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H. R. 1360

To regulate aboveground storage tanks used to store regulated substances,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 1993

Mr. MORAN introduced the following bill; which was referred to the Committee
on Energy and Commerce

JUNE 2, 1993

Additional sponsors: Mr. FLAKE, Ms. BYRNE, Mr. WOLF, Mr. GONZALEZ, Ms.
WATERS, Mr. TORRES, Mr. HASTINGS, Mr. JEFFERSON, and Mr. PETE
GEREN of Texas

A BILL

To regulate aboveground storage tanks used to store
regulated substances, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Safe Aboveground Storage Tank Act of 1993”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.

- Sec. 3. Definitions.
- Sec. 4. Notification.
- Sec. 5. Release detection, prevention, and correction regulations and inspection requirement.
- Sec. 6. State programs.
- Sec. 7. Access to information.
- Sec. 8. Federal enforcement.
- Sec. 9. Federal facilities.
- Sec. 10. Studies of aboveground storage tanks.
- Sec. 11. Consolidation with underground tank program
- Sec. 12. Authorization of appropriations.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—The Congress finds that—

3 (1) as a result of pressing environmental con-
4 cerns about undetected leaking underground tanks,
5 and increased regulation of such tanks, increasing
6 amounts of petroleum products are being stored
7 aboveground in tanks of all sizes;

8 (2) aboveground tanks, originally in disfavor be-
9 cause of fire protection concerns, are increasingly
10 popular because of their ability to be easily mon-
11 itored for leaks and spills;

12 (3) State and local fire authorities have consist-
13 ently regulated small aboveground tanks and their
14 current strict fire safety requirements have proven
15 to provide excellent environmental protection as well;
16 and

17 (4) to date no Federal legislation has existed
18 that comprehensively regulates aboveground tanks of
19 all sizes and their associated piping for environ-
20 mental protection concerns.

1 (b) PURPOSES.—The purpose of this Act is to estab-
2 lish a comprehensive program for the regulation of above-
3 ground storage tanks to promote environmental protection
4 and protection against fires by ensuring that all above-
5 ground storage tanks are managed in accordance with
6 Federal environmental standards designed to prevent
7 leaks and spills and to assure expeditious spill reporting
8 and cleanup.

9 **SEC. 3. DEFINITIONS.**

10 As used in this Act:

11 (1) ABOVEGROUND STORAGE TANK.—

12 (A) IN GENERAL.—The term “above-
13 ground storage tank” means any one or com-
14 bination of tanks located aboveground (includ-
15 ing any pipe connected to the tank) that is used
16 to contain an accumulation of regulated sub-
17 stances and that is located at least 90 percent
18 above the surface of the ground (as measured
19 by volume), including—

20 (i) a field-erected tank;

21 (ii) a rebuilt tank;

22 (iii) a shop-fabricated tank; and

23 (iv) a storage tank situated in an un-
24 derground area (including a basement, cel-
25 lar, mineworking, drift, shaft, or tunnel) if

1 the storage tank is situated on or above
2 the surface of the floor.

3 (B) EXCLUSIONS.—The term shall not in-
4 clude any of the following:

5 (i) A farm or residential tank of 1,100
6 gallons or less capacity used for storing
7 motor fuel for noncommercial purposes.

8 (ii) A tank of 1,100 gallons or less ca-
9 pacity used for storing heating oil for con-
10 sumptive use on the premises where stored.

11 (iii) A stationary tank of 1,100 gal-
12 lons or less capacity used for storing fuel
13 to supply stationary fuel-fired equipment
14 through a system of fixed valves and pip-
15 ing.

16 (iv) A storm water or waste water col-
17 lection system.

18 (v) A flow-through process tank.

19 (vi) A liquid trap or associated gath-
20 ering lines directly related to oil or gas
21 production and gathering operations.

22 (vii) Except as provided in section 4
23 and in subsections (i) and (j) of section 5,
24 a fire-protected tank regulated by State or
25 local fire regulatory authorities with a ca-

1 capacity of not more than 12,000 gallons lo-
2 cated at a facility with a cumulative tank
3 capacity of not more than 42,000 gallons.

4 (viii) Except as provided in section 4,
5 a production tank.

6 (ix) A pipe connected to a tank, sys-
7 tem, trap or line described in clauses (i)
8 through (vi).

9 (2) ADMINISTRATOR.—The term “Adminis-
10 trator” means the Administrator of the Environ-
11 mental Protection Agency.

12 (3) FACILITY.—The term “facility” means,
13 with respect to an owner or operator, all above-
14 ground storage tanks and their associated piping
15 used for the storage of regulated substances that are
16 owned or operated by the owner or operator and lo-
17 cated on a single parcel of property (or on contig-
18 uous or adjacent property).

19 (4) FIELD-ERECTED TANK.—The term “field-
20 erected tank” means an aboveground storage tank
21 that is primarily assembled, erected, inspected, and
22 tested for releases on the site where the tank is
23 intended to be operated.

24 (5) FLOW-THROUGH PROCESS TANK.—

1 (A) IN GENERAL.—The term “flow-
2 through process tank” means a tank that forms
3 an integral part of a production process
4 through which there is a steady, variable, recur-
5 ring, or intermittent flow of materials during
6 the operation of the process.

7 (B) EXCLUSIONS.—The term does not in-
8 clude a tank used—

9 (i) for the storage of materials prior
10 to introduction of the materials into the
11 production process; or

12 (ii) for the storage of finished prod-
13 ucts or byproducts from the production
14 process.

15 (6) NONOPERATIONAL STORAGE TANK.—The
16 term “nonoperational storage tank” means an
17 aboveground storage tank in which regulated sub-
18 stances are not deposited, and from which regulated
19 substances are not dispensed, after the date of en-
20 actment of this Act.

21 (7) OPERATOR.—The term “operator” means a
22 person who is in control of, or has responsibility for,
23 the daily operation of an aboveground storage tank.

24 (8) OWNER.—

25 (A) The term ‘owner’ means—

1 (i) in the case of an aboveground stor-
2 age tank in use on the date of enactment
3 of this Act, or brought into use after that
4 date, a person who owns an aboveground
5 storage tank used for the storage, use, or
6 dispensing of regulated substances; and

7 (ii) in the case of an aboveground
8 storage tank in use before the date of en-
9 actment of this Act, but no longer in use
10 after that date, a person who owned the
11 tank immediately before the discontinu-
12 ation of its use.

13 (B) EXCLUSION.—The term does not in-
14 clude a person who holds indicia of ownership
15 primarily to protect his security interest in the
16 tank, unless, through foreclosure or other relat-
17 ed actions, the person takes possession of the
18 tank.

19 (9) PERSON.—The term “person” has the same
20 meaning as provided in section 1004(15) of the
21 Solid Waste Disposal Act (42 U.S.C. 6903(15)), ex-
22 cept that the term also includes any consortium,
23 joint venture, or commercial entity, and the United
24 States Government.

1 (10) PETROLEUM.—The term “petroleum”
2 means petroleum, including crude oil or a fraction of
3 crude oil, that is liquid at standard conditions of
4 temperature and pressure (60 degrees Fahrenheit
5 and 14.7 pounds per square inch absolute).

6 (11) PRODUCTION TANK.—The term “produc-
7 tion tank” means a tank used to contain fluids de-
8 rived from, or associated with, oil or natural gas ex-
9 ploration or production.

10 (12) FIRE-PROTECTED TANK.—

11 (A) IN GENERAL.—The term “fire-pro-
12 tected tank” means an inner tank that is sur-
13 rounded by a barrier that provides not less than
14 a 2-hour pool fire resistive rating, that is im-
15 pact-resistant, that has integral or external sec-
16 ondary containment, that contains liquid with a
17 flash point below 140 degrees Fahrenheit,
18 whose exterior surface (including connecting
19 piping) and the floor beneath the tank is mon-
20 itored, and that is constructed and installed in
21 accordance with the model fire code require-
22 ments described in subparagraph (B).

23 (B) MODEL FIRE CODE REQUIREMENTS.—

24 (i) Subject to clause (ii), the requirements re-
25 ferred to in subparagraph (A) are the require-

1 ments of 1 or more of the following model fire
2 codes: National Fire Protection Association
3 (30) or (30–A), the National Fire Code of the
4 Building Officials and Code Administrators
5 International, Inc., the Uniform Fire Code of
6 the International Fire Code Institute, and the
7 Standard Fire Prevention Code of the Southern
8 Building Code Congress International.

9 (ii) A model fire code listed in clause (i)
10 may be used for purposes of subparagraph (A)
11 only if the requirements of the code are as
12 stringent as, or more stringent than, the re-
13 quirements of the code as the code existed on
14 the date of the enactment of this Act.

15 (C) NEW TECHNOLOGIES.—The term ‘fire-
16 protected tank’ includes any tank with a capaci-
17 ty of not more than 12,000 gallons that uses
18 technologies developed after the date of the en-
19 actment of this Act and that provides protection
20 against fire, and protection of the environment,
21 that is equivalent or superior (as determined by
22 the Administrator) to the protection provided
23 by a tank meeting the requirements of subpara-
24 graph (A).

1 (D) APPLICATION OF PROTECTION MATE-
2 RIAL ON NEW TANKS.—In the case of a tank
3 brought into use after the date of the enact-
4 ment of this Act, the tank shall be considered
5 a fire-protected tank only if the protection ma-
6 terial required by industry and model fire codes
7 is fully applied or installed on the inner storage
8 tank at the manufacturing site prior to inspec-
9 tion and testing for release and shipment.

10 (E) FLASH POINT DEFINED.—As used in
11 this paragraph, the term “flash point” shall
12 have the meaning provided by the Adminis-
13 trator, determined in accordance with—

14 (i) testing methods under the regula-
15 tions on management standards for haz-
16 ardous waste under subtitle C; and

17 (ii) the model fire code requirements
18 described in subparagraph (B).

19 (13) REBUILT TANK.—The term “rebuilt tank”
20 means an aboveground storage tank that was in use,
21 was disassembled, and was subsequently erected
22 elsewhere.

23 (14) REGULATED SUBSTANCE.—The term “reg-
24 ulated substance” means—

1 (A) a substance defined in section 101(14)
2 of the Comprehensive Environmental Response,
3 Compensation, and Liability Act of 1980 (42
4 U.S.C. 9601(14)) (but not including a sub-
5 stance regulated as a hazardous waste under
6 subtitle C of the Solid Waste Disposal Act (42
7 U.S.C. 6921 et seq.)); and

8 (B) petroleum.

9 (15) RELEASE.—The term “release” means any
10 spilling, leaking, pumping, pouring, emptying, dump-
11 ing, emitting, discharging, escaping, leaching, or dis-
12 posing from an aboveground storage tank into
13 ground water, surface water, or soil.

14 (16) SECONDARY CONTAINMENT.—The term
15 “secondary containment” means a system that is
16 used for release prevention (including release preven-
17 tion underneath the tank), including any of the
18 following:

19 (A) A system capable of catching and hold-
20 ing 110 percent of the full capacity of the tank
21 and the associated piping of the tank.

22 (B) A double-walled tank with appropriate
23 venting and double-walled piping.

24 (C) An external liner.

1 (D) A fire-protected tank, the secondary
2 containment portion of which is capable of re-
3 taining at least 100 percent of the contents of
4 the inner tank and the associated piping of the
5 inner tank.

6 (E) A system or structure constructed in
7 such manner that any release would be collected
8 by a drainage system or structure and routed to
9 a waste water treatment system with an appro-
10 priate permit issued by the Administrator, plant
11 recirculating process system, or alternate con-
12 tainment system approved by the Adminis-
13 trator.

14 **SEC. 4. NOTIFICATION.**

15 (a) ABOVEGROUND STORAGE TANKS.—

16 (1) IN GENERAL.—

17 (A) EXISTING TANKS.—Not later than 18
18 months after the date of enactment of this Act,
19 and every 2 years thereafter, each owner of an
20 aboveground storage tank shall notify the State
21 or local department or agency designated pur-
22 suant to subsection (b) of the existence of the
23 aboveground storage tank. The notification
24 shall specify the age, size, type, location, and
25 uses of the tank.

1 (B) TANKS NOT IN OPERATION.—

2 (i) IN GENERAL.—For each above-
3 ground storage tank taken out of operation
4 after January 1, 1977, the owner shall, not
5 later than 1 year after the date of enact-
6 ment of this Act, notify the State or local
7 department or agency designated pursuant
8 to subsection (b) of the existence of the
9 tank.

10 (ii) CONTENTS OF NOTICE.—The no-
11 tice required under clause (i) shall specify
12 each of the following, to the extent known
13 to the owner:

14 (I) The date the tank was taken
15 out of operation.

16 (II) The age of the tank on the
17 date it was taken out of operation.

18 (III) The size, type, and location
19 of the tank.

20 (IV) The type and quantity of
21 substances remaining in the tank on
22 the date it was taken out of operation,
23 or if the tank was cleaned and purged
24 of residue after that date.

1 (V) The type and quantity of
2 substances remaining in the tank on
3 the date the notification is made.

4 (VI) The type of release detection
5 system, if any, and the extent of any
6 known soil or ground water contami-
7 nation.

8 (VII) The materials out of which
9 the tank was constructed.

10 (C) FUTURE TANKS.—An owner who
11 brings into use an aboveground storage tank
12 after the initial notification period specified
13 under subparagraph (A) shall, not later than 30
14 days after the bringing of the tank into use,
15 and every 2 years thereafter, notify the State or
16 local department or agency designated pursuant
17 to subsection (b) of the existence of the tank,
18 specifying each of the following:

19 (i) The age of the tank.

20 (ii) The size, type, and location of the
21 tank.

22 (iii) The uses of the tank.

23 (iv) The type of release detection sys-
24 tem.

1 (v) The materials out of which the
2 tank was constructed.

3 (2) EXCEPTION.—Paragraph (1) shall not
4 apply to hazardous waste tanks for which notice was
5 given pursuant to section 103(c) of the Comprehen-
6 sive Environmental Response, Compensation, and
7 Liability Act of 1980 (42 U.S.C. 9603(c)).

8 (3) NOTIFICATION BY DEPOSITORS.—During
9 the period beginning on the date that is 30 days
10 after the Administrator prescribes the form of notice
11 pursuant to subsection (c) and ending on the date
12 that is 18 months after that date, a person who de-
13 posits regulated substances in an aboveground stor-
14 age tank shall immediately notify the owner or oper-
15 ator of the notification requirements of the owner
16 under this subsection.

17 (4) NOTIFICATION BY SELLERS.—Beginning 30
18 days after the Administrator issues new tank per-
19 formance standards pursuant to section 5(e), a per-
20 son who sells a tank intended to be used as an
21 aboveground storage tank shall notify the purchaser
22 of the tank of the notification requirements of the
23 owner under this subsection.

24 (5) NOTICE OF PETROLEUM RELEASE OR
25 SPILL.—Each owner of an aboveground storage tank

1 shall, immediately upon discovery, notify the Admin-
2 istrator (or the State department or agency des-
3 igned under subsection (b) in the case of a State
4 exercising primary enforcement responsibility) of any
5 spill or other release of one barrel (42 gallons) or
6 more of petroleum from such tank.

7 (b) AGENCY DESIGNATION.—Not later than 180 days
8 after the date of enactment of this Act, the Governor of
9 each State shall designate an appropriate department or
10 agency of the State, or of a political subdivision of the
11 State, to receive the notifications under paragraphs (1)
12 and (5) of subsection (a).

13 (c) REGULATIONS.—Not later than 18 months after
14 the date of enactment of this Act, the Administrator, in
15 consultation with State and local officials designated pur-
16 suant to subsection (b), and after notice and opportunity
17 for public comment, shall issue regulations prescribing the
18 form of the notice and the information to be included in
19 the notifications required under subsection (a)(1). In pre-
20 scribing the form of the notice, the Administrator shall
21 take into account the effect of the requirements on small
22 business concerns (as defined in section 3(a)(1) of the
23 Small Business Act (15 U.S.C. 632(a)(1))), and on other
24 owners and operators.

25 (d) STATE INVENTORIES.—

1 (1) IN GENERAL.—Each State shall prepare
 2 two separate inventories of all aboveground storage
 3 tanks in the State containing regulated substances,
 4 one inventory with respect to petroleum, and one
 5 with respect to other regulated substances. In pre-
 6 paring the inventories, the State shall utilize and ag-
 7 gregate the data in the notification forms submitted
 8 pursuant to subsection (a).

9 (2) SUBMISSION OF DATA.—Each State shall
 10 submit the aggregated data described in paragraph
 11 (1) to the Administrator not later than 2 years after
 12 the date of enactment of this Act.

13 (e) FEES.—

14 (1) IN GENERAL.—Each notice submitted under
 15 paragraph (1) of subsection (a) shall be accom-
 16 panied by the payment of a fee payable to the de-
 17 partment or agency designated under subsection (b).
 18 The amount of the fee shall be determined in ac-
 19 cordance with the following schedule:

20

Total tank capacity	Total amount of fee
0 to 42,000 gallons	\$ 50
42,001 to 100,000 gallons	100
100,001 to 1,000,000 gallons	200
1,000,001 to 10,000,000 gallons	500
10,000,001 or more gallons	1,000

1 (2) USE OF FEES.—The fees collected under
2 this subsection shall be used for any or all of the fol-
3 lowing:

4 (A) To conduct training for inspection person-
5 nel on environmental and fire protection factors re-
6 lating to tank safety.

7 (B) To fund the costs of the department or
8 agency of administering notification and inspection
9 requirements under this section.

10 (C) To fund research approved by the Adminis-
11 trator to determine methods for better assessing and
12 remedying soil and water contamination from leak-
13 ing aboveground storage tanks.

14 (D) To reimburse departments and agencies of
15 States and departments and agencies of political
16 subdivisions of States for the reasonable costs of re-
17 sponding to, and overseeing the cleanup or abate-
18 ment of, any incident or disaster involving an above-
19 ground storage tank spill or release.

20 (f) APPLICABILITY TO CERTAIN FIRE-PROTECTED
21 TANKS.—Notwithstanding section 3(1)(B)(vii), the notifi-
22 cation provisions of this section shall apply to fire-pro-
23 tected tanks under the jurisdiction of a fire regulatory au-
24 thority of a State or of a political subdivision of a State.

1 (g) APPLICABILITY TO PRODUCTION TANKS.—Not-
2 withstanding section 3(1)(B)(viii), the notification provi-
3 sions of this section, other than subsection (e), shall apply
4 to production tanks.

5 **SEC. 5. RELEASE DETECTION, PREVENTION, AND CORREC-**
6 **TION REGULATIONS AND INSPECTION RE-**
7 **QUIREMENT.**

8 (a) REGULATIONS.—Not later than 6 months before
9 the applicable effective date specified in subsection (g), the
10 Administrator, after providing notice and opportunity for
11 public comment, including convening a public meeting,
12 shall issue such release detection, prevention, and correc-
13 tion regulations applicable to all owners and operators as
14 are necessary to protect human health and the environ-
15 ment.

16 (b) DISTINCTIONS IN REGULATIONS.—

17 (1) IN GENERAL.—

18 (A) IN GENERAL.—Subject to subpara-
19 graph (B), in issuing regulations under this sec-
20 tion, the Administrator may distinguish above-
21 ground storage tanks by type, class, or age.

22 (B) PETROLEUM TANKS.—The regulations
23 for aboveground storage tanks containing petro-
24 leum shall be no less stringent than the regula-

1 tions for aboveground storage tanks containing
2 other regulated substances.

3 (2) FACTORS.—In making the distinctions de-
4 scribed in paragraph (1), the Administrator may
5 take into consideration each of the following factors:

6 (A) Location of tanks.

7 (B) Soil and climate conditions.

8 (C) Uses of tanks.

9 (D) History of maintenance of tanks.

10 (E) Ages of tanks.

11 (F) Industry standards at the time of issu-
12 ance of the regulations.

13 (G) National consensus codes.

14 (H) National fire protection codes.

15 (I) Hydrogeology.

16 (J) Water table.

17 (K) Sizes of tanks.

18 (L) Quantity of regulated substances peri-
19 odically deposited in or dispensed from tanks.

20 (M) Technical capability of owners and op-
21 erators.

22 (N) Compatibility of the regulated sub-
23 stance and the materials of which the tanks are
24 fabricated.

1 (O) Other factors that the Administrator
2 considers appropriate.

3 (c) REQUIREMENTS.—The regulations issued pursu-
4 ant to this section shall include each of the following, with
5 respect to all aboveground storage tanks:

6 (1) RELEASE DETECTION SYSTEM.—Require-
7 ments for maintaining a release detection system for
8 the facility at which the tank is located or a com-
9 parable system or method designed to identify re-
10 leases in a manner consistent with the protection of
11 human health and the environment.

12 (2) RECORDKEEPING.—Requirements for main-
13 taining records of any monitoring or release detec-
14 tion system or inventory control system (and tank
15 testing) or comparable system.

16 (3) PREVENTION OF RELEASES.—Requirements
17 for the prevention of releases, including—

18 (A) certified inspection of field-erected
19 tanks, rebuilt tanks, and shop-fabricated tanks,
20 for which the Administrator shall establish a
21 timetable;

22 (B) maintaining records of regular visual
23 inspection and of the certified inspection re-
24 quired pursuant to subparagraph (A);

25 (C) inspection procedures, including—

1 (i) periodic emptying of aboveground
2 storage tanks; and

3 (ii)(I) internal inspection; or
4 (II) standards for tanks that cannot
5 be entered;

6 (D) corrosion protection of tank bottoms in
7 contact with the ground;

8 (E) labeling of tanks; and

9 (F) spill and overfill prevention devices and
10 containment and recovery procedures.

11 (4) REPORTING OF RELEASES.—Requirements
12 for reporting of releases and corrective action taken
13 in response to a release (including reporting to the
14 National Response Center established pursuant to
15 the Federal Water Pollution Control Act, except for
16 those releases required to be reported under any
17 other provision of Federal law.

18 (5) CORRECTIVE ACTION.—Requirements for
19 taking corrective action in response to a release, in-
20 cluding the recovery of petroleum for reuse, in any
21 case in which the recovery is practicable.

22 (6) TANK CLOSURE.—Requirements for the clo-
23 sure of a tank from which a release has occurred in
24 order to prevent another release from occurring.

1 (7) UPGRADING CERTAIN TANKS.—Require-
2 ments for the upgrading of existing tanks (in exist-
3 ence on the date of the enactment of this Act), in-
4 cluding the upgrading of associated piping, to new
5 tank performance standards promulgated pursuant
6 to subsection (e) not later than 10 years after the
7 date of enactment of this Act. The requirements
8 shall include a requirement that any underground
9 piping associated with a tank in existence on the
10 date of promulgation of the regulations shall be
11 moved above ground at the time the tank is up-
12 graded unless moving the piping is infeasible be-
13 cause of road layouts or other similar obstacles.

14 (8) FINANCIAL RESPONSIBILITY.—Require-
15 ments for maintaining evidence of financial respon-
16 sibility for taking corrective action and compensating
17 third parties for bodily injury and property damage
18 caused by sudden and nonsudden accidental releases,
19 in accordance with subsection (d).

20 (9) SOIL AND GROUND WATER ASSESSMENT.—
21 In any case in which a fire-protected tank is located
22 at a facility with a cumulative tank capacity of more
23 than 42,000 gallons, or in which any unprotected
24 tank is located at a facility with a cumulative tank

1 capacity of 42,000 gallons or less, requirements for
2 the facility—

3 (A) to carry out an assessment of the soil
4 and ground water; and

5 (B) to report any releases to the National
6 Response Center established pursuant to the
7 Federal Water Pollution Control Act and to the
8 department or agency of the State or depart-
9 ment or agency of a political subdivision of the
10 State designated pursuant to section 4(b).

11 (d) FINANCIAL RESPONSIBILITY.—

12 (1) IN GENERAL.—

13 (A) IN GENERAL.—An owner or operator
14 of an aboveground storage tank shall be re-
15 quired to demonstrate financial responsibility in
16 accordance with regulations issued by the Ad-
17 ministrator pursuant to subsection (c)(8).

18 (B) METHODS.—Financial responsibility
19 may be demonstrated by any one, or any com-
20 bination, of the following: insurance, guarantee,
21 surety bond, letter of credit, qualification as a
22 self-insurer, or any other method satisfactory to
23 the Administrator.

24 (C) CONTRACTUAL TERMS.—In issuing
25 regulations under this subsection, the Adminis-

1 trator may specify a term of an insurance policy
2 or any other contractual term, condition, or de-
3 fense as necessary for, or as unacceptable for,
4 the establishment of evidence of financial re-
5 sponsibility in order to carry out this Act.

6 (2) BANKRUPTCY.—

7 (A) IN GENERAL.—If the owner or opera-
8 tor is in bankruptcy, reorganization, or arrange-
9 ment, pursuant to the Federal Bankruptcy
10 Code (11 U.S.C. 1 et seq.), or if, with reason-
11 able diligence, jurisdiction in a Federal court or
12 State court cannot be obtained over an owner
13 or operator likely to be solvent at the time of
14 judgment, a claim arising from conduct for
15 which evidence of financial responsibility is re-
16 quired to be provided under this subsection may
17 be asserted directly against the guarantor pro-
18 viding the evidence of financial responsibility.

19 (B) RIGHTS AND DEFENSES.—In an action
20 pursuant to this paragraph, the guarantor shall
21 be entitled to invoke all rights and defenses
22 that would have been available to—

23 (i) the owner or operator, if an action
24 had been brought against the owner or op-
25 erator by the claimant; and

1 (ii) the guarantor, if an action had
2 been brought against the guarantor by the
3 owner or operator.

4 (3) LIABILITY OF GUARANTOR.—

5 (A) LIMITATION OF AMOUNT.—The total
6 amount of liability of a guarantor shall be lim-
7 ited to the aggregate amount that the guaran-
8 tor has provided as evidence of financial respon-
9 sibility to the owner or operator under this sub-
10 section.

11 (B) EFFECT ON OTHER LIABILITY.—Noth-
12 ing in this subsection is intended to limit any
13 other Federal or State statutory, contractual, or
14 common law liability of a guarantor to an
15 owner or operator, including the liability of the
16 guarantor for bad faith in negotiating or in fail-
17 ing to negotiate the settlement of a claim.

18 (C) EFFECT ON LIABILITY UNDER THE
19 COMPREHENSIVE ENVIRONMENTAL RESPONSE,
20 COMPENSATION, AND LIABILITY ACT OF 1980.—
21 Nothing in this subsection is intended to dimin-
22 ish the liability of a person under section 107
23 or 111 of the Comprehensive Environmental
24 Response, Compensation, and Liability Act of

1 1980 (42 U.S.C. 9607 or 9611), or other appli-
2 cable law.

3 (4) AMOUNT OF COVERAGE.—

4 (A) IN GENERAL.—In issuing financial re-
5 sponsibility regulations under this section, the
6 Administrator shall establish an amount of cov-
7 erage for particular classes and categories of
8 aboveground storage tanks that shall satisfy the
9 regulations.

10 (B) PETROLEUM TANKS.—

11 (i) IN GENERAL.—The amount of cov-
12 erage for an aboveground storage tank
13 containing petroleum shall be an amount—

14 (I) greater than or equal to
15 \$1,000,000 and not to exceed
16 \$2,000,000 for each release; and

17 (II) not to exceed \$2,000,000 for
18 the aggregate of all releases occurring
19 from the tank during a 1-year period.

20 (ii) REDUCTION.—The Administrator
21 may set an amount lower than the amount
22 required by clause (i) for aboveground
23 storage tanks containing petroleum that—

24 (I) are located at facilities not
25 engaged in petroleum production, re-

1 fining, transportation, or marketing;
2 and

3 (II) are not used to handle sub-
4 stantial quantities of petroleum.

5 (C) FACTORS.—In establishing a class or
6 category of aboveground storage tanks for the
7 purpose of this paragraph, the Administrator
8 may consider—

9 (i) the size, type, location, storage,
10 and handling capacity of aboveground stor-
11 age tanks in the class or category and the
12 volume stored by the tanks;

13 (ii) the likelihood of release and the
14 potential extent of damage from a release
15 from tanks in the class or category;

16 (iii) the economic impact of the
17 amount of coverage required under this
18 subsection on the owners and operators of
19 aboveground storage tanks in the class or
20 category, particularly on small business
21 concerns (as defined in section 3(a)(1) of
22 the Small Business Act (15 U.S.C.
23 632(a)(1))), in relation to the impact of a
24 potential release on any affected commu-
25 nity and affected natural resources;

1 (iv) the availability to owners and op-
2 erators of aboveground storage tanks of
3 methods of financial responsibility that
4 provide for financial responsibility in
5 amounts greater than the applicable
6 amounts established by this paragraph;
7 and

8 (v) such other factors as the Adminis-
9 trator considers appropriate.

10 (D) SUSPENSION OF ENFORCEMENT.—

11 (i) IN GENERAL.—The Administrator
12 may suspend enforcement of the financial
13 responsibility requirements for a particular
14 class or category of aboveground storage
15 tanks or in a particular State, if—

16 (I) the Administrator makes a
17 determination that methods of finan-
18 cial responsibility satisfying the re-
19 quirements of this subsection are not
20 generally available for aboveground
21 storage tanks in the class or category;
22 and

23 (II) the State has taken meas-
24 ures to form a risk retention group
25 for the class of tanks, or to establish

1 a fund pursuant to section 6(c)(1) to
2 be submitted as evidence of financial
3 responsibility.

4 (ii) LENGTH OF SUSPENSION.—A sus-
5 pension of enforcement by the Adminis-
6 trator pursuant to this paragraph shall be
7 for a period not to exceed 180 days after
8 the date on which the Administrator sus-
9 pends enforcement.

10 (iii) EXTENSION.—A determination to
11 suspend enforcement may be made with re-
12 spect to the same class or category or for
13 the same State upon the termination of the
14 period of suspension referred to in clause
15 (ii), if—

16 (I) the State has made substan-
17 tial progress in establishing a risk re-
18 tention group; or

19 (II) the owners or operators in
20 the class or category demonstrate, to
21 the satisfaction of the Administrator,
22 that the formation of such a group is
23 not possible and that the State is un-
24 able or unwilling to establish a fund
25 pursuant to clause (i)(II).

1 (5) COORDINATION WITH UPGRADING.—In pro-
2 mulgating the regulations under this subsection, the
3 Administrator shall ensure that, in the case of an
4 existing tank that is upgraded to meet new tank
5 standards, pursuant to subsection (c)(7), the owner
6 or operator shall not be required to demonstrate fi-
7 nancial responsibility until the tank is upgraded.

8 (6) DEFINITION.—As used in this subsection,
9 the term “guarantor” means a person, other than
10 the owner or operator, who provides evidence of fi-
11 nancial responsibility for an owner or operator under
12 this subsection.

13 (e) NEW TANK PERFORMANCE STANDARDS.—

14 (1) IN GENERAL.—Not later than 3 months be-
15 fore the applicable effective date specified in sub-
16 section (g), the Administrator shall issue perform-
17 ance standards for aboveground storage tanks
18 brought into use on or after the effective date.

19 (2) CONTENTS.—The performance standards
20 for new aboveground storage tanks and associated
21 piping shall include design, construction, installation,
22 maintenance, inspection, secondary containment, la-
23 beling, corrosion protection, integrity, and compat-
24 ibility standards. The performance standards also
25 shall include a requirement that any piping associ-

1 ated with new aboveground storage tanks shall be
2 situated aboveground, except where infeasible be-
3 cause of road layouts or other similar obstacles.

4 (3) PLACE OF ASSEMBLY.—The Administrator
5 shall consider the differences between shop-fab-
6 ricated and field-erected tanks in issuing the stand-
7 ards.

8 (f) REBUILT TANK PERFORMANCE STANDARDS.—

9 (1) IN GENERAL.—Not later than 3 months be-
10 fore the applicable effective date specified in sub-
11 section (g), the Administrator shall issue perform-
12 ance and testing standards for rebuilt tanks reintro-
13 duced for use on or after the effective date.

14 (2) CONTENTS.—The standards described in
15 paragraph (1) shall include design, construction, in-
16 stallation, maintenance, inspection, secondary con-
17 tainment, labeling, corrosion protection, integrity,
18 and compatibility standards.

19 (g) EFFECTIVE DATES.—

20 (1) PETROLEUM TANKS.—For aboveground
21 storage tanks containing regulated substances de-
22 fined in section 3(14)(B), regulations issued pursu-
23 ant to subsections (c) and (d), and standards issued
24 pursuant to subsections (e) and (f), shall take effect

1 not later than 30 months after the date of enact-
2 ment of this Act.

3 (2) NONPETROLEUM TANKS.—For aboveground
4 storage tanks containing regulated substances de-
5 fined in section 3(14)(A)—

6 (A) standards issued pursuant to sub-
7 sections (e) and (f) shall take effect not later
8 than 3 years after the date of enactment of this
9 Act; and

10 (B) regulations issued pursuant to sub-
11 sections (c) and (d) shall take effect not later
12 than 4 years after the date of enactment of this
13 Act.

14 (h) INTERIM PROHIBITION.—During the period be-
15 ginning on the date that is 180 days after the date of
16 enactment of this Act and ending on the day before the
17 effective date of the standards issued by the Administrator
18 under subsection (e), no person may install any above-
19 ground storage tank (including a tank of single wall or
20 double wall construction) for the purpose of storing regu-
21 lated substances unless the tank—

22 (1) will prevent releases due to corrosion or
23 structural failure for the operational life of the tank;

24 (2) is in compliance with applicable fire codes;
25 and

1 (3) is made of a material, used in the construc-
2 tion or lining, that is compatible with the substance
3 to be stored.

4 (i) ENVIRONMENTAL PROTECTION AGENCY RE-
5 SPONSE PROGRAM.—

6 (1) APPLICABILITY.—This subsection shall
7 apply to all regulated substances that are not sub-
8 ject to cleanup response requirements under the
9 Comprehensive Environmental Response, Compensa-
10 tion, and Liability Act of 1980 and that are released
11 from an aboveground tank, including, notwithstand-
12 ing section 3(1)(B)(vii), any fire-protected tank
13 under the jurisdiction of State or local fire regu-
14 latory authorities.

15 (2) UNDERTAKING CORRECTIVE ACTIONS.—

16 (A) BEFORE REGULATIONS.—

17 (i) IN GENERAL.—Before the effective
18 date of regulations issued pursuant to sub-
19 section (c), the Administrator (or a State
20 or political subdivision pursuant to para-
21 graph (7)) may—

22 (I) require the owner or operator
23 to undertake corrective action with re-
24 spect to a release when the Adminis-
25 trator (or the State or political sub-

1 division pursuant to paragraph (7))
2 determines that the corrective action
3 by the owner or operator will be done
4 properly and will follow an expeditious
5 timetable; or

6 (II) undertake corrective action
7 with respect to a release if the action
8 is necessary, in the judgment of the
9 Administrator (or the State or politi-
10 cal subdivision pursuant to paragraph
11 (7)), to protect human health and the
12 environment.

13 (ii) EXTENT OF ACTION.—The correc-
14 tive action undertaken or required under
15 this paragraph shall be such as is nec-
16 essary to protect human health and the en-
17 vironment.

18 (iii) PRIORITY.—Subject to the prior-
19 ity requirements of paragraph (3), the Ad-
20 ministrator (or the State or political sub-
21 division pursuant to paragraph (7)) shall
22 give priority in undertaking the actions
23 under clause (i)(II) to cases in which the
24 Administrator (or the State or political
25 subdivision pursuant to paragraph (7))

1 cannot identify an owner or operator who
2 is—

3 (I) financially solvent (as deter-
4 mined by the Administrator); and

5 (II) capable of undertaking cor-
6 rective action in a manner that is sat-
7 isfactory to the Administrator (or the
8 State or political subdivision pursuant
9 to paragraph (7)).

10 (B) AFTER REGULATIONS.—After the ef-
11 fective date of regulations issued pursuant to
12 subsection (c) all actions or orders of the Ad-
13 ministrator (or a State or political subdivision
14 pursuant to paragraph (7)) described in sub-
15 paragraph (A) shall conform to the regulations.
16 After the effective date of such regulations the
17 Administrator (or the State or political subdivi-
18 sion pursuant to paragraph (7)) may undertake
19 corrective action with respect to a release only
20 if the action is necessary, in the judgment of
21 the Administrator (or the State or political sub-
22 division pursuant to paragraph (7)), to protect
23 human health and the environment, and if—

24 (i) within 90 days after the release (or
25 within such shorter period after the release

1 as is necessary to protect human health
2 and the environment), the Administrator
3 (or the State or political subdivision pursu-
4 ant to paragraph (7)) cannot identify an
5 owner or operator who is financially sol-
6 vent (as determined by the Administrator),
7 subject to the corrective action regulations,
8 and capable of undertaking corrective ac-
9 tion in a manner that is satisfactory to the
10 Administrator (or the State or political
11 subdivision pursuant to paragraph (7));

12 (ii) prompt action is required by the
13 Administrator (or the State or political
14 subdivision pursuant to paragraph (7))
15 under this paragraph to protect human
16 health and the environment; or

17 (iii) the owner or operator has failed
18 or refused to comply with an order of the
19 Administrator under this subsection or sec-
20 tion 8, or with the order of a State under
21 this subsection, that requires compliance
22 with the corrective action regulations is-
23 sued pursuant to this section.

24 (3) PRIORITY OF CORRECTIVE ACTIONS.—In
25 undertaking corrective actions under this subsection,

1 and in issuing orders requiring owners or operators
2 to undertake corrective actions, the Administrator
3 (or a State or political subdivision pursuant to para-
4 graph (7)) shall give priority to releases that pose
5 the greatest threat to human health and the environ-
6 ment.

7 (4) CORRECTIVE ACTION ORDERS.—

8 (A) ADMINISTRATOR.—The Administrator
9 may issue an order to an owner or operator to
10 carry out paragraph (2)(A)(i)(I) or to carry out
11 a requirement of the regulations issued under
12 subsection (c)(5).

13 (B) STATE OR POLITICAL SUBDIVISION.—
14 A State or political subdivision acting pursuant
15 to paragraph (7) may issue an order pursuant
16 to paragraph (2)(A)(i)(I) only until such time
17 as the Administrator approves the program of
18 the State and the State is exercising primary
19 enforcement responsibility pursuant to section
20 6.

21 (C) ISSUANCE AND ENFORCEMENT.—Each
22 order issued under this paragraph shall be is-
23 sued and enforced in the same manner and sub-
24 ject to the same requirements as orders issued
25 under section 8.

1 (5) ALLOWABLE CORRECTIVE ACTIONS.—

2 (A) IN GENERAL.—The corrective actions
3 with respect to a release from an aboveground
4 storage tank that may be undertaken by the
5 Administrator (or by a State or political sub-
6 division pursuant to paragraph (7)) under para-
7 graph (2) shall include—

8 (i) measures to contain the release;

9 (ii) measures to prevent additional re-
10 leases;

11 (iii) water and air quality monitoring;

12 (iv) the temporary or permanent relo-
13 cation of residents;

14 (v) the provision of alternative house-
15 hold water supplies or treatment of sup-
16 plies;

17 (vi) the recovery of the regulated sub-
18 stance that has been released;

19 (vii) the installation of any necessary
20 venting; and

21 (viii) the control of the movement of
22 contamination plumes.

23 (B) EXPOSURE ASSESSMENT.—

24 (i) IN GENERAL.—In connection with
25 the performance of any corrective action

1 under paragraph (2), the Administrator
2 may undertake an exposure assessment (as
3 defined in paragraph (11)) or provide for
4 such an assessment in a cooperative agree-
5 ment with a State or political subdivision
6 pursuant to paragraph (7).

7 (ii) COSTS.—The costs of the expo-
8 sure assessment may be treated as costs
9 associated with corrective action for the
10 purpose of paragraph (6).

11 (iii) DELAY.—The assessment may
12 not delay corrective action to abate imme-
13 diate hazards or reduce exposure.

14 (6) RECOVERY OF COSTS.—

15 (A) IN GENERAL.—

16 (i) LIABILITY FOR A COST.—When-
17 ever a cost has been incurred by the Ad-
18 ministrator (or by a State or political sub-
19 division pursuant to paragraph (7)) for un-
20 dertaking any corrective action or enforce-
21 ment action with respect to a release, the
22 owner or operator shall be liable to the Ad-
23 ministrator or the State or political sub-
24 division for the cost.

1 (ii) STANDARD OF LIABILITY.—The
2 standard of liability under this paragraph
3 applicable to an owner or operator shall be
4 equivalent to the standard of liability de-
5 scribed in section 311 of the Federal
6 Water Pollution Control Act (33 U.S.C.
7 1321).

8 (B) RECOVERY.—In determining the equi-
9 ties for seeking the recovery of costs under sub-
10 paragraph (A), the Administrator (or a State or
11 political subdivision pursuant to paragraph (7))
12 may consider—

13 (i) the amount of financial responsibil-
14 ity required to be maintained under sub-
15 sections (c)(7) and (d)(4); and

16 (ii) the factors considered in establish-
17 ing the amount of financial responsibility
18 under subsection (d)(4).

19 (C) INDEMNIFICATION AGREEMENTS.—

20 (i) AGREEMENTS NOT PROHIBITED.—
21 Nothing in this Act prohibits any agree-
22 ment to ensure, hold harmless, or indem-
23 nify a party to such agreement for any li-
24 ability under this Act.

1 (ii) LIABILITY NOT TRANSFERRED.—

2 No indemnification, hold harmless, or simi-
3 lar agreement or conveyance shall be effec-
4 tive to transfer liability imposed under this
5 Act from an owner or operator or from any
6 person who may be liable for a release
7 under this Act to any other person.

8 (iii) RELATIONSHIP TO OTHER
9 CAUSES OF ACTION.—Nothing in this Act,
10 including clause (ii), bars a cause of action
11 that an owner or operator or any other
12 person subject to liability under this Act,
13 or a guarantor, has or would have, by rea-
14 son of subrogation or otherwise, against
15 any person.

16 (7) STATE AND POLITICAL SUBDIVISION AU-
17 THORITIES.—

18 (A) IN GENERAL.—A State, and any politi-
19 cal subdivision of a State, may exercise the au-
20 thorities described in paragraph (2), subject to
21 the terms and conditions of paragraphs (3), (5),
22 (9), and (11), and including the authorities de-
23 scribed in paragraphs (4), (6), and (8), if—

24 (i) the Administrator determines that
25 the State or political subdivision has the

1 personnel necessary to carry out, and is ca-
2 pable of carrying out, effective corrective
3 actions and enforcement activities; and

4 (ii) the Administrator enters into a
5 cooperative agreement with the State or
6 political subdivision that establishes the ac-
7 tions to be undertaken by the State or po-
8 litical subdivision.

9 (B) COST SHARE.—

10 (i) IN GENERAL.—After the effective
11 date of regulations issued pursuant to sub-
12 section (c), and subject to clause (ii), the
13 State or political subdivision shall pay 10
14 percent of the cost of each corrective ac-
15 tion undertaken by the Administrator or
16 by the State or political subdivision under
17 a cooperative agreement described in sub-
18 paragraph (A)(ii).

19 (ii) EXCEPTION FOR EMERGENCIES.—
20 With respect to a corrective action, if the
21 State or political subdivision of the State
22 fails to pay the cost share amount specified
23 in clause (i), the Administrator may take
24 corrective action at a facility if the Admin-
25 istrator determines that immediate action

1 is necessary to respond to an imminent
2 and substantial endangerment to human
3 health or the environment.

4 (8) EMERGENCY PROCUREMENT POWERS.—The
5 Administrator may authorize such use of emergency
6 procurement powers as the Administrator considers
7 necessary for purposes of carrying out this sub-
8 section.

9 (9) FACILITIES WITHOUT FINANCIAL RESPON-
10 SIBILITY.—

11 (A) AUTHORITIES OF ADMINISTRATOR.—
12 At a facility with respect to which the owner or
13 operator has failed to maintain evidence of fi-
14 nancial responsibility in an amount at least
15 equal to the amount established by subpara-
16 graph (A) or (B) of subsection (d)(4), the Ad-
17 ministrator shall exercise the authorities pro-
18 vided in paragraph (2)(A)(i), paragraph (4),
19 and section 8 to order corrective action to clean
20 up any release at the facility.

21 (B) AUTHORITIES OF STATES AND POLITI-
22 CAL SUBDIVISIONS.—A State or political sub-
23 division acting pursuant to paragraph (7) shall
24 exercise the authorities provided in paragraphs

1 (2)(A)(i) and (4) to order corrective action to
2 clean up any release.

3 (C) PROTECTION OF HEALTH.—Notwith-
4 standing subparagraphs (A) and (B), the Ad-
5 ministrator—

6 (i) may take any corrective action au-
7 thorized under paragraph (5) at a facility
8 that is necessary to protect human health
9 and the environment; and

10 (ii) shall seek full recovery of the costs
11 of any corrective action conducted pursu-
12 ant to paragraph (6)(A) and without con-
13 sideration of the factors described in para-
14 graph (6)(B).

15 (D) INSOLVENCY AND EMERGENCY.—
16 Nothing in this paragraph is intended to pre-
17 vent the Administrator (or a State or political
18 subdivision pursuant to paragraph (7)) from
19 taking corrective action at a facility if the Ad-
20 ministrator (or State or political subdivision)
21 determines that—

22 (i) no financially solvent owner or op-
23 erator exists; or

24 (ii) immediate action is necessary to
25 respond to an imminent and substantial

1 endangerment of human health or the en-
2 vironment.

3 (10) PUBLIC PARTICIPATION.—Before under-
4 taking a corrective action under this subsection or
5 issuing an order requiring an owner or operator to
6 undertake a corrective action, the Administrator (or
7 a State pursuant to paragraph (7)) shall provide no-
8 tice to the public and an opportunity for public com-
9 ment on the proposed corrective action.

10 (11) DEFINITIONS.—As used in this subsection:

11 (A) OWNER.—The term “owner” does not
12 include a person who, without participating in
13 the management of an aboveground storage
14 tank and otherwise not engaged in the produc-
15 tion, refining, transportation, and marketing of
16 a regulated substance, holds indicia of owner-
17 ship primarily to protect the owner’s security
18 interest in the tank.

19 (B) EXPOSURE ASSESSMENT.—The term
20 “exposure assessment” means an assessment to
21 determine the extent of exposure of, or potential
22 for exposure of, individuals to regulated sub-
23 stances from a release, based on such factors
24 as—

1 (i) the nature and extent of contami-
 2 nation;

3 (ii) the existence of or potential for
 4 pathways of human exposure (including
 5 ground or surface water contamination, air
 6 emissions, and food chain contamination);

7 (iii) the size of the community within
 8 the likely pathways of exposure; and

9 (iv) the comparison of expected
 10 human exposure levels to the short-term
 11 and long-term health effects associated
 12 with identified contaminants and any avail-
 13 able recommended exposure or tolerance
 14 limits for the contaminants.

15 (j) INSPECTIONS.—The Administrator (or the State
 16 in the case of a State exercising primary enforcement re-
 17 sponsibility) shall inspect aboveground storage tanks and
 18 related facilities for the purposes of administering and en-
 19 forcing the provisions of this Act. Such inspections shall
 20 be conducted in accordance with the following schedule
 21 commencing with the first calendar year after the date of
 22 the enactment of this Act:

23

Tank facility capacity	Inspection frequency
Over 1,000,000 gallons	Annually.

Tank facility capacity	Inspection frequency
42,0001 to 1,000,000 gallons	Every 2 years.
0 to 42,000 gallons	At discretion of Administrator or State or local agency.

1 **SEC. 6. STATE PROGRAMS.**

2 (a) ELEMENTS.—

3 (1) IN GENERAL.—Beginning on the date that
4 is 30 months after the date of enactment of this Act,
5 a State may submit an aboveground storage tank re-
6 lease detection, prevention, and correction program
7 for review and approval by the Administrator.

8 (2) COVERAGE.—The program may cover
9 aboveground storage tanks used to store the regu-
10 lated substances defined in subparagraph (A) or (B)
11 of section 3(14), or both.

12 (3) COMPLIANCE WITH REQUIREMENTS.—

13 (A) IN GENERAL.—The Administrator may
14 approve a program under this section only if
15 the State demonstrates that the program—

16 (i) includes the requirements and
17 standards listed in subparagraph (B) at a
18 level no less stringent than the correspond-
19 ing requirements and standards issued by
20 the Administrator pursuant to section 5(a);
21 and

1 (ii) provides for adequate enforcement
2 of compliance with the requirements and
3 standards.

4 (B) REQUIREMENTS.—The requirements
5 and standards referred to in subparagraph (A)
6 are—

7 (i) the requirements listed in section
8 5(c);

9 (ii) the standards required under sub-
10 sections (e) and (f) of section 5; and

11 (iii) requirements—

12 (I) for notifying the appropriate
13 department or agency designated ac-
14 cording to section 4(b) of the exist-
15 ence of an operational or non-
16 operational storage tank; and

17 (II) for providing the information
18 required on the form issued pursuant
19 to section 4(c).

20 (b) INTERIM STANDARDS.—

21 (1) NO STATE LEGISLATIVE ACTION RE-
22 QUIRED.—If State regulatory action, but no State
23 legislative action, is required in order to adopt a
24 State program that meets the requirements of sub-
25 section (a), the Administrator may approve the State

1 program without regard to whether the implementa-
2 tion by the State of the requirements under para-
3 graphs (1) through (4), and (6) of section 5(c)
4 would be less stringent than the implementation of
5 corresponding standards issued by the Administrator
6 pursuant to section 5(a) for the 1-year period begin-
7 ning on the date of issuance of the regulations under
8 section 5(a).

9 (2) STATE LEGISLATIVE ACTION REQUIRED.—If
10 State legislative action is required to adopt a State
11 program that meets the requirements of subsection
12 (a), the Administrator may approve a State program
13 without regard to whether the implementation by the
14 State of the requirements listed in paragraphs (1)
15 through (4), and (6) of section 5(c) would be less
16 stringent than the corresponding standards issued
17 by the Administrator pursuant to section 5(a) for—

18 (A) the 2-year period beginning on the
19 date of issuance of regulations under section
20 5(a); and

21 (B) an additional 1-year period beginning
22 on the date of the legislative action by the State
23 if regulations are required to be issued by the
24 State pursuant to the legislative action.

1 (c) FINANCIAL RESPONSIBILITY.—Corrective action
2 and compensation programs administered by State or local
3 agencies or departments may be submitted for approval
4 under subsection (a)(3) as evidence of financial respon-
5 sibility. A State program shall comply with paragraphs (1)
6 through (4) of section 5(d).

7 (d) TECHNICAL ASSISTANCE.—The Administrator
8 shall provide technical assistance to States, local govern-
9 ments, and owners and operators, to assist in compliance
10 with this section.

11 (e) REVIEW AND APPROVAL OF PROGRAM.—

12 (1) REVIEW.—Not later than 180 days after
13 the date of receipt of a proposed State program, the
14 Administrator shall, after notice and opportunity for
15 public comment, determine whether the State pro-
16 gram complies with this section and provides for
17 adequate enforcement of compliance with the re-
18 quirements and standards adopted pursuant to this
19 section.

20 (2) APPROVAL.—If the Administrator deter-
21 mines that a State program complies with this sec-
22 tion and provides for adequate enforcement of com-
23 pliance with the requirements and standards adopted
24 pursuant to this section—

1 (A) the Administrator shall approve the
2 State program in lieu of the Federal program;
3 and

4 (B) the State shall have primary enforce-
5 ment responsibility with respect to the require-
6 ments of the program.

7 (f) WITHDRAWAL OF APPROVAL.—If, after holding a
8 public hearing, the Administrator determines that a State
9 is not administering and enforcing a program authorized
10 under this Act in accordance with this section, the Admin-
11 istrator shall so notify the State. If appropriate action is
12 not taken within a reasonable period of time, not to exceed
13 120 days after the notification, the Administrator shall
14 withdraw approval of the program and reestablish the
15 Federal program pursuant to this Act.

16 (g) STATE AUTHORITY.—Nothing in this Act shall
17 preclude or deny a right of a State or political subdivision
18 of a State—

19 (1) to adopt or enforce a regulation, require-
20 ment, or standard of performance respecting above-
21 ground storage tanks that is more stringent than a
22 regulation, requirement, or standard of performance
23 in effect under this Act; or

1 (2) to impose any additional liability with re-
2 spect to a release within the State or political sub-
3 division.

4 **SEC. 7. ACCESS TO INFORMATION.**

5 (a) FURNISHING INFORMATION.—

6 (1) IN GENERAL.—Subject to paragraph (2),
7 and for the purpose of developing or assisting in the
8 development of a regulation, conducting a study,
9 taking a corrective action, or enforcing this Act—

10 (A) an owner or operator of an above-
11 ground storage tank (or a tank subject to study
12 under section 10) shall, upon request of an offi-
13 cer, employee, or representative of the Environ-
14 mental Protection Agency, duly designated by
15 the Administrator, or upon request of a duly
16 designated officer, employee, or representative
17 of a State acting pursuant to section 5(i)(7)
18 with a program approved under section 6—

19 (i) furnish information relating to the
20 tank, associated equipment, and contents;

21 (ii) conduct monitoring or testing; and

22 (iii) permit the officer, employee, or
23 representative at all reasonable times to—

24 (I) have access to, and to copy,
25 all records relating to the tanks; and

1 (II) have access for corrective ac-
2 tion; and

3 (B) an officer, employee, or representative
4 may referred to in subparagraph (A)—

5 (i) enter at reasonable times an estab-
6 lishment or other place where an above-
7 ground storage tank is located;

8 (ii) inspect and obtain samples from a
9 person of a regulated substance contained
10 in the tank;

11 (iii) conduct monitoring or testing of
12 a tank, associated equipment, contents, or
13 surrounding soils, air, surface water or
14 ground water; and

15 (iv) take corrective action.

16 (2) PROMPT INSPECTIONS.—Each inspection
17 required under paragraph (1)(B) shall be com-
18 menced and completed within a reasonable amount
19 of time.

20 (b) CONFIDENTIALITY.—

21 (1) IN GENERAL.—

22 (A) AVAILABILITY TO PUBLIC.—Subject to
23 subparagraph (B), any record, report, or infor-
24 mation obtained from a person under this sec-
25 tion shall be available to the public.

1 (B) EXCEPTION FOR CONFIDENTIAL IN-
2 FORMATION.—

3 (i) IN GENERAL.—Subject to clause
4 (ii), and upon a showing satisfactory to the
5 Administrator or the State by a person
6 that a record, report, or piece of informa-
7 tion, or a particular portion of the record,
8 report or piece of information, to which the
9 Administrator or the State, or an officer,
10 employee, or representative of the Adminis-
11 trator or State, has access under this sec-
12 tion, would, if made public, contain infor-
13 mation entitled to protection under section
14 1905 of title 18, United States Code, the
15 record, report, or information shall be con-
16 sidered confidential in accordance with sec-
17 tion 1905 of such title.

18 (ii) EXCEPTION.—The record, report,
19 document, or information referred to in
20 clause (i) may be disclosed to other offi-
21 cers, employees, or authorized representa-
22 tives of the United States concerned with
23 carrying out this Act, or when relevant in
24 a proceeding under this Act.

1 (2) DESIGNATION OF PROTECTED INFORMA-
2 TION.—

3 (A) IN GENERAL.—In submitting data
4 under this Act, a person required to provide the
5 data may—

6 (i) designate the data that the person
7 believes is entitled to protection under this
8 subsection; and

9 (ii) submit the designated data sepa-
10 rately from other data submitted under
11 this Act.

12 (B) METHOD OF DESIGNATION.—A des-
13 ignation under this paragraph shall be made in
14 writing and in such manner as the Adminis-
15 trator may prescribe.

16 (3) PENALTY FOR DISCLOSURE.—A person not
17 subject to section 1905 of title 18, United States
18 Code, who knowingly and willfully divulges or dis-
19 closes any information entitled to protection under
20 this subsection shall, upon conviction, be subject to
21 a fine of not more than \$5,000 or to imprisonment
22 not to exceed 1 year, or both.

23 (4) DISCLOSURE TO CONGRESSIONAL COMMIT-
24 TEES.—Notwithstanding any limitation under this
25 section or any other provision of law, any record, re-

1 port, or other information obtained by the Adminis-
2 trator (or a representative of the Administrator)
3 under this Act shall be made available to a duly au-
4 thorized committee of Congress, upon written re-
5 quest.

6 **SEC. 8. FEDERAL ENFORCEMENT.**

7 (a) COMPLIANCE ORDERS.—

8 (1) IN GENERAL.—

9 (A) IN GENERAL.—Except as provided in
10 paragraph (2), whenever, on the basis of any
11 information, the Administrator determines that
12 a person is in violation of a requirement of this
13 Act, the Administrator may—

14 (i) issue an order requiring compli-
15 ance within a reasonable specified time pe-
16 riod; or

17 (ii) commence a civil action in the
18 United States district court in which the
19 violation occurred for appropriate relief, in-
20 cluding a temporary or permanent injunc-
21 tion.

22 (B) ORDERS AFTER A RELEASE.—After a
23 release, the Administrator may issue an order
24 prohibiting the use or operation of all or any
25 portion of a facility in which an aboveground

1 storage tank is located until the Administrator
2 (or the State if a State program has been ap-
3 proved pursuant to section 6) determines
4 that—

5 (i) the prohibition is not necessary to
6 protect human health and the environment;

7 or

8 (ii) adequate corrective action has
9 been taken.

10 (2) NOTICE TO STATE.—If a violation of a re-
11 quirement of this Act occurs in a State with a pro-
12 gram approved pursuant to section 6, the Adminis-
13 trator shall give notice to the State before issuing an
14 order or commencing a civil action under this sec-
15 tion.

16 (3) PENALTY.—If a violator fails to comply
17 with an order under this subsection within the time
18 specified in the order, the violator shall be liable for
19 a civil penalty of not more than \$25,000 for each
20 day of continued noncompliance.

21 (b) PROCEDURE.—

22 (1) HEARING.—An order issued under this sec-
23 tion shall become final unless, not later than 30 days
24 after the order is served, the person named in the
25 order requests a public hearing. Upon receipt of the

1 request, the Administrator shall promptly conduct a
2 public hearing.

3 (2) SUBPOENAS AND DISCOVERY.—In connec-
4 tion with a proceeding under this section the Admin-
5 istrator may—

6 (A) issue subpoenas for the attendance and
7 testimony of witnesses and the production of
8 relevant papers, books, and documents; and

9 (B) issue rules for discovery procedures.

10 (c) CONTENTS OF ORDER.—An order issued under
11 this section shall—

12 (1) state with reasonable specificity the nature
13 of the violation;

14 (2) specify a reasonable time for compliance;
15 and

16 (3) assess a penalty, if any, that the Adminis-
17 trator determines is reasonable, taking into account
18 the seriousness of the violation and any good faith
19 efforts to comply with the applicable requirements.

20 (d) CIVIL PENALTIES.—

21 (1) FAILURE TO NOTIFY OR FALSE INFORMA-
22 TION.—An owner who knowingly fails to notify or
23 submits false information pursuant to section 4(a)
24 shall be subject to a civil penalty not to exceed

1 \$10,000 for each tank with respect to which notifi-
2 cation is not given or false information is submitted.

3 (2) FAILURE TO COMPLY.—An owner or opera-
4 tor shall be subject to a civil penalty in an amount
5 not to exceed \$10,000 for each tank for each day of
6 violation if the owner or operator fails to comply
7 with—

8 (A) a requirement or standard issued by
9 the Administrator under section 5;

10 (B) a requirement or standard of a State
11 program approved pursuant to section 6; or

12 (C) section 5(h).

13 **SEC. 9. FEDERAL FACILITIES.**

14 (a) APPLICABILITY OF STORAGE TANK REQUIRE-
15 MENTS.—

16 (1) IN GENERAL.—

17 (A) APPLICABILITY.—Each department,
18 agency, and instrumentality of the executive,
19 legislative, and judicial branches of the Federal
20 Government having jurisdiction over an above-
21 ground storage tank shall be subject to and
22 comply with all Federal, State, interstate, and
23 local requirements, applicable to the tank, both
24 substantive and procedural, in the same man-
25 ner, and to the same extent, as any other per-

1 son is subject to the requirements (including
2 payment of reasonable service charges).

3 (B) REQUIREMENTS.—The Federal, State,
4 interstate, and local substantive and procedural
5 requirements referred to in this paragraph in-
6 clude, but are not limited to, all administrative
7 orders and all civil and administrative penalties
8 and fines, regardless of whether such penalties
9 or fines are punitive or coercive in nature or are
10 imposed for isolated, intermittent, or continuing
11 violations.

12 (C) WAIVER.—The United States hereby
13 expressly waives any immunity otherwise appli-
14 cable to the United States with respect to any
15 such substantive or procedural requirement (in-
16 cluding, but not limited to, any injunctive relief,
17 administrative order, or civil or administrative
18 penalty or fine referred to in subparagraph (B),
19 or reasonable service charge). The reasonable
20 service charges referred to in this paragraph in-
21 clude, but are not limited to, fees or charges as-
22 sessed in connection with the review of plans,
23 studies, and other documents, and inspection
24 and monitoring of facilities, as well as any other
25 nondiscriminatory charges that are assessed in

1 connection with a Federal, State, interstate, or
2 local aboveground storage tank regulatory pro-
3 gram.

4 (2) INJUNCTIVE RELIEF.—Neither the United
5 States, nor an agent, employee, or officer of the
6 United States, shall be immune or exempt from a
7 process or sanction of any Federal or State court
8 with respect to the enforcement of any injunctive re-
9 lief.

10 (3) INDIVIDUAL LIABILITY.—

11 (A) IN GENERAL.—No agent, employee, or
12 officer of the United States shall be personally
13 liable for any civil penalty under any Federal,
14 State, interstate, or local aboveground storage
15 tank law with respect to any act or omission
16 within the scope of the official duties of the
17 agent, employee, or officer.

18 (B) CRIMINAL PENALTIES.—An agent, em-
19 ployee, or officer of the United States shall be
20 subject to any criminal sanction (including, but
21 not limited to, any fine or imprisonment) under
22 any Federal or State aboveground storage tank
23 law, but no department, agency, or instrumen-
24 tality of the executive, legislative, or judicial

1 branch of the Federal Government shall be sub-
2 ject to any such sanction.

3 (b) ADMINISTRATIVE ENFORCEMENT ACTIONS.—(1)

4 The Administrator may commence an administrative en-
5 forcement action against any department, agency, or in-
6 strumentality of the executive, legislative, or judicial
7 branch of the Federal Government pursuant to the en-
8 forcement authorities contained in this Act. The Adminis-
9 trator shall initiate an administrative enforcement action
10 against such a department, agency, or instrumentality in
11 the same manner and under the same circumstances as
12 an action would be initiated against another person. Any
13 voluntary resolution or settlement of such an action shall
14 be set forth in a consent order.

15 (2) No administrative order issued to such a de-
16 partment, agency, or instrumentality shall become
17 final until such department, agency, or instrumentality
18 has had the opportunity to confer with the Ad-
19 ministrator.

20 (c) LIMITATION ON STATE USE OF FUNDS COL-
21 LECTED FROM FEDERAL GOVERNMENT.—Unless a State
22 law in effect on the date of the enactment of this Act or
23 a State constitution requires the funds to be used in a
24 different manner, all funds collected by a State from the
25 Federal Government from penalties and fines imposed for

1 violation of any substantive or procedural requirement re-
2 ferred to in subsection (a) shall be used by the State only
3 for projects designed to improve or protect the environ-
4 ment or to defray the costs of environmental protection
5 or enforcement.

6 (d) PRESIDENTIAL EXEMPTION.—

7 (1) IN GENERAL.—The President may exempt
8 an aboveground storage tank of a department, agen-
9 cy, or instrumentality in the executive branch from
10 compliance with a requirement referred to in sub-
11 section (a) if the President determines the exemp-
12 tion to be in the paramount interest of the United
13 States.

14 (2) LACK OF APPROPRIATION.—No exemption
15 shall be granted because of lack of appropriation un-
16 less the President specifically requests the appro-
17 priation in the budget of the United States Govern-
18 ment as submitted by the President and Congress
19 fails to make available the requested appropriation.

20 (3) LENGTH OF EXEMPTION.—An exemption
21 shall be for a period not in excess of 1 year, but ad-
22 ditional exemptions may be granted for periods not
23 to exceed 1 year upon a redetermination by the
24 President.

1 (4) REPORT TO CONGRESS.—The President
2 shall report each January to Congress all exemp-
3 tions from the requirements of this section granted
4 during the preceding calendar year, and the reason
5 for granting each exemption.

6 **SEC. 10. STUDIES OF ABOVEGROUND STORAGE TANKS.**

7 (a) REGULATED SUBSTANCES TANKS.—

8 (1) IN GENERAL.—

9 (A) PETROLEUM TANKS.—Not later than 1
10 year after the date of enactment of this Act,
11 and in accordance with paragraph (2), the Ad-
12 ministrator shall complete a study of above-
13 ground storage tanks used for the storage of
14 petroleum.

15 (B) OTHER TANKS.—Not later than 3
16 years after the date of enactment of this Act,
17 and in accordance with paragraph (2), the Ad-
18 ministrator shall complete a study of above-
19 ground storage tanks used for the storage of
20 regulated substances other than petroleum.

21 (2) ELEMENTS OF STUDIES.—Each study
22 under paragraph (1) shall include an assessment
23 of—

24 (A) the ages, types (including methods of
25 manufacture, coatings, protection systems, com-

1 patibility of the construction materials, and in-
2 stallation methods), and locations (including cli-
3 mate of the locations) of the tanks;

4 (B) the soil conditions, water tables, and
5 hydrogeology of tank locations;

6 (C) the relationship between the factors
7 listed in subparagraphs (A) and (B) and the
8 likelihood of releases;

9 (D) the design and inspection of the tanks;

10 (E) the effectiveness and costs of inventory
11 systems, tank testing, and release detection sys-
12 tems;

13 (F) the percentage of facilities undergoing
14 corrective action and the quantity of recovered
15 regulated substances; and

16 (G) such other factors as the Adminis-
17 trator considers appropriate.

18 (b) FARM AND HEATING OIL TANKS.—

19 (1) IN GENERAL.—Not later than 3 years after
20 the date of enactment of this Act, the Administrator
21 shall conduct a study of the tanks described in
22 clauses (i) and (ii) of section 3(1)(B).

23 (2) ELEMENTS OF STUDY.—The study shall in-
24 clude—

1 (A) estimates of the number and locations
2 of the tanks; and

3 (B) an analysis of the extent to which
4 there may be releases or threatened releases
5 from the tanks.

6 (c) REPORTS.—Upon completion of the studies re-
7 quired under subsections (a) and (b), the Administrator
8 shall submit reports to the President and to Congress con-
9 taining—

10 (1) the results of the studies; and

11 (2) recommendations regarding whether the
12 tanks studied should be subject to the requirements
13 of this Act.

14 (d) GENERAL ACCOUNTING OFFICE STUDY.—

15 (1) IN GENERAL.—Not later than 1 year after
16 the date of enactment of this Act, the Comptroller
17 General should conduct a study to assess whether
18 transportation-related tanks and their associated
19 piping are adequately regulated by the Department
20 of Transportation to protect human health and the
21 environment, and whether such tanks should be reg-
22 ulated by the Environmental Protection Agency for
23 the purposes referred to in this sentence.

24 (2) REPORT.—Upon completion of the study re-
25 quired under paragraph (1), the Comptroller Gen-

1 eral shall submit to Congress a report on the results
 2 of the study, along with recommendations regarding
 3 which department or agency should regulate such
 4 tanks.

5 **SEC. 11. CONSOLIDATION WITH UNDERGROUND TANK PRO-**
 6 **GRAM**

7 In order to provide more effective coordination in the
 8 regulation of both underground and aboveground storage
 9 tanks by the Administrator, the program established
 10 under this Act shall be administered by a Director of an
 11 office of underground and aboveground storage tanks and
 12 shall be consolidated with the administration of the under-
 13 ground tank program under subtitle I of the Solid Waste
 14 Disposal Act (42 U.S.C. 6991 et seq.).

15 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

16 For fiscal years 1994 through 1998, there are au-
 17 thorized to be appropriated such sums as are necessary
 18 to carry out this Act.

○

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