THE EFFECTIVENESS OF LEAKING UNDERGROUND STORAGE TANK CLEANUP PROGRAMS

HEARING

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENT AND HAZARDOUS MATERIALS

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

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THE EFFECTIVENESS OF LEAKING UNDERGROUND STORAGE TANK CLEANUP PROGRAMS

WEDNESDAY, MARCH 5, 2003

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON ENVIRONMENT AND
HAZARDOUS MATERIALS,
Washington, DC.

The subcommittee met, pursuant to notice, at 3 p.m., in room 2322, Rayburn House Office Building, Hon. Paul E. Gillmor (chairman) presiding.

Members present: Representatives Gillmor, Shimkus, Buyer, Bass, Issa, Otter, Solis, Schakowsky, Wynn, and Dingell (ex officio).

Staff present: Jerry Couri, policy coordinator; Jim Barnett, general counsel; Hollyn Kidd, legislative clerk; and Dick Frandsen, minority counsel.

Mr. GILLMOR. The committee will come to order and I'd like to welcome everyone to our subcommittee's first hearing of the 108th Congress, as well as thank members who are here for their attendance. I want to express my appreciation to the witnesses on our Panel today. I know they've made sacrifices to be here and participate and I want to acknowledge those efforts.

Today's oversight hearing provides a look into the issue of leaking underground storage tanks. While the program's acronym, LUST, is bound to get a few snickers, the problem of groundwater contamination from leaking tanks is a deadly, serious matter. Probably half of the U.S. population draws its drinking water from groundwater and chemicals now leaching out of tanks or their underground distribution systems pose a direct threat to drinking water source integrity, related soil contamination and public health.

A push to make any changes to LUST should equally be about protection as well as about cleanup.

Now as part of our oversight efforts, our committee must carefully review Federal and State tank programs to ensure that the status quo is not just acceptable, but that it leads to something beneficial. While 1.5 million out of 2.2 million regulated tanks have been cleaned up under the Federal and State LUST programs, new leaks at upgraded tank sites and the remaining universe of 700,000 operational tanks demand greater attention. Fortunately, the trust fund Congress established in 1986, with the blessing of tank owners and operators, is flush with cash, one of the few areas in the

Federal Government, supporting a balance of $1.88 billion and it could be tapped to handle many of UST's concerns.

But a major hurdle now exists since Congress has consistently appropriated a minuscule sum compared to the trust fund's annual receipts, making it inadequate to help fund the tasks it must accomplish and we must change that situation.

It's important that we move expeditiously on this issue and while my preference might be to proceed under regular order, what our subcommittee does may be combined as part of the Energy Bill and all indicates that the Energy Bill may be moving in the near future.

I have been working on a discussion draft. There's nothing in that draft that is set in concrete. It's just intended to be tangible proof that we want to get the process moving and both the majority and minority staff are now working together on that draft and hopefully we'll be able to have an agreement on a draft that we can both support in the near future.

There are two things in particular that I should point out about the draft that I've been working on. First, it incorporates most of the recommendations of the May 2001 GAO Report on leaking underground tanks; and second, it provides a very major increase in authorized spending to clean up leaking tanks. So to be clear, our committee must get to work on a legislative process. We have to make the necessary changes to the Federal LUST program to increase funding to States, drive more cleanups, strengthen tank inspection requirements, provide better enforcement tools to regulators and educate and train tank owners and operators in a way to prevent future leaks.

Whether you are worrying about ground water contamination from gasoline additives like MTBE, want to eliminate unfunded mandates, seek stronger enforcement and compliance for underground tanks, whether you want to see the States have greater flexibility with their programs, or like myself, feel strongly that dedicated Trust Funds need to be used for their stated purpose, I believe that all of us have a reason to care about this issue and to work to see that a good product moves forward.

I want to commend my ranking member, Congresswoman Solis and our committee's ranking member, Mr. Dingell, for the help that they and their staffs have provided so far and I look forward to them working together.

And with that, I yield the 31 seconds I have remaining and I yield to the gentlewoman from California, Congresswoman Solis for the purpose of delivering an opening statement.

Ms. SOLIS. Thank you, Mr. Chairman. I'm delighted to be here at my first meeting as ranking member. It's a very important subcommittee and I do look forward to working with you on these issues that affect this subcommittee's jurisdiction, but more importantly, to help provide assurances to the American public that we are doing their job and that is protecting the safety of their drinking water.

I also want to commend your staff and our staff for working together. I know we have still a ways to go. We are still going to continue our discussions and hopefully we'll be able to come to some agreements there.

This particular issue regarding the LUST program and I also have a problem with that acronym. I understand it very well because I think most of the Districts throughout the country are affected by this particular issue. And it is a shame that we're not able to utilize the Trust Fund money appropriately to help mitigate these problems that do exist. I'm glad to see that our witnesses are here. I was very intrigued by the GAO report that was issued and I have had a chance to review that, so I do have questions for you. And I want to conclude with that at this time and look forward to asking my questions of the witnesses here.

I yield back the balance of my time, Mr. Chairman.

[The prepared statement of Hon. Hilda L. Solis follows:]

PREPARED STATEMENT OF HON. HILDA L. SOLIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Thank you, Chairman Gillmor. Before I start my opening statement, let me say that I look forward to working with you this Congress and I am hopeful that we can work cooperatively on issues the American public cares about. There are many communities throughout the nation who are depending on this subcommittee to protect them against hazardous and toxic contamination.

This is especially true when it comes to leaking underground storage tanks (LUST). There are underground storage tanks in every Congressional District in the country. Many of these tanks are slowly leaking into our groundwater table and impacting the health and physical well-being of many families.

In May 2001, the General Accounting Office (GAO) released a report on the LUST program and clearly stated that the program is in need of improvements, like more training, better enforcement and regular inspections.

In the GAO report released in 2001 more than 200,000 regulated tanks were not being operated or maintained properly. This is a frightening statistic, but perhaps it shouldn't be a surprise since most states don't require operator training. 47 States out of 50 report that they don't even have proper training for their inspectors. This is alarming and is putting the health of our constituents in danger.

Only about ¼th of states are starting to recognize this as a problem. My home state of California now requires training courses for all tank owners, operators, installers, and inspectors. I am hopeful that others will soon follow suit.

I am also concerned that most states do not have regular inspections of tanks. The GAO report revealed that not only are we not training people appropriately, 63% of states do not inspect tanks at least once every three years. Only 12% of States inspect tanks annually, as recommended by GAO. As a result, tanks are falling out of compliance and leaks are being missed. We need to make sure that regular inspections are taking place so that the government can enforce laws and protect our drinking water.

As we consider this program, we also need to have a serious discussion about funding. The LUST trust fund will be over $2 billion this year. And yet, the President is only asking for $72 million of that fund to be spent.

Mr. Chairman, I think that it is necessary to fund serious cleanup. Nationwide there are an estimated 143,000 leaks with more confirmed each year. In FY 2001, the EPA failed to meet its goal of 21,000 LUST cleanups nationwide, falling short by 1,924 cleanups. In FY 2002, the goal was 21,500 cleanups but only 15,728 were completed. We are throwing the equivalent of small change at a huge, expensive problem. It is time that we use the money that we already have to make communities safer.

I look forward to hearing from our witnesses today. I am especially interested in hearing about some of the programs that EPA has instituted since the GAO report was published and hope our witnesses will address this some.

There are many steps that need to be taken to protect families and communities from leaking underground storage tanks and I am hopeful that today's testimony will help point this subcommittee in the right direction so that we can take those steps.

Mr. GILLMOR. Thank you. The gentleman from California.

Mr. ISSA. Well,thank you, Mr. Chairman, and I probably have less problem with LUST. It seems to have a name that's memo-

rable and thus will benefit us all, but I'll waive my time pursuant to the committee rules.

Mr. GILLMOR. Very good, and the member will have additional time in his questions.

The gentlelady from Illinois?

Ms. SCHAKOWSKY. Thank you, Mr. Chairman, and I congratulate you and our new subcommittee chair, Congresswoman Solis for convening this hearing.

I'd like to thank our witnesses for coming forward today to testify before us regarding this important issue. I look forward to working with all of you on this subcommittee.

Ground water is a fundamental resource for human life and economic vitality in our Nation. Leaking underground storage tanks present significant risk to ground water quality and therefore to human health, environmental quality and economic growth. The main contaminant from leaking tanks is gasoline which contains many carcinogens and developmental toxicants. To address the risks posed by leaking underground storage tanks, Congress amended the Resources Conservation and Recovery Act in 1984, RCRA, to create a program that would clean up contamination related to leaking underground storage tanks and prevent future contamination.

Despite Congress' creation of the LUST program, these storage tanks continue to present serious threats to public health and the environment.

I dealt with this issue when I was in the State legislature for 8 years in Springfield, and I know that in the city of Chicago there are thousands of underground storage tanks. Many of these tanks are operational, but hundreds are no longer in use and have been abandoned by their owners. While the city receives funding from the State of Illinois to administer its program, State funding levels have remained constant for many years, despite increases in the number of underground storage tanks and a corresponding need to devote more city staff and resources to tank inspections and enforcement.

Due to many States' experiencing budget shortfalls, LUST funds have been tapped for uses other than LUST-related projects. The State of Illinois and the city of Chicago are experiencing the same fate as many other States and cities across the Nation. The bottom line is that there's not enough Federal dollars being channeled into States to allow them to properly maintain and enforce the LUST cleanup programs.

At the end of fiscal year 2003, there will be a total of $1.9 billion in the LUST Trust Fund which is expected to reach $2.16 billion by the end of 2004. Despite this vast amount of available funding, the President has only requested roughly $72 million from the LUST Trust Fund for LUST cleanup programs for fiscal year 2004 and only a little over 80 percent of that money is allocated to the States. With an estimated 143,000 unaddressed releases reported across the Nation and the States desperate for more funding, the Administration is falling way short on improving the LUST cleanup programs across the Nation.

Leaking underground storage tanks are a serious threat to public health and environmental quality and we need to provide the fund-

ing that will allow the EPA and the States to increase and not weaken protections. However, we also need to demand strong leadership from the EPA when it comes to enforcing the standards that were created to protect public health and the environment. We expect to take up LUST reauthorization in this Congress and in doing so we have an opportunity to clean up the mess created by these tanks by enhancing preventative measures and enforcement tools so that the leaks don't occur in the future.

We owe it not only to our environment, but also to future generations to finish what we set out to do so many years ago and clean up the hazardous waste created by these tanks so that they don't continue to contaminate our drinking water.

I look forward to hearing from the witnesses and I look forward to working toward a solution that will protect public health and the environment.

Thank you, Mr. Chairman.

Mr. GILLMOR. Thank you. Is the ranking member here? Okay. We'll have an opening statement from Mr. Dingell, ranking member of the full committee.

The Chair is pleased to recognize the ranking member of the full committee, Mr. Dingell, for an opening statement.

Mr. DINGELL. Mr. Chairman, I thank you for your courtesy and I commend you for holding this hearing on the leaking underground storage tank program.

Mr. Chairman, this subcommittee held a hearing last May to examine the scope and the effect MTBE has had on ground water throughout this country. During the past 10 years, MTBE, along with other additives such as ethanol, has successfully helped combat air pollution in many areas of the country. One unintended consequence of the use of MTBE as a fuel additive, however, has been ground water contamination from leaking underground storage tanks and other sources.

I look forward today to hearing from our witnesses on how we can strengthen the enforcement of existing tank regulations, as well as finding ways to prevent future leaks from underground storage tanks.

Prevention in the first instance, rather than the costly remediation after a release should be our goal. Unfortunately, releases from underground petroleum storage tanks have already resulted in serious contamination and costly cleanup. In Michigan, the Department of Environmental Quality estimates there are approximately 4200 underground storage tank sites that will require public funding for cleanup with costs ranging as high as $1.7 billion.

EPA has informed us that one of the biggest challenges we face nationally is the number of cleanups dropped 28 percent in fiscal year 2002. This leaves us with a national backup of 143,000 releases waiting to be cleaned up. Not surprisingly, the budget this year falls short in addressing this issue. The leaking underground storage tank or LUST Trust Fund was created by Congress in 1986. It is financed by a tenth of a cent gallon tax on motor fuels. The LUST Trust Fund was specifically created to address contamination from leaking underground storage tanks at gas stations and other facilities which are also often the source of the MTBE and other petroleum contamination in ground water.

There is currently a surplus of $1.9 billion in the Trust Fund. It is estimated to grow under the President's budget to $2.1 billion by the end of fiscal year 2004. However, the President's budget request is only for $72 million. This request is only 40 percent of the $180 million collected annually from the gasoline tax. Without using the money available in the Trust Fund, and the annual tax receipts, many abandoned gas stations contaminated with petroleum and MTBE releases across the country will not be cleaned up.

Mr. Chairman, I am pleased that our staffs have been working together in a bipartisan manner to address the funding, enforcement and prevention issues. I note that the Senate Environment and Public Works Committee has already ordered similar legislation reported. That's S. 195. In order to move this legislation expeditiously, we should complete our negotiations, follow regular order and conference a bill with the Senate version.

Again, Mr. Chairman, I commend you and I thank you for your recognition.

Mr. GILLMOR. Thank you, Mr. Dingell, and we'll recognize the gentleman from Indiana for an opening statement, but before that, I'll ask unanimous consent that all members may be permitted to enter opening statements. Is there an objection? Chair hearing none, so ordered.

The gentleman from Indiana.

Mr. BUYER. I waive and reserve.

[Additional statemments submitted for the record follow:]

PREPARED STATEMENT OF HON. W.J. "BILLY" TAUZIN, CHAIRMAN, COMMITTEE ON ENERGY AND COMMERCE

Thank you, Chairman Gillmor.

For quite a few Congresses now this Committee has been attempting to make improvements in the Federal leaking underground storage tank program, and this hearing will begin this process once again. Our counterpart Senate committee acted on a bill just last week, so I hope that this is the year when we can finally get something done.

There are two critical goals I have for improving the LUST program. First, we need to ensure that Federal appropriations for the program continue to go where those dollars can do the most good: that's to the States. The large majority of States have EPA-approved LUST programs and virtually all States have sophisticated laws, rules, and regulations governing storage tank maintenance and remediation. Literally tens of thousands of tanks are still awaiting cleanup, and getting money to the States is the best way to address them.

Once we get money to the States, we need to be sure that they can use that funding in ways that they think will best prevent and, if necessary, remediate leaking tanks. Unfortunately, current law is ambiguous on this point, and I will be curious to learn from the witnesses what kinds of flexibility Congress should afford to the States in allocating their money.

The second thing I'll be looking for in legislation is what, if any, increased regulation of tanks and tank operators is necessary. It's been nearly twenty years since Congress enacted the storage tank program. We need to take a look at whether there are any sensible new requirements that we should be imposing on the regulated community.

PREPARED STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Thank you Mr. Chairman for holding this hearing today. This Subcommittee has had hearings on Leaking Underground Storage tanks in the past but today I'm interested in hearing from our witnesses to learn what has changed since the last time we visited this issue.

But, I'm concerned that we'll hear that this program continues to be riddled with problems. From testimony submitted to the Subcommittee, I understand that there continues to be a need for additional resources for states to carry out a thorough and effective LUST program. Both the GAO testimony and Mr. Galbraith's testimony identify numerous areas where the needs in this program far outweigh the funding resources that have been made available to the states. I am very concerned about references in the testimony to poorly trained staff, lack of clean up money and shortages in enforcement capabilities—all which has lead to poor maintenance track records and potential drinking water contamination—which continues to be a problem in my state of New Jersey.

I also am concerned that some of these LUST program problems arise from the lack of stringent requirements—including operator training, timely inspections and secondary containment requirements for all current and new underground storage tanks. We need to create requirements that address these shortcomings but at the same time we need to be sure to provide the necessary resources for states to meet these requirements. Anything less allows for a continuation of the current problems—leaking tanks and failures in compliance.

Today, I am also interested in hearing from EPA on how they plan to address the more than 200,000 tanks that are not being operated and maintained properly today. Additionally, I would also like to learn how EPA plans to address the more than 140,000 reported releases that have not had cleanup completed and the hundreds of thousands of unused underground storage tanks that either leak or pose a threat to leaks because they are not being inspected.

Finally, I would like to note that I am at a loss to understand why the Administration has continued to under fund this program. With nearly $2 billion in the trust fund to clean up LUST sites across the country and hundreds of thousands of sources of contamination identified, the President's budget request for FY 2004 has dedicated only $72 million to LUST. I am interested in hearing from Mr. Galbraith, if he believes his state can operate a thorough LUST program with funding maintained at the same level as last year. We need to address this issue in order to ensure that clean up throughout the county happens now. The resources are available.

Mr. Chairman, this subcommittee needs to work together to address the LUST program. I am discouraged to learn that this Subcommittee may relinquish its control of this program by allowing LUST to be included in the fuels provision of the energy bill. This Subcommittee should continue to work on resolving many of the issues I've raised in order to improve and enhance this important program. Thank you and I hope we can accomplish that goal.

Mr. GILLMOR. The gentleman waives and reserves. Our first witness is Mr. Clifford Rothenstein, the Director of the Office of Underground Storage Tanks for U.S. EPA.

STATEMENTS OF CLIFF ROTHENSTEIN, DIRECTOR, OFFICE OF UNDERGROUND STORAGE TANKS, U.S. ENVIRONMENTAL PROTECTION AGENCY; JOHN B. STEPHENSON, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, U.S. GENERAL ACCOUNTING OFFICE; AND EDWARD GALBRAITH, TANKS SECTION CHIEF, MISSOURI DEPARTMENT OF NATURAL RESOURCES, LAND AND AIR DIVISION

Mr. ROTHENSTEIN. Thank you. Good afternoon, Mr. Chairman, members of the subcommittee. I am Cliff Rothenstein, the Director of EPA's Office of Underground Storage Tanks. I'm pleased to be here today. We've made a lot of progress in our program and I'd like to highlight some of our accomplishments, identify some of our newest challenges, and briefly describe what we're doing to address some of these challenges.

Nineteen years ago, Congress responded to the growing problem of leaking underground petroleum tanks by enacted Subtitle I of the Resource Conservation and Recovery Act. EPA, States, tribes and the private sector responded to Congress' mandate by working together to clean up leaking tanks and prevent future leaks.

Through this strong partnership we have made significant progress in protecting the public from underground storage tank problems.

I'd like to highlight some of our most noteworthy accomplishments. When this program was first established, there were over 2 million tanks, many of which were bare steel and corroding. Together, EPA and the States have closed 1.5 million of these substandard tanks. By doing so, these tanks can no longer contaminate our drinking water, ground water or soil. Together, we've cleaned up almost 285,000 leaking tanks or about two thirds of all leaks. Together, we've gotten most tank owners to upgrade their tanks and install leak detection equipment and because of this effort, the number of new leaks has sharply declined from about 30,000 in 1998 to about 8500 last year, a 70 percent drop.

Through these statistics, it's easy to see just how much progress we have made, but our work is not finished. One of the toughest challenges and many of you have raised this, is MTBE, both preventing new releases and cleaning up existing MTBE contamination. This is a significant undertaking in many, many communities, especially communities who have lost some or all of their drinking water due to MTBE. We're working very closely with many communities to answer their technical questions about MTBE and in some cases provide financial support.

MTBE though isn't our only challenge. Although we've made great strides cleaning up leaking underground tanks, we still have almost 143,000 releases that still need to be cleaned up. We and the States are committed to clean up these releases more quickly. Together, we're working on an initiative to accelerate the pace of clean ups by promoting performance-based clean up contracting which can save both time and money. Risk-based corrective action, which is setting clean up levels appropriate for the type of land use and multi-site clean up agreements, so we can bundle several sites together into one package so we can use our resources more efficiently.

We're also looking at our clean up challenge with an eye toward making contaminated land available for reuse. One of our greatest opportunities for reuse are old, abandoned gas stations. That is why we created UST fields, another great acronym, sorry, with 50 pilots underway in 30 States and 3 tribes. These pilots are just the beginning. Our Nation's new brownfields law includes greater opportunities and money to clean up and redevelop old gas stations and other abandoned petroleum sites. By providing some seed money to States, cities, tribes, we're helping them assess, clean up and reuse abandoned properties.

In addition to these efforts, we must also prevent future leaks through greater compliance. Although we've made considerable progress by getting most tank owners to install better equipment, we must now make sure that the equipment is being operated properly. We're working closely with States on several creative ways to improve compliance through the use of third party inspectors, multi-site compliance agreements, more intensive training for State and EPA inspectors and better guidance to gas station owners and operators so they know how to maintain their equipment and what to do when a problem occurs.

Finally, over the past couple of years, we've learned that despite our best efforts, some leaks are coming from new and upgraded tanks. To get a better handle on the source and causes of these leaks, we've been working closely with States, universities and industry and some trends are emerging.

On the positive side, today's underground tanks are much better than the older tanks. Unfortunately, a number of problems remain. Many are caused by human error, such as owners or operators failing to operate their leak detection equipment correctly or failing to prevent spills and overfills during deliveries. But leaks from pipes, dispensers and some tanks themselves are also a problem. We're currently summarizing what we know and look forward to working with States, industries and others to identify appropriate remedies.

In summary, Mr. Chairman, and members of the subcommittee, we're very pleased with the significant progress we've made in closing substandard tanks, improving compliance and cleaning up releases. Nevertheless, we still have a lot of work ahead. I commend the subcommittee for focusing on the challenges that we are facing and I look forward to working with you and other members to address the work before us.

This concludes my testimony. I ask that my full statement be included in the record and would be happy to answer any questions.

[The prepared statement of Cliff Rothenstein follows:]

PREPARED STATEMENT OF CLIFF ROTHENSTEIN, DIRECTOR, OFFICE OF UNDERGROUND STORAGE TANKS, U.S. ENVIRONMENTAL PROTECTION AGENCY

Good afternoon Mr. Chairman and Members of the Subcommittee. I am Cliff Rothenstein, EPA's Director of the Office of Underground Storage Tanks. I am pleased to appear today to discuss some of the challenges facing the Underground Storage Tank program and describe the work EPA has undertaken to address those challenges.

BACKGROUND

In 1984, Congress responded to the increasing threat to groundwater posed by leaking underground storage tanks (USTs) by adding a new subtitle to the Resource Conservation and Recovery Act (RCRA). Subtitle I directed EPA to develop a comprehensive regulatory program for USTs storing petroleum or certain hazardous substances to protect the environment and human health from UST releases. EPA's 1988 regulations set minimum standards for new tanks and required owners of substandard tanks to either upgrade or close them. The regulations addressed a variety of other requirements including those related to leak detection and the cleanup of tank releases.

In 1986, Congress created the Leaking Underground Storage Tank (LUST) Trust Fund to provide a funding source for the UST cleanup program. The LUST Trust Fund provides funding for EPA to help administer the nationwide LUST program and implement the program in Indian Country. In 1998, Congress also created explicit authority for EPA to provide LUST funding for Federally recognized Indian Tribes. The majority of LUST Trust Fund monies are provided to states by EPA to oversee cleanups, take enforcement actions at leaking tank sites, and undertake state-lead cleanups when a party responsible for the leaks cannot be found or is unwilling or unable to clean up the site. EPA provides approximately 81 percent of the annual LUST Trust Fund congressional appropriation to states.

Since its inception in the mid-1980's, the EPA UST program has developed an effective partnership with states to implement the program. From the outset, the program was designed to be implemented primarily by the states. In general, all states implement an underground storage tank program using grants and cooperative agreements from EPA. Thirty two states, the District of Columbia, and Puerto Rico, have been formally approved by EPA to operate their own UST programs in lieu of the Federal UST program. EPA retains the authority to implement and enforce a state's UST program in authorized states and to implement and enforce the Fed-

eral program in unauthorized states. EPA continues to work with unapproved states to help them improve their programs so that they are eligible for EPA approval.

PROGRAM PROGRESS

At the inception of the UST program, there were more than 2 million regulated tanks. Many of them were old steel tanks suffering from corrosion. To date, more than 1.5 million substandard tanks have been closed. Currently, there are approximately 698,000 active USTs, nearly all of which now have required leak detection and prevention equipment. Further, states report that approximately 70 percent of these USTs are being operated and maintained correctly.

EPA and the States have made substantial progress in cleaning up releases from leaking USTs. Since the inception of the program, approximately 427,000 petroleum releases have been reported from USTs. Of these, 384,000 have had cleanup started and cleanup has been completed for 285,000 of these releases. In other words, cleanup has been started at 90 percent of release sites and completed at 67 percent. Considerable progress has also been made in reducing the number of new releases. Since 1990, reported releases averaged approximately 30,000 per year. By fiscal year 2002, the number of reported UST releases had dropped to 8,400.

PROGRAM CHALLENGES

Although the UST program has made substantial progress, there are additional challenges that need to be addressed. There are still approximately 140,000 reported releases that have not had cleanup completed and there are hundreds of thousands of abandoned USTs that need to be addressed. Further, roughly 30 percent of active USTs do not comply with leak prevention and prevention requirements. Finally, releases are being reported from new and upgraded systems.

The vast majority of regulated USTs contain petroleum products that include toxic substances such as benzene, toluene, and naphthalene. UST releases therefore can pose a threat to human health and the environment. Further complicating the cleanup of UST releases is the presence of methyl tertiary-butyl ether (MTBE). Communities across the country are finding MTBE contamination in their groundwater. For example, the city of Santa Monica, California has lost a significant portion of its drinking water supply due to MTBE contamination caused by leaking USTs and in Long Island, New York, MTBE contamination has affected more than 160 private and public wells and threatens Long Island's sole source aquifer.

More than 140,000 confirmed releases must still be cleaned up, and more releases are reported every year. In addition to addressing these known and future releases there are abandoned USTs that must be found, removed and cleaned up. The General Accounting Office (GAO) has estimated that there is petroleum contamination at approximately 200,000 brownfield sites. The UST program not only needs to clean up releases, but must also focus on prevention. EPA believes that preventing releases before they occur will help provide efficient and effective protection of human health and the environment.

GAO has also reported that approximately 29 percent of USTs were not operated or maintained properly, finding particular problems with leak detection systems and anti-corrosion equipment. While most USTs have equipment that complies with program requirements, proper operation and maintenance remains a problem. Owners and operators of USTs often have many responsibilities in their place of business that compete with the time needed to properly operate and maintain UST systems. Additional compliance assistance, operation and maintenance training, system inspections, and enforcement are needed to improve the operation and maintenance of UST systems.

Finally, new and upgraded UST systems are being found to leak. State data indicates that approximately 2 percent of facilities have leaks in new or upgraded tanks. The challenge to the UST program is to determine the cause of current problems, identify which problems warrant further action, and develop appropriate measures to address them.

PROGRAM INITIATIVES

EPA has undertaken four initiatives to address the challenges facing the UST program: (1) faster cleanups, (2) USTfields for abandoned tanks, (3) improving compliance, and (4) evaluating UST system performance.

Working with EPA regions and states, the UST program has developed cleanup goals to promote faster cleanups. EPA has also created a web-based tool box for promoting pay-for-performance contracting methods, which in many cases has shortened cleanup times and reduced cleanup costs by 30 to 50 percent. In addition, EPA is encouraging the development of voluntary multi-site cleanup agreements between

state or Regional EPA programs and private, Federal, or Tribal owners of multi-site leaking USTs. Developing multi-site agreements should produce program economies of scale that will allow faster cleanups. Finally, EPA is partnering with the State of New York on a project to optimize the performance of remedial systems at LUST sites.

EPA's USTfields initiative targets funding for properties contaminated with petroleum products from abandoned USTs that had not been eligible for funding through the Agency's Brownfields program. In November 2000, EPA announced its first ten USTfields pilot grants, and its next 40 in August 2001. The report Recycling America's Gas Stations, released last year, describes the progress of the first 10 pilots. In January 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act into law. The Act authorizes significant new funding for the cleanup of petroleum contaminated properties. The USTfields pilots will provide valuable lessons learned as we continue to address abandoned petroleum contaminated properties. EPA received over 1200 applications for this year's competition and will award the first grants under the new law this summer.

EPA is committed to improving compliance with UST program requirements. Working with State and Tribal partners, EPA is focusing on the need for improved operation and maintenance and improving the quality of compliance data. Improved compliance data will reveal the percentage of facilities properly monitoring their systems, rather than simply having the proper equipment in place. EPA is also looking at a number of new approaches to improve compliance including third-party inspections and the use of environmental results programs such as the one used by the State of Massachusetts for several commercial sectors. These alternative approaches to inspections require UST owners and operators to confirm and certify that their leak prevention and detection equipment is being operated and maintained properly. Finally, the training of both state inspectors and owners and operators is a continued need. EPA is working with its state partners to identify the best approaches to increase training opportunities, including greater use of universities and internet-based interactive training.

EPA is also focusing on the evaluation of UST system performance to help determine the sources and causes of releases, as well as the reasons for leak detection failures. The Agency is working with various states to evaluate the performance of UST systems, including partnering with 24 states to perform leak analysis at new release sites to determine the source and cause of the release. In addition, EPA gathered and analyzed more than 50 reports or studies generated by states and the private sector and met with numerous state program and industry experts to identify the strengths and weaknesses of current UST systems.

The evaluation of UST system performance has found that there continue to be faults in UST systems including the design, installation, operation, and maintenance of various components. Many of the problems appear to be caused by human error or lack of oversight, such as failure to test and maintain corrosion protection and leak detection systems. UST system piping has been identified as a major concern, as have spills and overflows during product delivery and releases from dispensers. Release detection is not always reliable and is reactive by design, not registering the leak until it has entered the environment, unless there is a secondary containment system with interstitial monitoring, which 21 states now require. Finally, there is emerging evidence that vapors are escaping from new and upgraded UST systems, which can contaminate groundwater.

In addition, EPA has undertaken several efforts to assist states in addressing MTBE contamination. EPA has provided funding and technical support to several communities, including Santa Monica, California; South Lake Tahoe, California; Long Island, New York; Pascoag, Rhode Island; and Hopkins, South Carolina. Further, EPA now maintains a website that documents MTBE cleanup case studies to provide states a nationwide cleanup resource. Finally, EPA is conducting a demonstration of cleanup technologies for MTBE contaminated soils, groundwater, and drinking water at Port Hueneme, California and in Pascoag, Rhode Island.

CONCLUSION

Significant progress has been made on a number of UST program challenges including the closure of substandard tanks, upgrading equipment, improving compliance, and cleaning up releases. However, a great deal of work remains to complete UST cleanups and reduce future releases through improved UST system operation, maintenance and training. We look forward to working with Congress to address these remaining challenges.

Mr. GILLMOR. Thank you, Mr. Rothenstein. Your full statement will be included in the record.

Mr. John Stephenson, who is Director of Natural Resources and Environment for the U.S. General Accounting Office.

STATEMENT OF JOHN B. STEPHENSON

Mr. STEPHENSON. Thank you, Mr. Chairman, Ms. Solis and members of the subcommittee, I'm here to discuss our work on the nationwide problem of leaking underground storage tanks and the recommendations we made in our May 2001 report to address the problem.

As you know, studies continue to show that tanks leaking petroleum products and other hazardous substances contaminate the soil, our water supplies and can pose health risks as well as a costly clean up burden. Since our original study, we've examined and updated program data and responses to our recommendations, as well as other current information. This examination shows that while the EPA, as you've heard, has taken a number of corrective actions, the problems we identified in our report persist and have not been comprehensively resolved.

As you know, Congress established the tank program in 1984 to protect the public from potential leaks from the then more than 2 million tanks, mostly gas stations across the country. Under the program, tank owners were required to install new leak detection equipment by the end of 1993, and leak prevention equipment by the end of 1998. If these conditions were not met, owners had to close or remove their tanks. EPA has authorized 32 States to implement the program with agency oversight and monitoring while 16 other States operate their own programs under their own laws with limited EPA oversight.

Congress also created the Trust Fund in 1986 to help cover clean up costs for owners or operators that could not pay. The Trust Fund is replenished through a tenth of a cent per gallon gasoline tax and at the end of this last fiscal year there was $1.9 billion, as you've heard in the Trust Fund. Congress annually appropriates about $70 million from that fund.

Because the States are primarily implementing the tank program, the information in our report was based on a survey we conducted of all 50 States and the District of Columbia.

Now here's what we found. As you've already heard, about 1.5 million tanks have been permanently closed since the program began, leaving roughly 700,000 active tanks. About 89 percent of these tanks were in compliance with the equipment requirements, however, we found that almost 30 percent, more than 200,000 tanks were not being operated and maintained properly, thus increasing the chance for leaks. Indeed, 15 States reported in our survey that leak detection equipment was frequently turned off or improperly maintained.

For these and other reasons, States estimated that even tanks in compliance with the required equipment may continue to leak.

In fact, 34 States reported the potential for such leaks. However, neither EPA nor the States can accurately estimate the full extent of the problem because many of them do not inspect tanks often enough to know. In fact, we found that about 60 percent of the

States do not meet the minimum inspection requirement recommended by EPA of at least once every 3 years.

We also found that most States can levy citations or fines, but that only about half have the authority to prohibit fuel deliveries which we view as one of the most effective tools for ensuring compliance with the program requirements.

In general, States said that they did not have the funding, trained staff or authority to conduct more inspections or to more strongly enforce compliance. States still face a considerable workload in ensuring that contamination from leaking tanks is prevented where possible and cleared up if not. This includes both the potentially large, but unknown workload of abandoned tanks, not yet identified, as well as the inactive tanks that have been identified, but not yet removed.

To address these problems, we recommended improving training, better inspections and enforcement and special attention to tanks not yet upgraded, closed or removed. We also suggested that Congress consider: (1) expanding use of the Trust Fund to include inspection and enforcement activities; (2) authorizing EPA to require inspections at least once every 3 years—I think we said periodically, but we were adhering to the EPA minimum (3) authorizing EPA to prohibit fuel deliveries to noncompliant tanks; and (4) requiring States to adopt this enforcement authority.

We hope that any underground storage tank legislation would, as a minimum, consider these recommendations.

Mr. Chairman, that concludes my statement. I'll be happy to answer any questions.

[The prepared statement of John B. Stephenson follows:]

PREPARED STATEMENT OF JOHN STEPHENSON, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, UNITED STATES GENERAL ACCOUNTING OFFICE

Mr. Chairman and Members of the Subcommittee: I am here today to discuss our work on the nationwide problem of leaking underground storage tanks (UST) and the recommendations that we made to address this problem in our May 2001 report on the Environmental Protection Agency's (EPA) tank program.[1] As you know, studies show that tanks leaking petroleum products and other hazardous substances contaminate the soil or water supplies and can pose health risks, such as nausea and kidney damage, as well as a costly cleanup burden. Since our original report, we have continued to examine and update EPA program data and responses to our recommendations, along with other information. This examination shows that while the agency has taken a number of corrective actions, the problems that we identified in May 2001 persist and have yet to be comprehensively resolved.

In 1984, the Congress created the UST program to protect the public from potential leaks from the more than 2 million operating tanks located across the nation, mostly at gas stations. Under the program, EPA required tank owners to install new leak detection equipment by the end of 1993 and new spill-, overfill-, and corrosion-prevention equipment by the end of 1998. If these conditions were not met, owners had to close or remove their tanks.

EPA has authorized 32 states to implement the program with agency oversight and monitoring, while 16 states operate their own program under their own laws with limited EPA oversight. To help states implement their programs, EPA provides all states funding (about $187,000 per state). In addition, EPA retains direct authority over a small number of tanks primarily located on Indian tribal lands. In 1986, Congress created a trust fund to help EPA and the states cover tank cleanup costs that owners and operators could not afford or were reluctant to pay. The fund is

[1] U.S. General Accounting Office, *Environmental Protection: Improved Inspections and Enforcement Would Better Ensure the Safety of Underground Storage Tanks,* (Washington, D.C.: May 4, 2001).

replenished partly through a $.001/gallon tax on gasoline and other fuels. At the end of fiscal year 2002, the fund had a balance of about $1.9 billion.

Because the states are primarily implementing the provisions of the program, we conducted a survey of all 50 states and the District of Columbia in the fall of 2000 to determine the extent to which tanks comply with program requirements, how EPA and the states inspect tanks and enforce requirements, and whether upgraded tanks still leak. We based the findings of our report, which we are discussing today, primarily on the survey and our visits to three EPA regions with the largest number of tanks to monitor. In addition, since the release of our report, we have updated our findings and reviewed states' progress in cleaning up tank releases. In summary, we found that:

• About 89 percent of tanks that states monitor had the required leak prevention and detection equipment installed, according to our estimates at the time of our 2002 survey. EPA data at the time indicated that about 70 percent of the tanks its regions managed on tribal lands had the required equipment, although not all regions could even attest to the location of all tanks on these lands to ensure they had been updated. Furthermore, we estimated that almost 30 percent of the tanks—more than 200,000—were not being operated and maintained properly, thus increasing the chance of leaks and posing health risks. For example, 15 states reported that leak detection equipment was frequently turned off or improperly maintained. For these and other reasons, states reported that leaks persisted even in the tanks with the required equipment installed. In December 2002, EPA reported that 19 to 26 percent of the nation's underground storage tanks still have operational problems, although agency program managers think these numbers are understated because of inconsistent reporting from the states. EPA is working with the states to develop an accurate baseline of all tanks that are not in compliance. Both EPA and the states attribute operational and maintenance problems primarily to poorly trained staff. We recommended that EPA regions work with each of the states in their jurisdiction to determine specific training needs and ways to meet them. In response, EPA has been working with states and contractors to develop less costly training opportunities, such as Internet-based training. We also suggested that the Congress consider increasing the amount of funds it appropriates for states from the trust fund and allow them to spend a limited portion on training.

• While EPA and the states have evidence that tanks continue to leak, they cannot determine the full extent of the problem because some of them do not physically inspect all tanks. In fact, at the time of our survey, over half of the states were not inspecting all of their tanks frequently enough to meet the minimum rate recommended by EPA—at least once every 3 years, and only one of the three regions that we visited met this rate. In addition, 27 states lacked the authority to prohibit fuel deliveries to stations with problem tanks—one of the most effective tools for ensuring compliance with program requirements—and relied instead on issuing citations and fines to violators. States said they did not have the available funding, staff, or authority to conduct more inspections or more strongly enforce tank compliance. We recommended that EPA negotiate inspection goals with each state. While EPA has not yet set such inspection goals, it has been working with states to use third-party inspectors and other options to increase their inspection coverage. We also suggested that the Congress may want to (1) consider increasing the amount of funds it appropriates from the trust fund and allow states to spend a limited portion on inspections and enforcement, (2) authorize EPA to require physical inspections of all tanks on a periodic basis, (3) authorize EPA to prohibit fuel deliveries to non-compliant tanks, and (4) require states to adopt this enforcement authority.

• States still face a considerable workload in ensuring that contamination from leaking tanks, including those that leak MTBE, is cleaned up, and that funding is available to address these cleanups. As of September 30, 2002, states and EPA regions had to ensure the completion of ongoing cleanups for about 99,427 leaks and initiation of cleanups for another 43,278. States also face a potentially large, but unknown, future workload in addressing releases from both abandoned tanks that have not been identified and inactive tanks that have been identified but not removed. In addition, in a June 2002 Vermont Department of Environmental Conservation survey of state funding programs,[2] nine states reported that they did not have adequate funding to cover their current cleanup program costs. Therefore, in the future, some states may need to seek additional federal support when they turn their attention to addressing the many unidentified abandoned tanks nationwide

[2] Vermont Department of Environmental Conservation, *A Summary of State Fund Survey Results* (June 2002). The Department conducts this survey annually.

that have no financially viable owners or operators to pay for cleanup, as well as increasing and costly cleanup of methyl tertiary butyl ether (MTBE).

MOST TANKS HAVE BEEN UPGRADED, BUT MANY ARE NOT PROPERLY OPERATED AND MAINTAINED

Based on state responses to our survey, we estimated that nearly 617,000, or about 89 percent of the approximately 693,000 regulated tanks states manage, had been upgraded with the federally required equipment by the end of fiscal year 2000. In comparison, EPA data at that time showed that about 70 percent of the total number of tanks its regions regulate on tribal lands had been upgraded, but the accuracy of this data varied among the regions. For example, one region reported that it had no information on the actual location of some of the 300 tanks it was supposed to regulate and therefore could not verify whether these tanks had been upgraded.

Even though most tanks have been upgraded, we estimated from our survey data that more than 200,000 of them, or about 29 percent, were not being properly operated and maintained, increasing the risk of leaks. EPA's most current program data from the end of fiscal year 2002 show that these conditions have not changed significantly; tank compliance rates range from an estimated 19 to 26 percent. However, program managers estimate these rates are too high because some states have not inspected all tanks or reported their data in a consistent manner. The extent of operational and maintenance problems we identified at the time of our survey varied across the states, as figure 1 illustrates.

Some upgraded tanks also continue to leak, in part because of operational and maintenance problems. For example, in fiscal year 2000, EPA and the states confirmed a total of more than 14,500 leaks or releases from regulated tanks, with some portion coming from upgraded tanks. EPA's most recent data show that the agency and states have been able to reduce the rate of new leaks by more than 50 percent over the past 3 years.

The states reported a variety of operational and maintenance problems, such as operators turning off leak detection equipment. The states also reported that the majority of problems occurred at tanks owned by small, independent businesses; non-retail and commercial companies, such as cab companies; and local governments. The states attributed these problems to a lack of training for tank owners, installers, operators, removers, and inspectors. These smaller businesses and local government operations may find it more difficult to afford adequate training, especially given the high turnover rates among tank staff, or may give training a lower priority. Almost all of the states reported a need for additional resources to keep their own inspectors and program staff trained, and 41 states requested additional technical assistance from the federal government to provide such training.

EPA has provided states with a number of training sessions and helpful tools, such as operation and maintenance checklists and guidelines. According to program managers, the agency recognizes that many states, because of their tight budgets, are looking for cost-effective ways of providing training, such as Internet-based training. To expand on these efforts, we recommended that EPA regions work with their states to identify training gaps and develop strategies to fill these gaps. In addition, we suggested that the Congress consider increasing the amount of funds it provides from the trust fund and authorizing states to spend a limited portion on training.

MOST STATES DO NOT MEET EPA'S RECOMMENDATION TO INSPECT ALL TANKS EVERY 3 YEARS OR HAVE THE ENFORCEMENT TOOLS NEEDED TO IDENTIFY AND CORRECT PROBLEMS

According to EPA's program managers, only physical inspections can confirm whether tanks have been upgraded and are being properly operated and maintained. However, at the time of our survey, only 19 states physically inspected all of their tanks at least once every 3 years—the minimum that EPA considers necessary for effective tank monitoring. Another 10 states inspected all tanks, but less frequently. The remaining 22 states did not inspect all tanks, but instead generally targeted inspections to potentially problematic tanks, such as those close to drinking water sources. In addition, one of the three EPA regions that we visited did not inspect tanks located on tribal land at this rate. According to EPA program managers, limited resources have prevented states from increasing their inspection activities. Officials in 40 states said that they would support a federal mandate requiring states to periodically inspect all tanks, in part because they expect that such a mandate would provide them needed leverage to obtain the requisite inspection staff and

funding from their legislatures. Figure 2 illustrates the inspection practices states reported to us in our survey.

While EPA has not established any required rate of inspections, it has been encouraging states to consider other ways to increase their rate of inspections, for example by using third-party inspectors, and a few have been able to do so. However, to obtain more consistent coverage nationwide, we suggested that the Congress establish a federal requirement for the physical inspections of all tanks on a periodic basis, and provide states authority to spend trust fund appropriations on inspection activities as a means to help states address any staff or resource limitations.

In addition to more frequent inspections, a number of states said that they needed additional enforcement tools to correct problem tanks. As figure 3 illustrates, at the time of our survey, 27 states reported that they did not have the authority to prohibit suppliers from delivering fuel to stations with problem tanks, one of the most effective tools to ensure compliance. According to EPA program managers, this number has not changed.

EPA believes, and we agree, that the law governing the tank program does not give the agency clear authority to regulate fuel suppliers and therefore prohibit their deliveries. As a result, we suggested that the Congress consider (1) authorizing EPA to prohibit delivery of fuel to tanks that do not comply with federal requirements, (2) establishing a federal requirement that states have similar authority, and (3) authorizing states to spend limited portions of their trust fund appropriations on enforcement activities.

STATES HAVE MADE PROGRESS IN CLEANING UP LEAKS BUT STILL FACE A POTENTIALLY LARGE WORKLOAD; SOME MAY NEED FEDERAL FUNDS TO HELP ADDRESS IT

At the end of fiscal year 2002, EPA and states had completed cleanups of about 67 percent (284,602) of the 427,307 known releases at tank sites. Because states typically set priorities for their cleanups by first addressing those releases that pose the most risks, states may have already begun to clean up some of the worst releases to date. However, states still have to ensure that ongoing cleanups are completed for another 23 percent (99,427) and that cleanups are initiated at a backlog of 43,278 sites. EPA has also established a national goal of completing 18,000 to 23,000 cleanups each year through 2007. However, in addition to their known workload, states may likely face a potentially large but unknown future cleanup workload for several reasons: (1) as many as 200,000 tanks may be unregistered or abandoned and not assessed for leaks, according to an EPA estimate;[3] (2) tens of thousands of empty and inactive tanks have not been permanently closed or had leaks identified; and (3) some states are reopening completed cleanups in locations where MTBE was subsequently detected.

This increasing workload poses financial challenges for some states. In the June 2002 Vermont survey of state funding programs, nine states said they did not have adequate funding to cover their current program costs, let alone unanticipated future costs. For example, while tank owners and operators have the financial responsibility for cleaning up contamination from their tanks, there are no financially viable parties responsible for the abandoned tanks that states have not yet addressed. In addition, MTBE is being detected nationwide and its cleanup is costly. States reported that it could cost more to test for MTBE because additional steps are needed to ensure the contamination is not migrating farther than other contaminants, and MTBE can cause longer plumes of contamination, adding time and costs to cleanups. If there are no financially viable parties responsible for these cleanups, states may have to assume more of these costs.

In closing, the states and EPA are taking steps to address the tank problems that we have identified, but they still cannot ensure that all regulated tanks have the required equipment to prevent health risks from fuel leaks, spills, and overfills or that tanks are safely operated and maintained. Many states do not inspect all of their tanks to make sure that they do not leak, nor can they prohibit fuel from being delivered to problem tanks. Finally, a number of states do not have adequate funds for their programs now, and more of them may face financial challenges in the future as they address leaks from abandoned tanks and leaks that contain MTBE. We have suggested a number of ways that both EPA and the Congress could help correct these problems and better ensure the safety of public health.

Mr. Chairman, this concludes my statement. I would be pleased to respond to any question you or Members of the Subcommittee may have.

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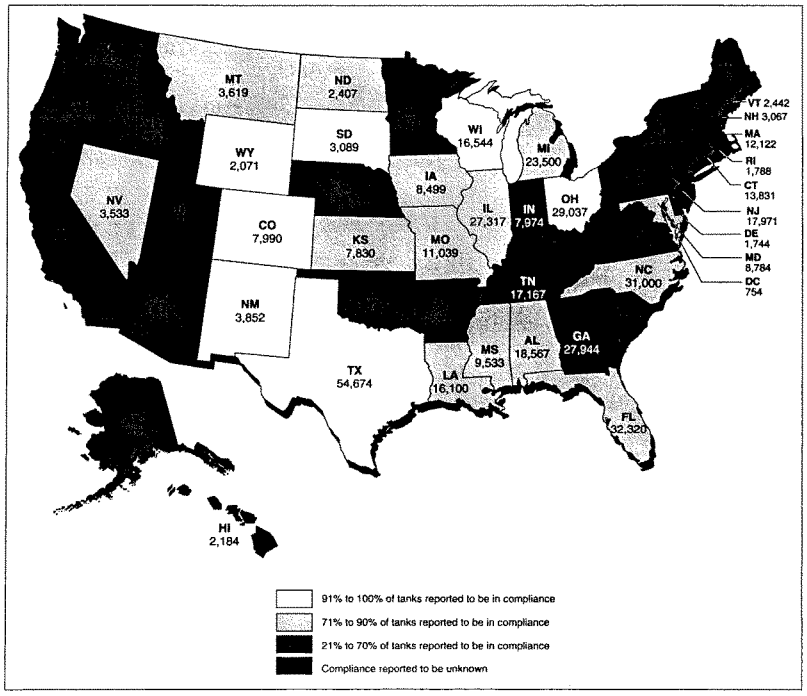
[3] *Report to Congress on Compliance Plan for the Underground Storage Tank Program,* U.S. Environmental Protection Agency (EPA 510-R-00-001, June 2000).

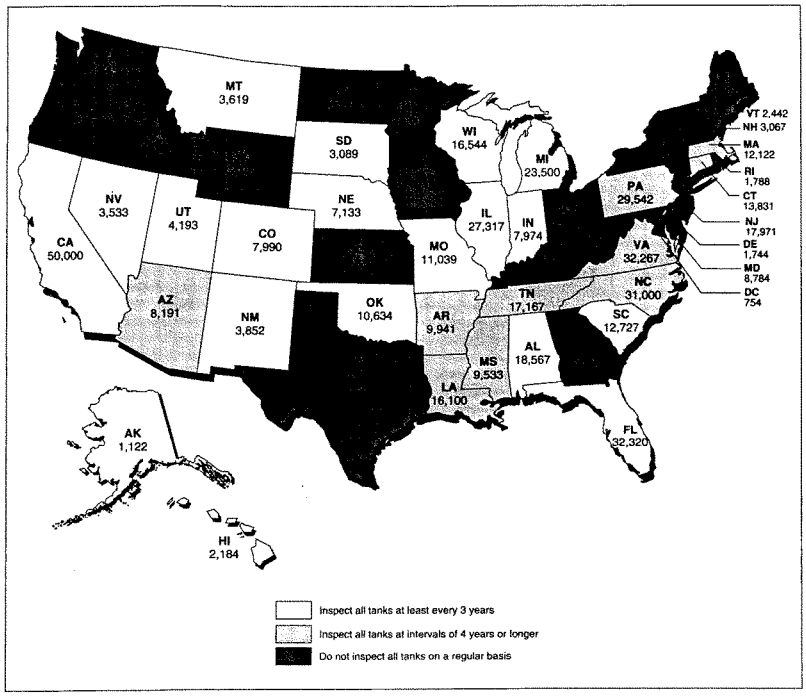
Figure 1: Compliance With Federal Equipment Requirements Varies Among States (total active tanks per state)



Source: GAO.

Note: EPA implements the federal tank program in Idaho and enforces certain requirements in New York because these states lack some or all of the necessary laws.

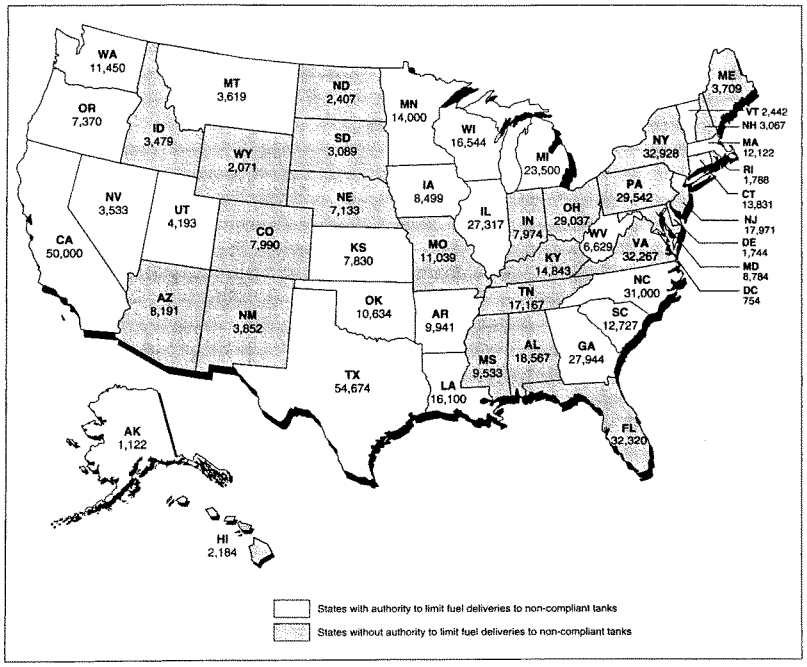
Figure 2: Frequency of Inspections Varies Among States (total active tanks per state)



Source: GAO

Note: EPA implements the federal tank program in Idaho and enforces certain requirements in New York because these states lack some or all of the necessary laws.

Figure 3: Many States Lack Authority to Prohibit Fuel Deliveries to Problem Tanks (total active tanks per state)



Source: GAO.

Note: EPA implements the federal tank program in Idaho and enforces certain requirements in New York because these states lack some or all of the necessary laws.

Mr. GILLMOR. Thank you, Mr. Stephenson.

And Mr. Edward Galbraith who is the Tanks Section Chief of the Missouri Department of Natural Resources.

STATEMENT OF EDWARD GALBRAITH

Mr. GALBRAITH. Thank you. Good afternoon, Mr. Chairman and members of the subcommittee. I'd Ed Galbraith. I'm Chief of the Tanks Section for the Missouri Department of Natural Resources.

I am happy to be here today to provide you with a State perspective on implementation of the Federal UST program on lessons learned and ideas for improvement. Missouri, like many other States, is highly dependent upon ground water for its drinking water sources. The toxicity and mobility of gas and diesel fuel in ground water make this a vitally important environmental issue for our State.

As you know, the Federal tank program is divided into a preventative and a clean up portion and I want to say three quick things about the preventative side. The implementation of the preventative program, I think, has been excellent and I think the petroleum community, the petroleum industry and marketers have done an excellent job in acquiring the equipment required for leak detection and upgrade requirements as required by the Federal and State regulation. In Missouri, we implement the Federal program almost identically to the State program.

Although this initial implementation has been good, and I would say very good, the results are unknown. We don't know if we have success yet, because not enough time, not enough data has been accumulated to know if the system is working. However, there are things we can be doing today to ensure that the program will succeed and those things are better outreach and education for tank owners, increased inspections and more resources for enforcement.

Missouri does not believe that a regulatory overhaul is necessary at this time. However, there are practical steps that we can take today that would improve success dramatically. It is incumbent that we, as regulators, partner with tank owners to ensure that they are getting the most effective use of their investments in pollution prevention technology. They've bought the equipment. They've paid for it. Is it working? Are they getting what they paid for? That's our first duty as regulators.

Part of achieving that is increased inspections. The current regulatory program is theoretically sufficient, yet it is highly susceptible to human error. When human error is a major factor, adequate oversight is of great importance. I agree with many of the statements, opening statements that were made and I agree with the gentleman here at this panel that increased inspections are needed, but I would encourage the subcommittee to consider that any mandate on States to periodically inspect tanks every 2 years or every 3 years might cause States to sacrifice quality for quantity unless there are more resources that go with that mandate.

In addition, there are specific tools that have been mentioned that I think could be effective ways to ensure the success of the regulatory program: operator certification programs; licensing requirements for people who install and repair tanks; tag out programs certainly are, bar none, the most effective enforcement tool

that would be available to States. Many States have that provision. Missouri does not.

Again, I would say, I would emphasize that as Congress considers changes to the regulatory program, Missouri would remind them that States are struggling to handle an increasing number of priorities with decreasing resources. With some of the priorities are State driven and some are coming from EPA, we are struggling to meet our commitments today and I would encourage Congress not to impose more mandates without considering the resource issues that go with that.

I want to touch briefly on remediation. The Federal Trust Fund, I'll just call it the Trust Fund because we all know what we're talking about here, has been very successful for States in giving us the resources we need to oversight clean ups, do emergency response, and to actually go in and perform clean ups where an owner is the calcitrant or does not exist in cases where there are high priority releases.

However, the issue of old, abandoned tank sites remains. Most States have established remedial funds to take care of these paths, if you wish to call them that. However, Missouri and many States do not have enough in those funds to handle all of the old abandoned tank sites that are out there. In Missouri, there are thousands of known abandoned tank sites and certainly many hundreds, if not thousands more that we don't even know about yet. Abandoned tank sites pose environmental and health risks: contamination of ground water, leaching offsite into neighboring buildings, soil ingestion for occupants of—future occupants of those sites if they're not cleaned up. They also have social and economic costs. An abandoned tank site is sometimes the first foothold into a blight condition in a neighborhood, especially in our urban areas.

As Cliff mentioned, EPA is currently funding 50 UST field pilot projects nationwide using Trust Fund dollars and Missouri is the recipient of two of those pilots. We commend EPA very highly for this ground breaking effort and I would encourage this committee to tap into the energy and knowledge and the lessons learned from that effort in crafting and addressing this problem of abandoned tanks.

The last issue I want to touch on briefly is above ground storage tanks. I know that the U in LUST means underground, but if we're talking about problems and ways to fix them, legislatively, I would feel irresponsible if I didn't bring this up. If I go out to a site today and gasoline from an underground storage tank has contaminated some family's well, I can use Trust Fund dollars, Federal Trust Fund dollars to replace that drinking water source. If that well is contaminated by gasoline or diesel from an above ground storage tank, I cannot use that money. Above ground storage tanks store the same hazardous material. The gasoline is subject to the same tax. I feel like I'm not able to do my job in circumstances simply because of the circumstance of the locatio of the tank and I think that is a problem that many States are facing.

One of the opening statements talked about getting this job done and not leaving problems for the future. Above ground storage tanks have no requirement for financial responsibility as do underground storage tanks, so they don't always have the financial re-

sources they need. We cannot spend Federal LUST Trust Fund dollars to address these sites. We are creating a whole new category of problem sites for the future. I only want to bring this to the subcommittee's attention because it is a problem that may not have been considered before.

In closing, Missouri appreciates the subcommittee's efforts to consider all these issues and for inviting a State to share its perspective and we encourage you to continue to listen to State voices as you deliberate on proposed solutions.

Thank you very much and I'd be happy to take any questions.

[The prepared statement of Edward Galbraith follows:]

PREPARED STATEMENT OF EDWARD GALBRAITH, CHIEF, PETROLEUM STORAGE TANK SECTION, MISSOURI DEPARTMENT OF NATURAL RESOURCES

Good morning, I am Ed Galbraith. As Chief of the Tanks Section for the Missouri Department of Natural Resources, I am responsible for insuring that Missouri has adequate resources and authority to regulate the operation and closure of underground storage tanks (USTs) and the remediation of petroleum contamination from USTs and aboveground storage tanks (ASTs) in Missouri. Our state does not have "State Program Approval" from EPA at this time, however we have a draft application under review with EPA and I do not foresee any roadblocks to eventual approval.

I am happy to be here today to provide you with a state perspective on implementation of the federal UST program, on lessons learned and ideas for improvements.

MISSOURI GROUNDWATER IS A VITAL RESOURCE

Missouri is highly dependent upon groundwater for its drinking water. About one-half of our citizens receive their drinking water from public and private groundwater sources. The toxicity and mobility of gas and diesel fuel in groundwater make this a vitally important environmental issue for Missouri. To date, have been about fifty impacted drinking water sources, six of them public drinking water systems.

COMPLIANCE: AN OUNCE OF PREVENTION

The first goal of the program is to eliminate releases from USTs. The deadline for federal upgrade standards was December 28, 1998. Since no system is foolproof, the program's second goal is early detection of releases before they become threats to human health and the environment. During the 1990's there was a staged implementation of performance standards for leak detection.

Many states, including Missouri report that compliance with the new leak prevention and detection standards has been very good. The percentage of properly upgraded tanks is 98% in Missouri. But while initial implementation has been very successful, many states including Missouri remain concerned about the ongoing effectiveness of these systems. Are they being operated and maintained in a manner that insures that they will prevent and detect releases? Most states acknowledge that there is a significant gap between "equipped to comply" and true "operational compliance" in the field. A few examples of to illustrate this point:

- Many cathodic protection systems, i.e., the electrical fields that are induced to prevent corrosion of steel, are ineffective because of faulty design, installation or operation. We suspect that some tanks are continuing to corrode despite the owners' investment in corrosion protection equipment.
- At many facilities, the overfill prevention devices are circumvented or rendered inoperable, or store personnel are not aware of the procedures for responding to overfill alarms. Some of the more dramatic emergencies and disasters in Missouri and nationwide have been caused by faulty overfill prevention systems.
- Some of the leak detection methods are highly dependent upon the observations and recordings of untrained or unmotivated store personnel and as such the results are unreliable.
- Unscrupulous operators can circumvent some types of leak detection methods.
- Vapor monitoring and groundwater monitoring as means of release detection are highly subjective and unreliable for a number of reasons. They are often ineffective because of poor installation and they do not detect releases in a manner that could be considered "early." Once the contaminant has reached the shallow groundwater and is detected, the release is often very extensive.

Does this mean that upgraded tank systems are continuing to leak? The answer is that we are not certain. It is true that there have been relatively few reported incidents of releases from upgraded UST systems to date. This may be a sign that the federal program is working. However, we have not yet had a chance to gather significant data. Very few upgraded tanks have been closed in the four years since the 1998 upgrade deadline. There could be many leaking tanks out there that we simply don't know about and may not until they are closed and the site is assessed.

REVOLUTIONARY OVERHAUL—NO; PRACTICAL PREVENTION—YES

What should be done; do we need a massive overhaul of the program? Missouri does not believe an overhaul is necessary at this time, however there are practical steps that we can take today that would improve success dramatically.

- Emphasize educational outreach to tank owners and operators. It is the tank owners who have paid for upgrades and they have a stake in reducing their liability associated with releases. Operational noncompliance means that they are not getting what they paid for. It means that they have bought certain equipment but are not deriving its full benefit. It is incumbent upon us as regulators to partner with tank owners and operators to insure that they are getting the most effective use of their investments in pollution prevention technology.
- Increase inspections. The current regulatory program is theoretically sufficient, yet it is highly susceptible to human error and in some cases deliberate interference from dishonest operators. Where human error is a major factor, adequate oversight is of greater importance. If the current regulatory system is to be successful, we must increase inspections. Tank systems are complex, yet the turnover interval for convenience store employees and managers averages six weeks to six months. Under these conditions, an inspection every three or four years is not adequate to insure that facilities are operating properly.
- Some states have implemented operator certification programs that utilize efficient online training and testing services that are effective yet do not place undue burdens on tank owners and operators.
- Negligent tank contractors are sometimes responsible for the operational compliance problems we observe. Because contractors are not currently regulated in many states, the tank owner is often in an awkward position, facing compliance pressures from state regulators because of poor contractor work. The federal program could address this by certification or licensing requirements for tank contractors that install, inspect, repair and remove USTs.
- Phase out certain currently-acceptable leak detection methods or require routine tightness testing to accompany certain methods.
- Enact criminal provisions for deliberately circumventing overfill prevention devices.
- Increase resources for criminal investigators to pursue evidence of falsification of leak detection or other records.

As Congress considers changes to the regulatory program, we would remind the subcommittee that states are struggling to handle an increasing number of priorities with decreasing resources. Some of these new priorities come from EPA, others are driven by state issues. We are struggling to meet our commitments today and we would encourage Congress not to appropriate more dollars to the state only to append more requirements and mandates.

USE OF LUST TRUST FUND FOR LEAK PREVENTION AND DETECTION

The federal grant program does not currently provide significant funding for prevention to states. The vast majority of federal dollars for state tank efforts goes to cleanup activities and states must rely primarily on state funds for implementing the pollution prevention program. Given what we know about the vast sums of money spent on releases, not to mention the potential for harm to human health and the environment, we believe that it simply makes sense to allow use of LTF resources for prevention.

REMEDIATION OF RELEASES AND LONG-TERM STEWARDSHIP

Releases from Operating USTs

One of the key components of the regulatory program is insuring that active, operating tank sites demonstrate financial responsibility for addressing releases discovered before or during closure activities. Tank owners can select from a variety of tools such as state insurance funds, private insurance, financial self-test, etc. In general, the regulatory framework for these mechanisms is adequate.

Currently, the federal LUST trust fund cannot be used to address contamination where there is an identified owner or operator except under limited conditions and only under the provision that the state will seek recovery of costs. The state feels that this is appropriate and the LTF should not be used to subsidize cleanups for current releases from in-use tank operations.

Abandoned Tank Sites

However the issue of old, abandoned tank sites remains. Most states have established remedial funds to attempt to deal with the problem of "past sins." However in Missouri as in many states these funds will not be able to address all old abandoned tank sites, either because of eligibility limitations or because of lack of funds. The problem of abandoned tank sites is so large that many states lack the most basic information about numbers and types of sites. In Missouri, there are thousands of known abandoned tank sites where our only information is a name and an address. In addition to these, we continue to discover previously unknown sites, often as a result of private property transactions.

Abandoned tank sites pose environmental and health risks such as contamination of groundwater and risks via ingestion, inhalation and dermal contact by occupants of properties who may be unaware that they are living or working on a site that has petroleum contamination. Abandoned sites also present economic and other social costs to communities. Properties with abandoned tanks remain undeveloped, stigmatized by the perception of contamination. Old tank sites often provide a foothold for blight where redevelopment might otherwise occur. In many cases, we have observed whole blocks of vacant properties that go undeveloped because of the presence of an old gas station on the corner lot.

EPA is currently funding fifty "USTfield" pilot projects nationwide using LTF dollars. Missouri is the recipient of two of these and we commend EPA for initiating this groundbreaking effort. I would encourage this committee to tap into the lessons learned from this effort to find out how the LTF can be used more effectively to address the problems of the nation's abandoned tanks sites. One of the lessons we have learned in Missouri is that the cost recovery provisions of the LTF can be an unnecessary roadblock to cleanup of abandoned sites where there original owner and operator are long gone, yet the current property owner meets the statutory definition of owner.

ABOVE GROUND STORAGE TANKS ARE NOT COVERED BY LTF

The LTF, by definition does not address aboveground petroleum storage tanks. This is a problem for states confronted with emergency situations and drinking water impacts involving contamination from aboveground tanks. One example of this is a family with two small children who live in the town of Cadet Missouri, about sixty miles southwest of St. Louis. About two years ago, their private well became contaminated with petroleum. At the time, we were only aware of an aboveground tank site. As a result, while we could do some investigation under the LTF, no money could be spent to provide a new well for the Warden's and their family. As a result, for over a year, the Wardens had to cook and drink with bottled water and could not shower or bathe at home. Every night or two they would have to take their two children to a neighbor's to bathe. The fire department regularly delivered water for animals and livestock. It was only after a year of investigation and interviews that we discovered another tank site, a UST site in the vicinity that was also a contributor to contamination. At that point we were able to spend LTF dollars to provide a new well in a deeper aquifer for the family.

Why did this need to happen? Aboveground tanks store the same hazardous substances as USTs. The fuel in them is subject to the same taxes. Yet they are not eligible for expenditures under the LTF.

Furthermore, aboveground tanks are held to a lesser compliance standard than USTs and frankly cause more problems than do operating UST systems. The corrosion prevention standards for underground piping are much less rigorous for aboveground tanks even though it's the same type of pipe going under the same ground. There is no suitability requirement or periodic inspection for aboveground tank bottoms as there is for the UST shell. Leak detection requirements for aboveground tanks are not adequate It should come as no surprise that of releases from active tanks systems in Missouri in the past two years, the majority are from above ground tanks. Furthermore there is no federal requirement for financial assurance or for environmental assessment at closure.

We would ask that the subcommittee consider whether it is time to bring regulatory standards for ASTs up to par with USTs and suggest that the LUST Trust Fund be made available for use at AST sites.

I want to thank the subcommittee for considering these issues and for inviting a state to share its perspective. We encourage you to continue listening to state voices as you deliberate and propose solutions to these issues. Missouri is prepared to partner with Congress and EPA in moving the tank program forward, cognizant of the resource limitations which are so critical at this time.

If you have any questions, I would be happy to try to address them at this time.

Mr. GILLMOR. Thank you, Mr. Galbraith. The bells indicate that we have 15 minutes to vote, so soon we'll take a break, but let me try to get through some questions before we do that.

First of all, Mr. Galbraith, you mentioned we ought to expand this program to above ground tanks. I'd like to ask the other two gentleman your views on that.

Mr. STEPHENSON. I would yield to the gentleman from the state. We don't have any statistics on what percentage of the tanks are above ground, but when you're considering MTBE contamination I would suggest that it's also a problem from above ground storage tanks, marine tanks, for example, so I'm not sure what the magic is in being underground versus over top of the ground.

Mr. GILLMOR. Would you agree with that, Mr. Rothenstein?

Mr. ROTHENSTEIN. We will look at the issue. We don't have a position on this, but I actually, it is an important issue. I know the public really doesn't care where the release came from, but I'd ask you to consider a couple of things. First, it would greatly expand the scope of the program. Right now it is limited to leaking underground tanks. There are 700,000 of those active tanks there of which a number of them are leaking.

Second, I think it could stress the ability of our program and other State programs to address leaking underground tanks. That in some ways has been borne out in some States where they have their own State funds to address tank problems and in some cases their fund is eligible for more than underground tanks but available for above ground tanks, heating oil tanks. And in those cases, some States have had difficulty meeting the obligations under the—for the leaking underground tank fund.

And then the final thing just to keep in mind is the tax on petroleum at the refinery or the time it comes into the country, that tax, the tenth of a cent per gallon can be refunded if the petroleum is ultimately just from nonregulated underground tanks. So right now the money that we get is for petroleum that's going to underground tanks. So there's some factors that I think need to be considered.

Mr. GILLMOR. Some of that money, in fact, is refunded?

Mr. ROTHENSTEIN. Some of that I guess is——

Mr. GILLMOR. Is there a claim against——

Mr. ROTHENSTEIN. There is. If indeed, there's a request for that and it's money that goes into an above ground tank and it's ultimately dispensed from that above ground tank, they're not obligated to pay the tax.

Mr. GILLMOR. But my question is is there money in the fund now that could be subject to be taken out? Is there refund claim or are we satisfied that the money that's in there we have?

Mr. ROTHENSTEIN. I would have to get back to you on that.

Mr. GILLMOR. I appreciate that.

Mr. ROTHENSTEIN. I don't know.

Mr. GILLMOR. One quick question here. I'm trying to get a handle on the need in terms of our authorized expenditures. And the gen-

tleman from Missouri has indicated the money you're getting is adequate to do the program with one exception and that's cleaning up the remedial tanks which would be a pretty big number. Can you, do you have enough information to give me kind of a guesstimate, if we were going to have a program that did everything that in theory the bill's original law set out to do as to how much money we're talking about?

Mr. GALBRAITH. We have not made that calculation. We certainly, as you develop legislation, we'd be happy to take a look at that and provide some estimates. But we haven't done that at this point.

Mr. STEPHENSON. The only thing we've heard is that it's about $88,000 per site on average and a typical site would have three to four tanks. So I can't do the math in my head, but you're talking about hundreds of millions of dollars.

Mr. GILLMOR. You know, I would appreciate it if you could get back to us as soon as you can because if things go right here, we're hoping that we're going to have a bill that's not going to be gathering dust here and maybe moving. So as soon as you can get back, it would be good.

Let me ask one more question and we'll take a break.

Mr. Stephenson, since you did your report in 2001, have there been any other significant findings that GAO has made that would be relevant to the program?

Mr. STEPHENSON. No, we updated our information a little bit from last year's MTBE hearing before this subcommittee and then again in preparation for this committee hearing, but we haven't done a wholesale look, a comprehensive look at the program since then, enough to verify that the percentages are roughly the same as they were 2 years ago. We would need to redo our survey.

Mr. GILLMOR. I'm advised that there are three votes. Three votes means we're probably going to be back here in about 30 minutes. We'll be finishing a 15-minute vote and doing two 5-minute votes. So at this point we will recess.

[Brief recess.]

Mr. GILLMOR. We'll go to Mr. Wynn for questions, if you have some.

Mr. WYNN. Not at this time, Mr. Chairman. I would like to submit my written statement.

Mr. GILLMOR. Very good. Without objection, so ordered.

We will now turn for questions to the ranking member of the subcommittee, Congresswoman Solis.

Ms. SOLIS. Thank you. My first question I'd like to direct to Mr. Rothenstein and I appreciate your comments and equally all the other witnesses here, but I did want to ask, are you finding that there are still leaks coming from equipment that has been upgraded? And if you could give me an idea of what your opinion is on support of potential secondary containment for newly installed tanks.

Mr. ROTHENSTEIN. Thank you. We have heard some of those issues as well that there are some leaks that are coming from newly upgraded, new and upgraded systems. We've got some major studies under way with States, industry to try to evaluate the source and causes of these releases.

What we're finding that most tanks actually are much better than they have been in the past, but where the source and causes are generally due to two principal problems and I think both of them have been mentioned here already. One is human error. Operators or owners or poor installation problems, failing to maintain or operate the equipment properly. I think some folks have said that the leak detection alarms were hooked up improperly, hooked up to the light switch where, when you shut it off, sometimes at night you shut the light switch off and the alarm goes off.

The second issue is related to, in some cases, the equipment itself and we're finding that there are leaks from some of the equipment, some of the piping, the tanks, the dispensers themselves where the gasoline pump where you go to pump gas in your car are leaks from that. So we're looking into the source and causes. We found some interesting trends and what we're hoping to do is work with the States and work with others to evaluate what should be done and what could be done.

We're looking to see what some States have done, and in fact, they have a whole host of different things, including secondary containment.

Ms. SOLIS. I have a chart that was given to me, shared with me, regarding Florida's plan. They've actually instituted this secondary containment program and have had some very good results in the chart here. It shows you where they first started and implementation has been a very strong, obviously enforcement and everything else that's working. Standards have helped to improve the containment there, so I would be interested in hearing from you in terms of the possibly working with us on language as a containment remedy, or another remedy here that we should be looking at more seriously.

Mr. ROTHENSTEIN. We would certainly be wiling to work with you. We have looked at the Florida information. We know that there are, I think, about 21 States today that require secondary containment.

Ms. SOLIS. Right.

Mr. ROTHENSTEIN. In one form or another. Florida is one of them and some of the results that you have show some positive benefits.

Ms. SOLIS. One of the other questions I had for Mr. Stephenson is with respect to the report. You kind of stated that perhaps there's a need to gather more information and that the report was done in 2001 and you said basically things may not have changed, but can you clarify that for me? Is there still a need to do more data collection?

Mr. STEPHENSON. We didn't redo our survey of 50 States and the States are the ones with all the information on the status of clean ups and everything else. We did enough spot checking to assure ourselves that, in general, the percentages of compliance and so forth were reasonably—as we reported in our report—reasonably the same.

Ms. SOLIS. There seems to be a consensus that we need stronger enforcement and more frequent inspections, if we're to prevent releases of contaminants. The Defense Department is challenging State authority to assess penalties for violation of the UST regulations and has also challenged EPA's authority to assess these pen-

alties. Do you think the Federal facility should be subject to the same enforcement sanctions including penalties that apply to private industry, State and local governments that own or operate underground tanks? This is for Mr. Galbraith?

Mr. GALBRAITH. I'm sorry?

Ms. SOLIS. Anyone can answer, but I'm sure everyone is aware of this issue.

Mr. GALBRAITH. Forgive me, I thought you were directing your question elsewhere and I was taking notes.

Ms. SOLIS. I'd like EPA to respond.

Mr. ROTHENSTEIN. I think that we haven't taken any specific position on any language that I know is in certain bills, but we do believe that Federal facilities are and should be subject to the same set of requirements as anybody else.

Ms. SOLIS. Including penalties?

Mr. ROTHENSTEIN. And we believe the same thing is true including penalties and I think we feel that that is the case.

Mr. GALBRAITH. I agree that Federal facilities should be subject to exactly the same standards.

Mr. STEPHENSON. I don't know what the national security implications would be. That's what they always cite when they want to be treated differently than a private facility, but a polluter is a polluter.

Ms. SOLIS. If I might, I'd just like to ask one more question to Mr. Galbraith at this time and that was with respect to above ground storage tanks and you mentioned about the dilemma there. Can you touch on that a little more?

Mr. GALBRAITH. There is regulation of above-ground storage tanks to the spill prevention and countermeasures law. It is designed to address terminals, okay, facilities, that have very large facilities. What I'm talking about are gas stations, retail gas stations. They're more common in rural States because safety issues preclude above ground storage tanks in urban areas for the most part.

There is a regulatorily uneven playing field between gas station A with underground storage tanks and gas station B and I don't think the prevention measures for above ground storage tanks are equal to those for underground storage tanks.

Ms. SOLIS. Do you think that's something that we should be looking at as we begin the process of looking at potential legislation and funding for that?

Mr. GALBRAITH. I do because we're talking about tank issues and petroleum. This would seem to be the appropriate place to raise those issues and questions.

Ms. SOLIS. And you also mentioned something about your plan that you use in Missouri, prevention, and you kind of underscored that you need more money to provide for clean up, but also to do more outreach and things. Is there a dollar amount that you can put to that?

Mr. GALBRAITH. We currently get to our tank sites once about every 3½ years for inspection. I think once every 2 years would probably be more adequate, so I'm talking about possibly doubling our resources for inspection. The State pays for inspection resources at this time. We spend about, in terms of personal service,

we spend about $400,000 a year on inspections. So if you double that, I think would give us a more adequate level of inspection effort.

Mr. GILLMOR. The gentlelady's time has expired. The gentleman from Indiana who has 8 minutes.

Mr. BUYER. Thank you. I'm relatively new to the issue. My immediate reaction which I'd like your comment, Mr. Stephenson, as I reviewed your report, when you say that 27 States lack authority to prohibit fuel deliveries to stations with problem tanks, and they're relying on issuing of citations and fines to violators rather than stopping the operations, are you saying that the issuing of citations and fines has not proven itself to be effective?

Mr. STEPHENSON. Yes, we're suggesting that red tag authority or a prohibition of fuel deliveries is kind of the ultimate enforcement tool that we think States need in their arsenal for particularly bad performers year in and year out. The fines don't seem to have worked in some egregious cases.

Mr. BUYER. Would you comment on my sense of having read your report that States perhaps don't view this issue with the same priority that perhaps Congress may be viewing the issue or the EPA.

Mr. STEPHENSON. Well, the state—right now, the States run these programs, not the Federal Government for the most part and so you have to get a red tag authority through the State legislature.

Mr. BUYER. I understand we can continue the oversight. I mean obviously these States, what we may think is a major priority or a big concern with regard to the country, the States must not be.

Mr. STEPHENSON. Further in the report you'd see that based on our State survey, most of them want this red tag authority and would like it federally mandated.

Mr. BUYER. If we pay for it, right? They want the money.

Mr. STEPHENSON. They don't want unfunded mandates, that's true.

Mr. BUYER. Absolutely right. This Congress has already voted and said we don't want to fund, we're not going to do unfunded Federal mandates.

Mr. STEPHENSON. That's true. That's why we went further to suggest that the Trust Fund could be expanded beyond clean ups to include some of these inspections and enforcement tools.

Mr. BUYER. I guess my reaction is gee, I can do more training and do more enforcement and do more inspections if you just give me the money. These are State legislatures, they're dealing with the same issues that we're dealing with. If a Governor out there felt and thought that it was a priority or that there was a concern in his particular State, I think he would care.

Mr. STEPHENSON. I think this is a perfect question to ask our representative from the State here on what the situation is in Missouri.

Mr. BUYER. Yes, but he didn't travel all the States. He didn't have a good overview and that's why I'm asking you. I'm taking from your report an opinion and you're saying the opinion you're deriving from this report I disagree with. That's what I'm asking you.

Mr. STEPHENSON. But it's not a GAO opinion. It's an opinion based on a survey of all 50 States from people just like the gentleman sitting next to me in Missouri.

Mr. BUYER. Let me ask Mr. Stephenson's opinion?

Mr. STEPHENSON. I think, we think red tag authority is needed in some cases. That doesn't mean you have to exercise it all the time, but if you have an egregious performer, year in and year out, that seems to ignore fines, then it's a tool that we think should be in the enforcement arsenal that States have.

Mr. BUYER. Well, Missouri, you're one State out there, what are your comments on my interpretation?

Mr. GALBRAITH. Well, I think speaking for Missouri, we take this issue very seriously and I don't want to leave the impression that the States that don't have certain types of tools don't want them. There's reasons, maybe political reasons why, for example, Missouri does not have the authority to tag out a tank that's noncompliant.

I think what we're talking about here, EPA or the Federal Government sets the base program. States are free to innovate and go beyond that, if they wish, and I think what we're talking about here today is should the Federal program, base program have a tool for tagging out tanks that are noncompliant.

It's not a money issue. Okay? It's an enforcement tool issue which might actually get cost savings because instead of paying staff to do civil enforcement, you have a very immediate at the pump tool. So that's one way to think about it.

Mr. BUYER. Let me ask this question, if anybody can answer. I'm going to show you how new I am to this issue. When I think about these new tanks that are put in the ground, I think that they are all double walled. Is that—am I completely off target here?

Mr. ROTHENSTEIN. Not all of them are. There's no requirements for double walled tanks. In fact, to meet the requirements that we established, they have a whole host of choices. They could go back and reline some of the existing tanks. It's called carthotic protection. They could purchase a fiberglass tank. They could purchase a double walled tank.

There's a lot of single wall tanks that are still in the ground today that meet the requirements——

Mr. BUYER. Therein lies the problem? Meaning, yes, I've upgraded to a new tank, but we still have tanks, new tanks that are now also leaking.

Mr. ROTHENSTEIN. That's what we're finding in some cases. Now, a lot of companies have decided that they're going to, because it's not all that much more expensive we've heard, they're putting in double walled systems when they're building a new facility. They're going ahead and making the expense to double wall their systems.

The real purpose is with a double walled system what you get is you have—you can catch a leak before it actually gets into the environment.

Mr. BUYER. I understand that. Mr. Stephenson, with regard to citations or fines that are out there, what are we talking about? What are the fines? What are the level of fines across the country for violations?

Mr. STEPHENSON. It varies from State to State and I don't recall the exact numbers.

Mr. BUYER. For a particular violation, you don't recall any of those?

Mr. STEPHENSON. It ranges all over the place.

Every State sets its own fine limits. I can probably get that for you.

Mr. BUYER. I'm just curious as to—when you cite it and I'm just curious as to why citations or fines are not being an effective tool. My gosh, an executive branch government has tremendous power. I wouldn't like those things to continue to stack up I mean if I were an operator out there. Obviously, somebody is going to make a business judgment or decision. Repeated citations, repeated fines, you would think would be an effective tool. I don't like speeding tickets, right?

Mr. STEPHENSON. Have you stopped speeding?

Mr. BUYER. I refuse to answer that question on the grounds it may incriminate me.

I yield back my time.

Mr. GILLMOR. The gentleman yields back. The gentleman from Maryland.

Mr. WYNN. I thank the Chairman. I do have just one question I would like to ask and it's pretty localized so if you don't have the information, I certainly understand and hope that you would get it back to me.

On December 11th, EPA issued an order to Chevron, Incorporated regarding the cross border dispute which arose from a facility in Maryland which for want of a better word, bled, being an underground storage tank, into the District of Columbia. Because of the nature of the dispute, EPA took jurisdiction and required a corrective measure study. And basically what I wanted to know was what's the study of that study, No. 1; and No. 2, EPA wished to meet with a community group of citizens, an executive committee in January and I wanted to know if EPA had actually done that?

Mr. ROTHENSTEIN. I am familiar with this and we did, in fact, issue an order requiring that action be taken and I will—the enforcement and the activities are being handled out of our regional office in Region 3, so I will have to get back to you, if I could with a quick respond.

Mr. WYNN. That would be fine. That's all I have.

Mr. GILLMOR. The gentleman from California.

Mr. ISSA. Thank you, Mr. Chairman. Mr. Rothenstein, the leakage program, if you will, sits with a Trust Fund approaching $2 billion. The budget calls for less money than will probably come in in new revenue this year to be spent. Tell me, if we doubled it, tripled it, quadrupled it, are there places to spend it that would be—that would make our water and our ground table cleaner?

Mr. ROTHENSTEIN. Let me answer that in a couple different ways. First——

Mr. ISSA. Yes or no, is my preference.

Mr. ROTHENSTEIN. I suspect there are ways that it could be spent. The money that we're getting today, we think we're spend-

ing it very, very efficiently in getting a good return on our investment already, No. 1, at the Federal level.

The vast majority of the clean up costs though are paid for by the States. They have $1 billion per year that the States are devoting to cleaning up leaks from underground storage tanks. So it's our money plus their money that is being used to address that. And as a result of this money, we're able to clean up somewhere between 16,000 to 18,000 sites a year.

Mr. ISSA. And the second half of the question, second half of the answer is if you had more—understanding you being efficient, effective, frugal, prudent. If you had more money, are there sites that you'd be able to clean up sooner and make our water table cleaner sooner? Sorry to be the guy to have to ask you that question, but it's extremely important to this committee.

Mr. ROTHENSTEIN. I think there's a lot of sites out there that where there's a lot of work that's currently underway and there are probably different types of options that could be used at any one of those. I'm not sure that it's necessarily a resource problem in terms of sites going uncleaned up at this point. They might choose different remedies, I'm not sure about that, but I think the way we're using it right now, we're trying to look for the most efficient approaches using the money and I think we're able to address a good number of sites with the money that we're getting.

Mr. ISSA. Thank you. Let me ask a follow up that is slightly different.

Mr. ROTHENSTEIN. Sure.

Mr. ISSA. If we were able to give you a contingent account that would give you the ability to use additional funds should you find programs or opportunities beyond the ones you presently forecast, would that be a useful tool for you, not knowing what things are going to be like 7, 8, 9, 10 months from now?

Mr. ROTHENSTEIN. Well, we today are having to address MTBEs as one of the examples and we're working with States——

Mr. ISSA. That's my next question.

Mr. ROTHENSTEIN. Yes, we're working with States. I mean that's sort of the contingency. Those are emerging problems that we've had to deal with and what we've done within our current budget is establish a number of pilots to try to work with the States, develop new innovative technologies, work with our Office of Research and Development and provide technical assistance in reviewing a whole host of documents. So we're able to handle a lot of that today, I believe.

Mr. ISSA. What is more damaging to the environment, MTBE in the water or the difference in air quality if you hypothetically didn't put in oxygen into the fuel at all, worst case?

Mr. ROTHENSTEIN. I'm not sure I can answer that comparison between the two. I can tell you that when MTBE gets into the ground water and it affects the drinking water, well, people don't drink it because of taste and odor thresholds and potential health effect problems. So there's some issues associated with that on the ground water side.

Mr. ISSA. In the last Congress, you might recall that I had a bill on the floor that died painfully, specifically to allow California to have an alternate mixture that would meet air quality standards,

but without any oxygen in it, obviously trying to get around MTBE without mandating the only alternative, thus mandating a monopoly, if you will. We didn't get anywhere on that, but I would be interested to have an answer to the basic question if you can your team of scientists give us the, if you will, the tradeoff, the health hazards of MTBE versus worst case, if hypothetically we just stopped using MTBE and had the cleanest nonoxygenated formula, how much of an impact would it really be since this body, which I'm pleased to belong to, but was disappointed in their vote, wouldn't allow us to give them completely clean fuel or up to the Federal standard, up to the State standard which is greater than the Federal standard, unless we used specific oxygen in it which was both expensive and almost single source domestically.

The next question I really—you know what? I think I'll forego any other questions at this time, Mr. Chairman, I yield back.

Mr. GILLMOR. The gentleman from California yields back. The gentleman from New Hampshire?

Mr. BASS. Thank you very much, Mr. Chairman. As my friend from California no doubt knows, one of the reasons why MTBE continues to be part of the mixture for fuels in States such as mine and his is because there is not a majority of votes on this committee to change that policy and the EPA has to do what it has to do under the circumstances it finds itself in and I'd point out that in my State, over 15 percent of the public water supplies are contaminated now with MTBE; 27 percent of private wells are contaminated. In one town alone, 70 percent of the water supply is contaminated with MTBE and the State Department of Environmental Services is continuing to cope with this problem, which is growing exponentially even now. And even though New Hampshire was in the forefront in leaking underground storage tank replacement, the nature of the substance is so devastating to the immediate environment that the impact is almost incalculable.

My only question to the representative from the EPA is is the current LUST program adequate to address these emerging problems with MTBE and are there any changes that need to be made in the law in order to make it work better with this particular problem?

Mr. ROTHENSTEIN. In terms of the authority to address MTBE to clean it up, we do believe we have that authority. We are, in fact, spending money from the LUST Trust Fund to assist States in the clean up of MTBE.

Some of the improvements that I talked about before that we're looking at to prevent leakage from underground tanks through better inspections, better operator training, looking at some of the equipment issues. We think some of the things we have underway could be very helpful in terms of preventing leaks from tanks which ultimately would address the problem. But there's two parts to this. One is cleaning up what's out there already and trying to prevent the problem from occurring and I think we feel that we are able to do much of that. Could we do a better job? Always.

Mr. BASS. Although this may be a little outside of the realm of this hearing, because of its high solubility in water, MTBE is a threat not only from the leaking underground storage tank, but from any kind of a spill, at the gas pump or outside somebody's ga-

rage or anywhere else and it's virtually impossible to capture the way some of these other substances are. Do you agree with that?

Mr. ROTHENSTEIN. I think we have heard that that MTBE is actually—the largest source of releases are from underground storage tanks, but you're correct it is coming from other sources.

Mr. BASS. Thank you, Mr. Chairman.

Mr. GILLMOR. Thank you, Mr. Bass. The gentleman from Idaho.

Mr. OTTER. Well, thank you very much, Mr. Chairman. I just have one question and perhaps you can embellish this for me, Mr. Stephenson. Would you tell me why Idaho is the only State where the EPA has to enforce the tank inspection law?

Mr. STEPHENSON. States apply to run the program or not. Apparently Idaho did not ask to run the program. Therefore, EPA runs the program for them.

Mr. OTTER. Do you know why?

Mr. STEPHENSON. No, I don't.

Mr. ROTHENSTEIN. I just checked with my staff expert. I think we're also in the process right now with working with the State to try to get program approval. We've got 32 States that are approved to run the program right now. It's really up to each State to decide whether they want the program or not and I think up until now it hasn't been in the case. Now our region is working with the State to work through the issues.

Mr. OTTER. Perhaps I should have started with a different question with both of you gentlemen. How long have you been with the Agency?

Mr. ROTHENSTEIN. I've been with this program for 3 years.

Mr. OTTER. And you, sir?

Mr. STEPHENSON. I've been with GAO for 30 years, but not involved in this program that long.

Mr. OTTER. I see. Would it be a surprise to you, one of you, if I suggested that one of the reasons the State of Idaho decided to let the Environmental Protection Agency enforce the tank law was because of the inconsistency of application of the rules and regulations?

Mr. ROTHENSTEIN. We——

Mr. OTTER. Would that be a surprise to you? Have you ever found that in any other state?

Mr. ROTHENSTEIN. I'm not sure—our rules provide, are basically run by the States and they provide a great deal of flexibility. I don't know if that means inconsistency or—I would characterize it as a program that provides flexibility to the States to implement it the way they try to see, best suits their needs. I'm not sure I would necessarily characterize it as inconsistent.

Mr. OTTER. Mr. Stephenson?

Mr. STEPHENSON. That's an excellent answer. I mean most environmental programs are intended to give the States a lot of flexibility in how they implement the rules.

Mr. OTTER. I think it would be an excellent answer if it was the correct answer, but I was Lieutenant Governor of Idaho for 14 years and the biggest problem we had was agreeing to what the rules and the regulations were and the interpretation by the folks on the scene. And so when we found an interpretation on one side of the State, we're a mountainous region and a desert region or a

forested region with high rainfalls, we couldn't come up with a set of rules that we could apply equally to the State under equal protection. So we just decided that if you guys know the rules, we'll let you run them.

One other question, how much has the brownfields legislation that we passed last year under the President's initiative helped in the clean up?

Mr. ROTHENSTEIN. Well, the brownfields first grants are not yet, have not yet been issued. This is the first year that we're beginning to implement those grants, but what I can say is the brownfields pilots that EPA had been implementing for several years and the UST fields pilots that we recently began to implement are making a difference. A lot of the communities are very excited about finding these abandoned gas stations, cleaning them up and returning them to productive uses. They're building new restaurants, cultural centers, parks and it really is helping to restore hope and health to the communities.

Mr. OTTER. I'm not sure we can stand any more golf courses.

Mr. ROTHENSTEIN. Well, gas stations are kind of small for a golf course, but that's near and dear to my hear too.

Mr. OTTER. Thank you, Mr. Chairman.

Mr. GILLMOR. Thank you. We'll go to a second round of questions. I have a couple here on red tag. My understanding is any State could do a red tag law, it's just that a number of them haven't? Is that accurate?

Mr. ROTHENSTEIN. Yes, I think it's up to the—states are subject to their own laws and regulations and they would have the authority. Twenty-three of them, I believe, do have some form of red tag authority.

Mr. GILLMOR. What you're picking up in your report was some of the State enforcement officers who don't have that authority are kind of asking Congress to force the States to do it, since they can't convince their own elected officials to do it. Is that an accurate statement?

Mr. STEPHENSON. Yes, that was based on our survey results. That's pretty much what they said.

Mr. GILLMOR. You mentioned that in terms of funds from the Federal Government which mainly go for administration at the State level, but the States are themselves spending $1 billion on clean up. What's the source of those funds in those States?

Mr. ROTHENSTEIN. It's a whole host of sources. Some cases, they're fees on gasoline. Some cases it may be from general revenue. Some cases it may be from permit fees that they have imposed on facilities in their States.

Mr. GILLMOR. Yes, because it strikes me that really what's happening is where the rubber meets the road which is bad analogy, but when you're moving dirt and naturally doing clean up, it's the States that are carrying the load here. It's not the Federal Government.

Let me also ask in respect to double walled tanks because we're talking about encouraging, requiring, double walled tanks. A couple of questions, one, is a double walled tank inherently going to be safer or are there some types of single walled tanks that might be

safer and more effective than some types of double walled tanks? Or is that not factual?

Mr. ROTHENSTEIN. I think the principal benefit a double walled tank is that with a single wall system you detect a leak once it gets out. With a double walled system, there's the leak detection in between the two layers, so you'll be able to detect it before it gets into the environment.

Depending on the integrity—so I think that's really the principal benefits. The materials could conceivably be the same for a single walled or a double walled.

Mr. GILLMOR. In terms of safety, which would, if you had to pick one or two, a very, very rigorous inspection or a double walled tank, which do you think would be more effective and what would be the relative cost of those two approaches?

Mr. ROTHENSTEIN. We haven't actually costed either of those. What I can say is we found that from the problem we're finding it's problems in both circumstances. Human error problems where inspections and training would be very beneficial and in some cases just tank problems because the equipment is not installed properly or it's just not effective.

I haven't actually done that comparison, Mr. Chairman, but I think we're finding in both cases there could be potential problems and benefits from improvements.

Mr. GILLMOR. Okay, let me go back to Mr. Galbraith.

Mr. GALBRAITH. I think one of the things about, you could inspect, I think a double walled tank less frequently than a single wall steel tank and that might be an incentive to make some kind of requirement a little more palatable. That is certainly from an environmental point of view, I think it would be justified.

Mr. GILLMOR. Okay, let me go back to Mr. Rothenstein. The GAO's report in some respects was kind of tough on the Agency's program and they made four recommendations for administrative action. I guess are those four recommendations, have they all been implemented, or were there some that for some reason you felt it would be better not to implement it? And also, are there any other things that EPA has done which may have gone beyond the recommendations of GAO?

Mr. ROTHENSTEIN. I think we are trying to implement GAO's recommendations. I think one of them was working with the States to make sure tanks are upgraded. We're working with States to do that to try to make sure all of the tanks have the proper equipment in place. We've actually gone beyond that and we're trying to make sure that they're not only, the equipment is in place, but they're operating them properly.

I think we are. One of theirs was training needs and we're working aggressively to try to develop better training tools for inspectors and for owners and operators. Inspection frequency, we've been working with States to look for creative inspection programs. A number of States have implemented what they're calling a third party inspection where they contract out with an inspector and it has dramatically and in some cases shortened the time. Before the third party inspection it was once every 38 years and they've cut it down to once every 3 years with this new approach.

So we are, I believe, trying to implement, maybe not as successfully as GAO, I think, but we're trying to implement each of the recommendations.

Mr. GILLMOR. Thank you, my time has expired. The gentlelady from California.

Ms. SOLIS. Thank you, yes. I'd like to go back to the issue of red tag authority for Cliff Rothenstein. If you could talk on your recent visit to Massachusetts and how that experience was and how that system is in place?

Mr. ROTHENSTEIN. Massachusetts does have red tag authority and it was sort of interesting to see the way that's working. What it really is is after an inspection, you see if the tank is in compliance or not and what the State does is they work with the owner and operator, try to get it into compliance. If after some period of time they don't get it back into compliance what they do is they put what I guess is literally a red tag over the intake valve so fuel can't be delivered. And if that red tag is cut, there's penalties in the State. I think there was possibly jail time, in fact. What they told me is that, I asked them, I said how frequently—how quickly do they come back into compliance and they said it was remarkable that they were back in compliance within a day or two because it meant that they couldn't get fuel delivered and there aren't too many gas stations that are with a red tag at any particular time, I think, so it seems to be pretty effective in that State.

Ms. SOLIS. One of the questions that keeps coming up is that you weren't able to meet your stated goals for the previous year and I'm not very clear on why it is we're not meeting those goals. Could you please clarify why there is such a lag there? Is there a need for more funding or what's taking up the——

Mr. ROTHENSTEIN. I think there seems to be and we're still working with the States and we're actively working with them on trying to accelerate clean ups, but it seems to be three principal issues. One is more MTBE seems to be discovered and when that occurs it does take, it's more complicated to clean up. It takes more time. It's more difficult to characterize the MTBE plume because it behaves differently in the environment than just a garden variety petroleum, so that's one issue.

The other is some States have decided that rather than clean up as many unclean sites, they're going back to some of those that have been previously cleaned to test for MTBE.

And then the third principal reason we believe is back around the time of 1998 when the deadline hit and all tanks had to be upgraded, a lot of owners and operators were removing their tanks and at the time of the removal they discovered some soil contamination which was relatively quick and easy to clean up, so they were able to get a lot more clean ups done more quickly. So those three principal reasons, I think are sort of explaining this trend.

Ms. SOLIS. Well, you still didn't answer my question in terms of how do we get the job done? How do we meet the goals that you set in place as well?

Mr. ROTHENSTEIN. We've actually got several different ideas under way. One is we're trying to change the contracting method with clean up contractors. We're going to a performance-based clean up contracting tool, rather than paying the contractor for

their time and materials. And in some States we've learned that they're saving about half the cost in getting it done in half the time.

When they're using ground water pump and treat technology, we're trying to figure out ways how to tweak the pumping technology so that it's more optimum and you can make more progress more quickly. We're trying to get companies to bundle sites where they have contamination so you can negotiate one clean up settlement for multiple sites. So there's a number of things that are underway that we're trying to improve the pace of clean up.

Ms. SOLIS. Given what the witnesses have said earlier, Mr. Galbraith, I appreciate your being here and your candidness and also the GAO report. It seems to me that from the survey and from what is outlined that there is an outcry for more support, more Federal funding from the Trust Fund to help provide more mitigation. Would you agree with that statement?

Mr. STEPHENSON. Well, I've certainly heard that from some folks that they think some additional funding would help.

Ms. SOLIS. Would that be helpful for the Agency?

Mr. ROTHSTEIN. Well, as I said in response to another question, we think that under the President's current budget, we are able to clean up sites and get a lot of work done and you know, as with anything, there's priorities that have to be made.

Ms. SOLIS. Mr. Galbraith, what's your opinion on that?

Mr. GALBRAITH. Well, it always has struck me as odd that we do not pay for prevention out of the Federal LUST Trust Fund and I think if we want to get the job done and make sure this program is successful, we need to change that and open up some of the dollars to the States.

Ms. SOLIS. Just to go back to EPA, on the whole issue of the GAO report, outlining for more training and inspections, what have you done to help increase that?

Mr. ROTHENSTEIN. Inspections?

Ms. SOLIS. Well, training, actually, yes.

Mr. ROTHENSTEIN. Training. There's actually a couple of things. We have an effort under way to try to—there's a lot of training modules that are already out there that inspectors have, and what we're trying to do is make it more readily accessible using the 21st century technology, the internet, so that there's a high turnover rate. That's one of the concerns and instead of having everybody convene in a central location, trying to use the internet type of technology where everybody is trained in a basic level of skill.

Ms. SOLIS. But isn't that harder for small businesses that may not have the ability to pay for that?

Mr. ROTHENSTEIN. Well, there's two things. One is that's for EPA and State inspectors. For owners and operators, what we've been working on is a pretty thorough checklist of what is required and that would be different in each state. They might have to modify some of that, but it's a pretty thorough check list of activities that owners and operators would have to require and we're working with a few States to try to test that with their owners and operators to get them to fill out this checklist once a year, go through, make sure they're aware and in compliance with the requirements.

Ms. SOLIS. Thank you, Mr. Chairman.

Mr. GILLMOR. The gentleman from Idaho.

Mr. OTTER. No questions.

Mr. GILLMOR. We'll go to another round. Let me ask and I guess principally this would go to you, Mr. Galbraith, but not necessarily. How about some real world examples of unfunded mandates in the program from the Federal Government and to what degree those are a problem and in that respect, GAO has said they're requiring onsite tank inspections would be a good public policy decision. What would that do in terms of your program in terms of your cost? Would you able to do it? Would you have the money to do it? Same, I think, is true in the case of operator training. It's a mandate and do you have the money to do it and is that something that you should have a significant Federal increase?

Mr. GALBRAITH. Well, as I mentioned before, the Federal LUST Trust Fund does not fund prevention activities and this is one of those an ounce of prevention things that really has always struck me as a little bit odd. To increase inspections to a mandate, I could inspect every station twice a year, if I wanted to, but it wouldn't be a very good inspection. So if we want to maintain the high quality of inspections and I think most States do a very good job, we've got to put more inspectors on the ground in order to get—because once you said inspector turnover is high. It's see store manager turnover that's high. The average lifetime of a see store manager is 6 months. So if you're only getting out there once every 3 or 4 years, you're not keeping them on the ball, so to speak.

With respect to operator training, that is something that the State could not implement now with the State funds that are available to us. Of course, it would depend on how it was structured and to what extent marketers would pay for their own training and there are a number of tools out there. I think we could implement it in a way that is not burdensome to the tank community, but it is not a mandate that we could fund today.

Mr. GILLMOR. Let me ask you, Mr. Rothenstein, does EPA have a national data base of all tanks and what criteria do you use to evaluate the effectiveness of a particular state's program?

Mr. ROTHENSTEIN. We get certain types of information each year reported from the States. The number of releases, the number of cleanups initiated, number of cleanups completed and number of percent of facilities in compliance with our leak detection requirements and our upgrade requirements. We do not, however, maintain a national data base of information on tanks. Those are maintained by the States, currently.

Mr. GILLMOR. Many tank owners and operators have paid into the Trust Fund. In fact, many argue that the money in the fund is theirs. What steps does EPA take to meet with tank owners and operators to assess their concerns about the current tank program or any future changes to be made to it?

Mr. ROTHENSTEIN. A couple of things. First, I think the money, it goes into the Federal Trust Fund, so it's for implementing the program. It is financed from them. We regularly meet with owners and operators and their associations to discuss a whole host of issues on implementing the program and we take their suggestions. Many of our initiatives, I think that we've got in place reflect a lot of what they're trying to accomplish.

Mr. GILLMOR. And with respect to the Federal and State government owned and operated tanks, how have they fared in compliance with the 1998 deadline? And if they haven't fared well, what are the obstacles they claim that they have in upgrading and remediating?

Mr. ROTHENSTEIN. I think when the 1998 deadline approached, we surveyed all the government and Federal facilities. We think that the vast majority of them, just like the vast majority of privately owned tanks have the equipment. We think that they're probably having similar types of operation and maintenance issues like everybody else. And we're working with them, just like we're trying to work with private PRPs.

Mr. GILLMOR. Okay. Ms. Solis?

Ms. SOLIS. Yes, just a quick question again for Mr. Rothenstein. Seventy-two million dollars is outlined for your LUST clean up project. How many sites are you going to be able to handle with that amount of money?

Mr. ROTHENSTEIN. For the $72 million, that money, 81 percent of that money goes directly to the States, another 4 percent goes for tribal clean ups and we believe that we will be able to clean up upwards of 16,000 to 18,000 completed clean ups with that.

In addition, much of that money, even though some of the sites will not be completed, there's work underway and they're actively using that money to remove some of the free product that may be there and to continue the long term clean up.

Ms. SOLIS. What percentage of that is of the total that you are effectively targeting?

Mr. ROTHENSTEIN. I flunked math in school.

Ms. SOLIS. Out of 143,000 tanks that have to be——

Mr. ROTHENSTEIN. Right, there's about 143,000. We have recently set a goal of trying to reduce that backlog, the 143,000 down to about 75,000 in a 5-year period. So I haven't done the calculations for any particular——

Ms. SOLIS. We're not doing too well, according to my math, and as your testimony, as you stated earlier, that we're actually uncovering more.

Mr. ROTHENSTEIN. Right.

Ms. SOLIS. With respect to MTBE and all the other storage tanks, above storage tanks and all that. So we're really seeing, but we're not really getting to the issue here and we have a fixed amount of money that seems not to be really addressing the need to begin to really make some positive changes here. We've had 10 years to try to do this. The money is there. It's a fund that's been set aside to do this and it seems like there's more obstacles for States and people that really do want to do the right thing. At least that's my opinion from where I'm sitting and I really think that we need more support from the Agency to see that we meet these goals, if they're realistic. Because it's abominable. In my State of California, we probably have some better rules and regulations in place than most States and we still don't know many of those storage tanks that are out there. There's no data on that. So I have a real problem with that because we have a severe problem with our drinking water, as you well know. So I would look forward to having more constructive dialog with you on how we resolve this

issue realistically and I know the Chairman has said that he looks forward to working to some type of agreements, so I look forward to that.

Mr. ROTHENSTEIN. We certainly appreciate that.

Mr. GILLMOR. The gentlelady yields back. I have a couple of questions for Mr. Stephenson.

Do you perceive any statutory or any administrative barriers that we ought to be concerned about, barriers to getting faster and more effective and more efficient tank clean ups?

Mr. STEPHENSON. I guess I'm not understanding the question.

Mr. GILLMOR. Well, is there something out there that's either in the law or in the regulations that's preventing tank clean up and inspection to take place or I kind of take the answer to the question is being probably not because——

Mr. STEPHENSON. Nothing other than what we said about opening the trust fund up to some preventative measures, like inspections and enforcement authority, and the total amount that goes to the States for clean up.

Mr. GILLMOR. Okay, but those are all pretty important ones if we're able to get them done.

Many States are finding it difficult to properly and comprehensively run their programs. Are there any measures that you would suggest to help alleviate the problems? Is there a problem of under or unfunded mandates?

Mr. STEPHENSON. I think some States don't have enough funds to inspect at the minimum EPA requirements of at least once every 3 years and you've heard from one State that they could use more resources for training inspectors and tank operators and the like, so those are the ones we focused on in our study. It would seem to be a cost effective, maybe not total solution, but at least a start to address the problems.

You don't have good statistics now. If you don't do the inspections, you really don't know the status of all the tanks out there, so a lot of States don't—60 percent of the States don't even inspect once every 3 years, so how can you base any policy decision on that limited of a data base.

Mr. GILLMOR. Okay, well, thank you very much. And if there are no further questions, let me also remind you though that we did ask earlier and you thought you may be able to come up with some figures for us on cost to do the program the way we want to do it and in particular, if you can come up with any figures, I know they're not going to be totally precise on dealing with the remediation problem which I take from the testimony is one big unmet need that's out there.

And I want to thank all of you for your testimony. It's been very helpful. We stand adjourned.

[Whereupon, at 3:14 p.m., the hearing was concluded.]

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