseeable future.

The current LUST Trust Fund balance was derived primarily from an excise tax of 0.1 cent per gallon imposed on motor fuels (i.e., gasoline, diesel fuel, special motor fuels, aviation fuel, and inland waterway barge fuels) that otherwise are subject to tax under the Code. Imposition of the tax terminated after December 31, 1995. H.R. 688 and the proposed Title II do not reimpose the motor fuels excise tax.

Proposed title II of H.R. 688 authorizes expenditure from the LUST Trust Fund for the expenditure purposes provided in the law, as amended by Title I of the bill. Thus, for example, in addition to the program expenditures authorized under present law, LUST Trust Fund monies may be spent for certain State program administrative costs associated with cleanups and corrective actions, for providing cleanup assistance to tank owners who would be put out of business without financial help, and for enforcement of certain 1998 environmental compliance standards. As provided under Title I of the bill, at least 85 percent of annual appropriations from the LUST Trust Fund must be allocated to States for underground storage tank program activities.

The provisions of the proposed Title II are effective on the date of enactment.

HOUSE OF REPRESENTATIVES,  
 COMMITTEE ON COMMERCE,  
 Washington, DC, April 17, 1997.

Hon. BILL ARCHER,  
 Chairman, Committee on Ways and Means, House of Representatives,  
 Longworth House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter regarding your Committee's jurisdictional interest in H.R. 688, the Leaking Underground Storage Tank Trust Fund Amendments of 1997.

I acknowledge your interest in this legislation and appreciate your cooperation in moving the bill to the House floor expeditiously. The Committee has reviewed your amendment and agrees to work with your Committee to address your concerns on the House Floor. I further agree that your decision to forgo further action on the bill will not prejudice the Ways and Means Committee with respect to its jurisdictional prerogatives on this or similar provisions.

Thank you again for your cooperation.

Sincerely,

TOM BLILEY, *Chairman.*

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

SECTION 1. SHORT TITLE

This section designates the short title of the Act as the "Leaking Underground Storage Tank Trust Fund Amendments Act of 1997."

SECTION 2. LEAKING UNDERGROUND STORAGE TANKS

This section amends section 9004 of the Solid Waste Disposal Act by adding at the end a new subsection (f).

The new subsection requires the EPA Administrator to distribute at least 85 percent of the funds appropriated to the EPA from the Leaking Underground Storage Tank Trust Fund to the States for reasonable costs under cooperative agreements entered into with the Administrator for five purposes. Since funding is distributed by the EPA through the cooperative agreements, EPA must approve through the cooperative agreement all State uses of Federal funds, as it does under existing law.

Over the years, EPA has given out an average of 86 percent of its annual appropriation to the States. At most, EPA has kept 19 percent of the annual appropriation for its own expenses; the low has been 11 percent. Existing law provides that EPA may use its portion to carry out its corrective action authorities under the statute, but primarily EPA uses the retained funding to oversee activities undertaken by the States. By requiring that a specified percentage of annual appropriations be distributed to the States, the legislation helps assure that Federal funding will be used efficiently to serve the purposes of the Act.

Although the amount of Federal funding historically appropriated is small in comparison with the anticipated nationwide cost of corrective action and compliance, the expanded uses of the fund add flexibility for the States, in cooperation with the EPA, to decide what is the best use within each State for the Federal funding.

Using the funds for enforcement of the UST 1998 leak prevention standards, as well as other technical requirements, will help prevent future leaks, and, therefore, is a most effective use of the Federal trust funds.

Pursuant to clause (f)(1)(A)(i), States may use the funds to take actions under 9003(h)(7)(A). These are the existing purposes for which funding may be used. Those purposes include enforcement of corrective action requirements, corrective actions taken by State and local governments at responsible party sites, and cost recovery actions.

Pursuant to clause (f)(1)(A)(ii), States may use the funds to cover necessary administrative expenses directly related to the operation of State financial assurance programs under 9004(c)(1).

Pursuant to clause (f)(1)(A)(iii), States may use the funds to enforce Federal, State or local tank leak detection, prevention and other requirements through State and local programs.

Pursuant to clause (f)(1)(A)(iv), States may continue to use the funds for State and local corrective actions at responsible party sites pursuant to section 9003(c)(4). This provision clarifies the authority of the EPA to continue to provide funding for States' administrative costs of the cooperative agreements, including oversight of corrective action performed by responsible parties.

Pursuant to clause (f)(1)(A)(v), States may use the funds to take corrective actions and compensate parties for cleanups of releases through 9004(c)(1) programs in cases where the State determines that the financial resources of an owner or operator, excluding resources provided by programs under 9004(c)(1), are not adequate to pay for the corrective action without significantly impairing the ability of the owner or operator to continue in business. A concern prompting this provision is the possibility that the cost of corrective action could lead to bankruptcy for operators in rural areas which only have one gas station. Although this legislation does not require the States to take into account the availability of State resources provided by programs under 9004(c)(1) in determining whether an owner or operator has adequate resources to pay for a corrective action, it is the intent of this Committee that the States will in the large majority of instances rely upon available State resources.

While this bill allows for several new uses of the LUST Trust Fund, the legislation does not prioritize among uses. The Committee finds, consistent with testimony heard from EPA, the States and industry representatives, that 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 also finds that there will be a significant funding need in coming years for enforcement of the tank leak detection and prevention requirements through State and local programs. It is this Committee's desire that the distribution of available Federal funding recognize the importance of enforcement to protection of human health and the environment.

The bill prohibits funding to be used for direct financial assistance to tank owners and operators to meet the 1998 tank standards.

The Committee notes that decisions about financial assistance to owners and operators continue to rest primarily with the States. Despite limitations on the use of Federal funding, States retain discretion to determine what use to make of State funding.

The bill also requires EPA to continue distributing funds in accordance with the allocation process it currently uses, which is based on the number of releases in each State, the number of tanks in each State, and the percentage of the population which depends on groundwater for drinking water and other purposes. It requires the agency to consult with States and representatives of owners and operators before making any changes to the allocation process.

To ensure that money EPA grants to the States remains with the States, the bill prohibits EPA from recovering funds from owners and operators where those funds were provided to owners and operators through the State financial assurance programs.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, 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**

**TITLE II—SOLID WASTE DISPOSAL**

\* \* \* \* \*

Subtitle I—Regulation of Underground Storage Tanks

DEFINITIONS AND EXEMPTIONS

SEC. 9001. For the purposes of this subtitle—

(1) \* \* \*

\* \* \* \* \*

(3) 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

\* \* \* \* \*

RELEASE DETECTION, PREVENTION, AND CORRECTION REGULATIONS

SEC. 9003. (a) \* \* \*

\* \* \* \* \*

(f) **EFFECTIVE DATES.**—(1) Regulations issued pursuant to **[sub-section]** *subsections* (c) and (d) of this section, and standards issued

pursuant to subsection (e) of this section, for underground storage tanks containing regulated substances defined in section 9001(2)(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.

\* \* \* \* \*

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)] in section 9001(2)(A) or (B) or both. 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—

(1) \* \* \*

\* \* \* \* \*

(f) TRUST FUND DISTRIBUTION TO STATES.—

(1) IN GENERAL.—(A) The Administrator shall distribute to States at least 85 percent of the funds appropriated to the Environmental Protection Agency from the Leaking Underground Storage Tank Trust Fund (in this subsection referred to as the “Trust Fund”) each fiscal year for the reasonable costs under cooperative agreements entered into with the Administrator for the following:

(i) States’ actions under section 9003(h)(7)(A).

(ii) Necessary administrative expenses directly related to corrective action and compensation programs under section 9004(c)(1).

(iii) Enforcement of a State or local program approved under this section or enforcement of this subtitle or similar State or local provisions by a State or local government.

(iv) State and local corrective actions pursuant to regulations promulgated under section 9003(c)(4).

(v) Corrective action and compensation programs under section 9004(c)(1) for releases from underground storage tanks regulated under this subtitle in any instance, as determined by the State, in which the financial resources of an owner or operator, excluding resources provided by programs under section 9004(c)(1), are not adequate to pay for the cost of a corrective action without significantly impairing the ability of the owner or operator to continue in business.

(B) Funds provided by the Administrator under subparagraph (A) may not be used by States for purposes of providing financial assistance to an owner or operator in meeting the requirements respecting underground storage tanks contained in

*section 280.21 of title 40 of the Code of Federal Regulations (as in effect on the date of the enactment of this subsection) or similar requirements in State programs approved under this section or similar State or local provisions.*

(2) *ALLOCATION.—*

(A) *PROCESS.—In the case of a State that the Administrator has entered into a cooperative agreement with 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 for such cooperative agreements.*

(B) *REVISIONS TO PROCESS.—The Administrator may revise such allocation process only after—*

(i) *consulting with State agencies responsible for overseeing corrective action for releases from underground storage tanks and with representatives of owners and operators; and*

(ii) *taking into consideration, at a minimum, the total revenue received from each State into the Trust Fund, the number of confirmed releases from leaking underground storage tanks in each State, the number of notified petroleum storage tanks in each State, and the percent of the population of each State using groundwater for any beneficial purpose.*

(3) *RECIPIENTS.—Distributions from the Trust Fund under this subsection shall be made directly to the State agency entering into a cooperative agreement or enforcing the State program.*

(4) *COST RECOVERY PROHIBITION.—Funds provided to States from the Trust Fund to owners or operators for programs under section 9004(c)(1) for releases from underground storage tanks are not subject to cost recovery by the Administrator under section 9003(h)(6).*

INSPECTIONS, MONITORING, TESTING, AND CORRECTIVE ACTION

SEC. 9005. (a) *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 pursuant 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) 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 **[relevant]** *relevant* in any proceeding under this Act.

\* \* \* \* \*

(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 **[Environmental]** *Environmental* Protection Agency).

\* \* \* \* \*

**SECTION 9508 OF THE INTERNAL REVENUE CODE OF 1986**

**SEC. 9508. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.**

(a) CREATION OF TRUST FUND.—

\* \* \* \* \*

(c) EXPENDITURES.—

(1) IN GENERAL.—Except as provided in paragraph (2), amounts in the Leaking Underground Storage Tank Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures to carry out section 9003(h) of the Solid Waste Disposal Act as in effect on the date

of the enactment of the Superfund Amendments and Reauthorization Act of 1986 *and to carry out section 9004(f) of such Act.*

\* \* \* \* \*

○