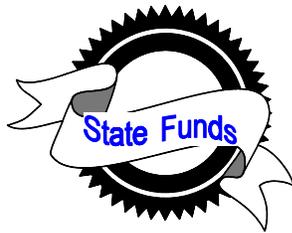


*State Fund Success Stories
Compendium*

Tenth Edition



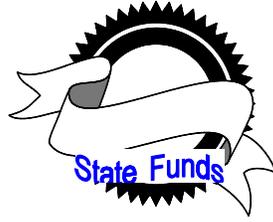
**The Association of State Underground
Storage Tank Cleanup Funds**

June 2005

**Supported by:
The Association of State and Territorial Solid Waste Management Officials
(ASTSWMO)**

Table of Contents

	Page
Letter to State Fund Administrators	2
State Fund Success Stories	
1. Financial Success	
Colorado.....	3
Indiana.....	7
2. Policy, Innovation and Productivity	
Colorado - 1.....	10
Colorado - 2.....	12
Colorado - 3.....	13
Indiana.....	15
New Mexico.....	18
South Dakota.....	23
3. Success with Stakeholders	
Colorado - 1.....	26
Colorado - 2.....	27
Colorado - 3.....	29
Missouri.....	Separate Attachment



The "State Fund Success Stories Compendium," Tenth Edition, 2005, is complete. After all the dust settled, we received twelve entries from five states.

The success story process began in 1995 during the planning of the 5th Annual State Fund Administrators Conference. We believe that all state funds have one or more successes that may help other fund programs. We want to keep this tradition going and, while we understand it is difficult to devote time to this, we encourage you to write your successes because of the educational benefit for everyone. If you have suggestions on how the Compendium could be made more beneficial or the process streamlined, please tell us this as well.

The Association of State Underground Storage Tank Cleanup Funds will again initiate the success story process for the 15th Annual State Fund Administrators Conference with the first invitational letter early in 2006. Start thinking about your successes now. As they evolve through the next year jot down some notes so it will be easy to construct your success stories.

Congratulations to all of the states who submitted stories this year. You are all winners and you make us winners by submitting your successes.

Chuck Schwer, VT, Co-Chair
William Alpine, MA, Co-Chair
Association of State Underground
Storage Tank Cleanup Funds

State Fund Success Stories

1. Financial Success

Colorado

Legislation to increase the Environmental Surcharge

1. Describe the Success

Legislation was passed that provides for an increase in revenues and funding levels for the Colorado Petroleum Storage Tank Fund (the Fund). Increased revenues will result from an increase in the environmental surcharge imposed on all petroleum products for sale in the state of Colorado. In addition, the legislation provides for an increase in the amount of reimbursement that can be provided per site as well as per applicant (assuming multiple sites) per year. The legislation also makes the Fund an enterprise fund and thus exempt from certain taxation limits in Colorado, and expands from “property owners” to “current and former property owners” as persons who may have recourse to the Fund.

The Colorado Department of Labor and Employment, Division of Oil and Public Safety (OPS) is the administrator of the Fund. During 2003/2004 OPS tried unsuccessfully to pass this much needed legislation. During 2004/2005 the same legislation was sponsored by the Petroleum Marketers Association and other industry groups with OPS support. The legislation passed both the Colorado House and Senate, and was signed by the Governor on May 3, 2005.

The Fund provides reimbursement of costs related to assessment and remediation of petroleum contamination resulting from underground and above ground storage tanks. The surcharge is the primary source of revenue (98%) to the Fund. The surcharge is collected on each tanker truck that leaves a distribution facility and adds approximately \$0.01 per gallon to the price of fuel at the retail dispenser.

The amount of the surcharge is based on the Fund balance. The current amount of the surcharge is shown on the left-hand side of Table 1 with the increased amount of the surcharge shown on the right-hand side of Table 1. As the Fund balance has been below \$5 million since January 2003, the maximum surcharge amount of \$75 has been collected since that time. Monthly revenues to the Fund typically range from \$2.0 million to \$2.4 million (approximately \$29 million per year). The Fund balance is currently \$1.8 million (May 2005). With the increased surcharge that will be effective in July 2005 at a rate of \$100 per tanker, monthly revenues are projected to be \$3.0 million to \$3.2 million (approximately \$38

million per year).

Table 1 Current and Increased Environmental Surcharge				
Current Surcharge			Increased Surcharge	
Fund Balance (\$)	Surcharge (\$ per truckload)		Fund Balance (\$)	Surcharge (\$ per truckload)
Above \$30 M	None		Above \$12 M	None
\$20 M to \$30 M	\$25		\$6 M to \$12 M	\$50
\$5 M to \$20 M	\$50		\$3 M to \$6 M	\$75
Below \$5 M	\$75		Below \$3 M	\$100

In addition to increasing the surcharge, the legislation also raises the amount of reimbursement that can be provided as shown in Table 2.

Table 2 Current and Increased Statutory Limits for Reimbursement from the Colorado Petroleum Storage Tank Fund		
	Current Limit	Increased Limit
Per occurrence per site	\$1 M	\$2 M
Per applicant (multiple sites)	\$2 M per fiscal year	\$3 M per fiscal year

2. What Problem(s) did it Resolve and Describe the Results

Increased Demand on the Fund and Maintaining a Positive Fund Balance

Due to the success of the Fund and the resulting increased demand, the Fund Balance was in danger of having insufficient funds to pay all pending applications in April 2004. At this time, OPS curtailed payments to applicants for a short time, and subsequently allocated payments to maintain a positive Fund balance. Since this time, the Fund balance has grown, and generally is between \$2 million to \$3 million. Currently, the backlog of payments is \$2.7 million – applications that are

ready for payment but are held in order to maintain a positive Fund balance. The increase in the surcharge will provide more revenue and help to eliminate the backlog and shorten turn around of payments to our applicants.

Impacts from new MTBE Regulations

In addition, OPS implemented regulations and a water quality standard for methyl tert butyl ether (MTBE) effective May 2005 (See Success with Stakeholders story). These new regulations require assessment and remediation, if necessary, of MTBE. Although some consultants and owner/operators have been sampling groundwater for MTBE for some time, additional assessment activities to define the extent of MTBE and possibly remediation for MTBE are expected. These additional costs will be reimbursed by the Fund. The impacts of the MTBE regulations are expected to further increase the demand on the Fund. The additional revenues are anticipated to help offset the additional demand from MTBE.

Impacts from EFS/eRAP Process

In terms of savings to the Fund, the implementation of the Economic Feasibility Summary/electronic Reimbursement Application (EFS/eRAP) process for approving and processing claims for corrective action has had a positive impact on the Fund balance. To date since implementation of the process in 2002, a total of 487 EFSs have been approved. Through negotiation of the EFSs by OPS Remediation Section staff with the environmental consultants and Owner/operators, a total of \$12,195,749 has been realized in savings.

In spite of these savings, applications to the Fund have increased by 107 percent since implementation of the EFS/eRAP process in 2002 with a corresponding increase of 38 percent in the value of reimbursements requested. Consequently, the number of applications processed by the Fund Section staff has increased 82 percent from 2002, with an increase of 39 percent in the value of reimbursements from the Fund to applicants. Currently, 64 percent of all applications received are eRAPs, and 60 percent of the applications paid are eRAPs.

While providing savings to the Fund, the EFS/eRAP process has been successful in providing ease of access to the Fund for corrective actions with demand increasing substantially since the inception of the EFS/eRAP process.

Applicants Exceeding \$2 million Fiscal Year Statutory Limit

For fiscal year 2005, two separate applicants with multiple sites in Colorado have exceeded the \$2 million fiscal year statutory limit. Since the end of April 2005, payments to these two applicants have been halted until the new fiscal year that begins in July 2005. These applicants have numerous sites in Colorado with petroleum releases and are very active and cooperative in assessing and remediating their sites as necessary. The increase in the statutory limit to \$3

million will help lessen if not alleviate this problem.

3. Who are the Beneficiaries of the Success?

The Fund

The Fund balance benefits due to the increased surcharge by the increase in revenues. It is anticipated that payments will be made in less time when additional funds are available.

Applicants

By having a successful and well managed Fund and maintaining a positive Fund balance, owners/operators of petroleum contaminated sites are not hesitant to come forward and report releases, confident in knowing they will receive reimbursement for their efforts. In addition, additional revenue will provide for speed of processing and paying applicants which benefits the applicants as they receive their reimbursement in less time.

Taxpayers

Ultimately, tax payers in the State of Colorado benefit by having a well managed Fund that provides for successful and timely remediation of petroleum contaminated sites.

4. How was it implemented

OPS unsuccessful efforts last year to pass this legislation did not go unnoticed by the petroleum industry. During 2004/2005, the Petroleum Marketers Association offered to support the legislative effort. A State Senator very supportive of the Petroleum Storage Tank program carried the legislation in the State Senate with a similar sponsor in the House. Members of the House and Senate Committees that reviewed the legislation were lobbied by the petroleum industry. OPS did not participate directly in these efforts, but provided support when requested. The OPS Division Director attended numerous hearings and answered questions regarding the necessity for and impacts of the legislation.

The surcharge is currently collected by the Colorado Department of Revenue (DOR) in accordance with a Memorandum of Agreement (MOA) between OPS and DOR. This agreement is renewed yearly and allows for the Department of Revenue to collect the surcharge, with a transfer of the monies into the Fund account. Based on the Fund balance, OPS notifies DOR whether the surcharge should change. Per the MOA, on July 1, 2005, it is anticipated that OPS will notify DOR that the surcharge should be increased to \$100 per tanker. Due to the time periods required for DOR notification of the petroleum distributors of the increased surcharge, increased revenues to the Fund will not be realized for approximately 5 months

OPS Fund Section staff monitor payments against the statutory limits. OPS Fund Section staff track payments to all sites and all applicants in the COSTIS database. Payments to any particular site are totaled automatically in the database and are presented in the site header information. A Fund analyst can see immediately upon calling up a site if the per site statutory limit has been reached. Reports are routinely generated from the database that total all payments to any particular applicant per fiscal year. By running these reports, the Fund analysts can track all payments to an applicant to ensure the per year statutory limit is not exceeded.

Indiana

Reducing Remediation Cost through Rule Modification

Background

Until recently, the Indiana Department of Environmental Management's (IDEM) Leaking Underground Storage Tank (LUST) Program has operated under fairly stringent action levels for the remediation of petroleum contamination. Soils were typically evaluated against a 100 part per million (ppm) standard for total petroleum hydrocarbons, and the U.S. EPA's Maximum Contaminant Levels (MCLs) for drinking water were used as clean-up goals for groundwater. While these action levels guaranteed protection of human health and the environment, they often inhibited property transactions or hampered re-development of abandoned sites by prolonging the remediation process. This was especially frustrating at sites that were to be re-used for commercial or industrial purposes.

In 2001, IDEM addressed this issue with the introduction of the Risk Integrated System of Closure (RISC). This non-rule policy guidance document allowed facilities to evaluate petroleum contamination using a risk-based approach in combination with site-specific action levels. It was created with the intention of establishing cost-effective closure standards and flexible closure options that resulted in negligible risk to human health and the environment.

Currently, these two sets of guidance are operating concurrently in the State of Indiana. While both offer viable methods of achieving closure at a facility, it was clearly in the best interest of Indiana's Excess Liability Trust Fund (ELTF) Program to require that the most cost-effective remediation and closure options be evaluated and implemented. Unfortunately, there was no mechanism in place to assure this. As a result, the ELTF was left vulnerable to facilities refusing to explore more time and cost-effective closure alternatives (typically offered under the RISC Program), often remediating their industrial/commercial properties to

nearly pristine conditions at the expense of the ELTF.

Describe the Success

A Rule revision (328 IAC 1) occurred in September 2004. Among other modifications, this revision firmly established a requirement that a Corrective Action Plan (CAP) for a petroleum-contaminated facility set forth cleanup objectives that are “sufficient, but no more stringent than necessary, for the current land use for the site.”

Facilities are not specifically prohibited from pursuing a more-expensive remediation method, or continuing to perform remediation activities when contamination has been reduced to site-specific action levels, but they will not be able to seek reimbursement from the ELTF. Eligible Responsible Parties (RPs) who wish to seek reimbursement from the State must now aggressively pursue time- and cost-effective remediation options—often in combination with institutional controls such as deed restrictions. This encourages them to consider the RISC Guidance which typically offers more flexible and cost-effective closure options as well as site-specific or default action levels. In turn, site closures are more readily achieved resulting in greater savings to the ELTF without compromising the agency’s responsibility to protect human health and the environment.

What problems did it resolve and describe the results

Prior to the Rule revision, the ELTF did not have the ability to enforce the implementation of a cost-effective CAP—only a technically feasible one. This rule change also provided the ELTF with the ability to discontinue payment if a facility had successfully remediated its contamination to an applicable land-use standard. Sites that had been dragging on for years (and filing claims against the ELTF) under the 1994 Guidance began to explore the more flexible and cost-effective closure options offered under the RISC Guidance.

Expedited closures achieved by using the RISC Guidance also removed barriers that once existed for the re-sale and re-development of petroleum-contaminated facilities.

To date, Indiana’s regulated community has been very receptive of the change.

Who are the beneficiaries of the success?

The ability to enforce expedited and cost-effective closures greatly benefits the Indiana ELTF which has been struggling with a record number of claims and a dwindling balance.

Indiana businesses and developers will also benefit as the expedited closures will facilitate the re-sale and re-development of former petroleum-contaminated facilities that might have sat vacant for years while remedial activities were completed under the more stringent, often unrealistic 1994 Guidance.

How was it implemented?

When first introduced in 2001, the RISC Guidance was optional for a period of one year and then eventually required for all new petroleum underground storage tank (UST) releases reported after February 15, 2002. The remaining facilities that had existing, reported petroleum releases were grandfathered into the older, more stringent Guidance established in 1994 with the intent that these sites would eventually become phased-out or transfer into the RISC Program.

With the recent Rule modification, transfer into this Program is often required if a facility wishes to continue to receive reimbursement from the ELTF.

Accordingly, successful implementation of this portion of the Rule revision has required increased communication between ELTF technical staff and the RPs/consultants. ELTF staff, now having greater regulatory authority over sites with remediation activity, play a more active role in the overall management of the project. The Agency has also seen an increase in the number of CAP Addendums received as the regulated community responds. Finally, there has been a need for increased internal communication as the ELTF technical staff must now rely on IDEM's Office of Legal council to review the deed and property restrictions that often accompany RISC closure requests. The Leaking Underground Storage Tank Section Chief and the ELTF Technical Administrator have been working as liaisons to coordinate and monitor this effort.

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2. Policy, Productivity, and Innovation

Colorado - 1

1. Describe the Success

The checklist is a tool attached to the Fund application that is used by the applicant to assure that all documentation necessary to complete a thorough and accurate Fund eligibility review is submitted. The checklist was greatly expanded to include the information required with every application (invoices, affidavits, proof of payment, etc.) and every possible scenario for documenting release detection and operational compliance at a station. Each piece of the necessary documentation is clearly stated on the checklist. A “check box” is located adjacent to each item. The instructions state the applicant is to “check off” those items submitted as part of the reimbursement application.

The tank addendum, which has always been an integral part of the reimbursement application, had not been updated in over ten years. The tank addendum was completely revamped adding additional detail so that applicants can easily determine what records describing their tank system are necessary to submit with their reimbursement application so that an accurate eligibility review can be completed.

Together, these forms have alleviated confusion on what constitutes proper documentation, decreased the need to send deficiency letters, and re-reviewing of files as additional information is submitted. As a result, original applications are processed more expediently and are presented before the Petroleum Storage Tank Committee in less time.

2. What Problem(s) did it Resolve and Describe the Results

As the application procedures have evolved to facilitate more expedient processing of reimbursement applications, it became apparent that many applications were delayed due to the applicant’s failure to supply accurate and complete information concerning their tank system and methods of release detection. Because the previous tank addendum did not clearly state the documentation necessary to complete an eligibility review, appropriate and complete information was not submitted with reimbursement applications. Often, information on the tank addendum conflicted with information in the OPS COSTIS database. Additionally, proper release detection records were either incorrectly submitted or were not submitted at all. This resulted in deficiency letters being sent to the applicant for explanation that delayed further processing of the application.

3. Who are the Beneficiaries of the Success?

Applicants to the Fund benefit since funds are reimbursed for their costs more rapidly. Also, this results in less interest being paid to lending institutions for those applicants who finance the cost of the cleanup. Fund analysts benefit as their time is spent more efficiently if the needed information is provided initially. This results in a larger number of applicants being processed in less time. The citizens of the State of Colorado benefit because the cleanup of contamination is accelerated.

4. How was it implemented

After identifying the common deficiencies that delay the reimbursement process and create additional staff efforts, Fund Section staff initially brain-stormed how the existing forms could be amended to be more user friendly, concise and supply enough direction on what documentation is needed to complete an eligibility review. Two concepts were devised and a draft tank addendum and checklist were created and formatted. Extensive research was put into assuring that these forms were comprehensive and complete. All Fund staff, along with the Division Director and the Field Inspection Section Manager reviewed the prototypes and provided useful suggestions. For Stakeholder input, the initial prototypes were sent to several tank owners/operators and environmental consultants familiar with the Fund for comments. An introductory letter and the new tank addendum and checklist were posted on the OPS web page in February 2005. The checklist and tank addendum have been required with all applications submitted since March 1, 2005. If any part of the documents on the checklist is missing, the application is immediately returned to the applicant with a letter outlining what information is lacking, thereby saving valuable time. Thus far, the new forms have been well accepted by applicants and appear to be doing the job intended.

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Colorado - 2

1. Describe the Success

The OPS receives funding from the EPA through a Leaking Underground Storage Tank (LUST) Trust Grant. The purpose of the grant is to provide funding for high priority sites where the tank owner/operator is unknown, unwilling or unable to perform his or her own assessment and remediation activities. The OPS Remediation Section oversees these efforts using environmental consultants hired by and working directly for OPS. OPS Remediation Section staff direct the assessment and cleanup, both technically and financially. One of the requirements of the LUST Trust Grant is to recover the costs expended if a viable owner operator is identified. The OPS has identified many sites that qualify for this funding that are also eligible to the State Fund.

Cost Recovery is a method whereby a responsible party who is unwilling or unable to perform the cleanup themselves is found to be eligible to the Petroleum Storage Tank Fund (the Fund). OPS performs the cleanup, recovering the costs from the Fund using the eligibility established by the responsible party. Certain costs not reimbursable from the Fund, such as the deductible or any unallowed costs, are recovered from the responsible party.

The OPS Cost Recovery program has created the opportunity for leveraging State Funds to meet the cost recovery requirement of the LUST Trust Grant as well as to greatly expand the number of sites that can be cleaned up through the LUST Trust program.

2. What Problem(s) did it Resolve and Describe the Results

Prior to the implementation of the Cost Recovery program, cleanups at LUST Trust sites were languishing, or not occurring at all due to limited funding. The Cost Recovery program has provided funding to promote and further LUST Trust cleanups.

The most significant impact cost recovery has made on the LUST Trust program is the number of sites where active remediation has been implemented and contamination is being removed. In 2001 there were only four sites in the program that had active remediation systems whereas in 2005 there are nineteen. Correspondingly, funds expended by the LUST Trust program increased 237 percent, from \$832,000 expended in 2001 up to \$1,974,000 expended thus far in 2005. In the four years since the Cost Recovery program implementation, \$4,152,000 has been recovered in support of assessments and cleanups.

3. Who are the Beneficiaries of the Success?

Responsible parties who are financially unable to perform remedial actions, the communities in Colorado that are being revitalized by the cleanups, and the environment.

4. How was it implemented

OPS Remediation and Fund Section staff worked with the Colorado Department of Labor and Employment Finance department staff to devise the accounting mechanisms to provide for cash transfer from the Fund to the LUST Trust program.

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Colorado - 3

1. Describe the Success - Fee Lands

In 2005, Senate Bill (SB) 05-075 was signed into law concerning petroleum storage tank owners with sites located on fee land. Fee Land means fee simple land not tribally owned within the exterior boundaries of the Southern Ute Indian Reservations in Colorado. Also in 2005, the Colorado Department of Labor and Employment (CDLE) signed a Memorandum of Agreement (MOA) with the Ute Mountain Ute Tribe in regards to two sites on trust lands within the reservation boundaries that are owned and operated by the Tribe.

Both SB 05-075 and the MOA will allow access to the Petroleum Storage Tank Fund (the Fund) for reimbursement of allowable assessment and remediation costs. SB 05-075 and the MOA will also provide for demonstration of compliance with the financial responsibility requirements of the effected parties. Neither SB 05-075 nor the MOA change any pre-existing governmental jurisdiction of the Tribes, their agencies, the States, or any of its agencies, or any other entity. The OPS does not gain regulatory authority to enforce state statutes,

regulations and policies, but rather those parties who opt to participate in the State Fund must be in compliance with state statutes, rules, and policies concerning tank registration, release detection, corrective actions, etc.

2. What Problem(s) did it Resolve and Describe the Results

On numerous occasions in the past, owner/operators with leaking petroleum storage tanks on fee lands have sought reimbursement from the Fund. The OPS has been unable to find these parties eligible because they were not regulated. The Fund was sued by one of these parties last fall and in order to avoid further legal fees settled the case for \$36,000. The OPS has seen the need to reach agreements with these parties and has made attempts over the last 10 years to sign MOUs with both Tribes. The mechanisms that are now in place will allow for OPS confirmation of regulatory compliance via inspections, technical report approvals, etc. as well as providing reimbursement from the Fund.

3. Who are the Beneficiaries of the Success?

Responsible parties located on fee lands, tribal members, the citizens of Colorado, and the environment.

4. How was it implemented

It will be implemented by the OPS through providing effected petroleum tank owners with a fact sheet describing their options concerning the Fund and the requirements, if they choose to participate. Those parties who choose to participate will register their tanks, pay surcharge fees, and tank and release information will be entered into the OPS database (COSTIS). From that point forward, the fee lands sites will be overseen and addressed by OPS technical and fund staff similar to any other site.

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Indiana

Implementation of Priority Payment

Background

The State of Indiana has been faced with increasing claims against the Excess Liability Trust Fund (ELTF). Claims paid in Fiscal Year 1999 were approximately \$9.5 million. In Fiscal Year 2004 that number had grown to \$51.6 million. During that same time period, annual ELTF revenue averaged \$31 million. The increasing annual operating deficit was quickly diminishing the ELTF balance.

In September of 2004, to address the ELTF balance issue, the State of Indiana implemented substantial changes to the Indiana Administrative Code (The Rule) that governs operations of the ELTF Program. One of the changes in the Rule required that the ELTF begin prioritizing sites for reimbursement of claims based on the threat to human health and the environment. This change was implemented when the ELTF balance dropped to \$25 million so as to be able to maintain a \$5 million minimum balance. The Indiana Department of Environmental Management (IDEM), ELTF Section was tasked with implementing these changes.

Describe the Success

The ELTF Section manages in excess of 1100 sites and processes more than 300 reimbursement claims per month. Completion of the following activities over a period of six months allowed the ELTF Section to successfully implement priority payment without an interruption to the claims payment cycle.

1. Rank incidents according to the requirements established in The Rule.
2. Implement financial tracking mechanisms to monitor available ELTF balance.
3. Design and implement computer system changes to determine which claims can be reimbursed and the pending ELTF liability based on the available balance.
4. Modify the claims process to utilize electronic documents for claim approval to eliminate waste of paper.
5. Maintain average claim processing time within 60 day requirement of The Rule.
6. Communicate the impact of The Rule changes on the reimbursement process to interested parties.

The solutions were simple, yet extremely effective in addressing these challenges. Minor changes to the ELTF computer system efficiently addressed the challenges the Program faced resulting in minimal impact to the daily activities and

responsibilities of staff.

What Problem(s) did it resolve and describe the results

Implementation of Prioritization provided the ELTF with the necessary tools and processes to manage the ELTF in accordance with the new Rule requirements and more closely monitor ELTF performance while maintaining financial and customer service objectives and requirements.

Who are the beneficiaries of the success?

Beneficiaries include the applicants/responsible parties waiting for payment, IDEM and the public. The applicants are assured the ELTF will remain a viable source of assurance by managing the balance in a fiscally responsible manner. IDEM benefits from the efficiency and reporting mechanisms that have been implemented and from Rule changes that defined in greater detail the process and requirements for Prioritization. The public benefits because Prioritization assures that those incidents that pose the greatest threat to health and human safety are assured funds for the necessary cleanup to be performed.

How was it implemented?

Ranking Incidents

The ELTF program quickly initiated a process to obtain critical site information necessary to categorize all incidents according to The Rule and had categorized nearly 75% of sites likely to submit a claim prior to reaching the \$5 million balance which initiated priority payment of claims.

A questionnaire was developed and sent to all Responsible Parties to collect the necessary information and categorize all sites. The questionnaire had a very high response rate and IDEM was able to quickly prioritize approximately 55% of active ELTF eligible sites. In addition a Prioritization review step was added to all ongoing technical site reviews to establish priority for those sites that the owner/operator did not respond. Thirdly, a report was developed to identify all incidents that have a reimbursement claim being processed and no priority ranking. All sites that appear on this report are reviewed by the ELTF Technical Administrator and a priority ranking is assigned. These steps have resulted in the high percentage of sites being ranked.

Financial Tracking Mechanisms

Historically revenue was tracked by the Auditor's office and balances were available only upon request. The ELTF Program Claim Administrator obtained

direct access to the State financial system to track ELTF revenue on a daily basis.

This balance information is used in conjunction with expense information to calculate the amount available for claim reimbursement. Monthly, the Claims Administrator enters this amount into the ELTF computer system to identify which claims will be reimbursed.

System Changes

To identify which claims will be reimbursed, the ELTF computer system had to be modified to track the priority of the incident and identify which claims would be reimbursed, based on the available budget calculated by the Claims Administrator. Two additional fields were added to the system. The first, the Priority Ranking was populated based on the information submitted by the owner/operator and confirmed by the technical review completed by the ELTF section. Second, the Eligible amount, is the amount determined to be eligible for reimbursement as determined upon completion of the claim review of submitted costs.

To create the reimbursement list an interface and program were developed to produce a report of which claims will be reimbursed based on the available budget amount entered by the Claims Administrator. The report produced a list of claims in accordance with The Rule as follows:

- * Approved for payment by the Claims Administrator
- * Grouped by priority ranking
- * Sorted by date and time received within the priority ranking category

Once the Claims Administrator approves the report, it is processed and the system automatically updates the claim information with the amount reimbursed and produces three files and paper reports.

- 1 Claims reimbursed
- 2 Cumulative claims pending
- 3 Claims pending and processed since the last report

These files are used to create the decision packages that are sent to the owner/operator to inform them of their reimbursement or that their reimbursement is pending due to lack of available funds along with their priority ranking.

These letters are produced by a separate application (Decision Printing Application) that imports the files and prints the necessary letters, reimbursement or non-reimbursement based on the three requirements listed above. The ELTF is required to complete processing of any claim within 60 days of receipt.

Claim Process Changes

Historically all claims were paid as approved and reimbursement was processed immediately upon completion of the claim being processed. With implementation of priority payment the reimbursement may be delayed indefinitely. The decision packages therefore can not be produced until the Claims Administrator produces the reimbursement reports. Before Priority Payment, the printed decision package was the mechanism for review and approval of all Claims. Continuing to follow that process would have resulted in a tremendous waste of paper and ELTF monies.

The Claims Administrator and claims processing team developed a process to share and review electronic copies of the decision packages. These documents are maintained in a network location available only to the claims staff. Upon completion of a claim review, the decision package is placed in a file for review by the Claims Administrator. Once the Claims Administrator approves the claim the ELTF system is updated with an approval date. This date is used by the system to determine which claims are eligible for reimbursement as noted above. All decision packages are then created by the Decision Printing application from the reports produced by the ELTF system. Once printed, all decision packages are signed and forwarded for payment if funds are available or mailed with no reimbursement if funds do not currently exist to pay the claim based on priority requirements under The Rule.

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New Mexico

The New Mexico Petroleum Storage Tank Corrective Action Fund

1. Describe the Success:

The New Mexico Petroleum Storage Tank Bureau (PSTB) is developing a procedure to petition for alternative abatement standards from the New Mexico Water Quality Control Commission (WQCC) in order to close sites that currently remain open although there is no threat to public health or

the environment. This will allow the Bureau to discontinue diverting limited resources pursuing a purely administrative problem.

PSTB is supporting petitions for alternative abatement standards at LUST sites where: 1) the health based contaminants of concern (COCs) have been remediated, 2) groundwater monitoring data indicate that the groundwater plume is continuing to naturally attenuate at rates that preclude justifying continued monitoring, and 3) no receptors are threatened by the residual contamination.

2. What Problem(s) did it Resolve and Describe the Results:

New Mexico's groundwater regulations require that groundwater standards for all contaminants of concern (COCs) be achieved before LUST sites are eligible for No Further Action (NFA) status (closure). At sites where groundwater contaminant concentrations chronically exceed the groundwater quality standards adopted by the New Mexico Water Quality Control Commission (NMWQCC), there is a vehicle for obtaining Alternative Abatement Standards (AAS) and possibly site closure.

Leaking Underground Storage Tank (LUST) sites that have had the petroleum constituents successfully remediated often have chronic, remnant concentrations of COCs, notably manganese, that prevent the site from attaining NFA status. For appropriate cause shown, the WQCC can grant an AAS for sites that may be orders of magnitude higher than the normal abatement standard. Attaining an AAS from the WQCC allows sites that pose no threat to public health and the environment to be closed. The AAS vehicle requires approval of an AAS petition by the WQCC.

3. Who are the Beneficiaries of the Success?

The citizens of New Mexico-Properties currently lying fallow because of a perceived environmental problem will return to the tax rolls as productive useful properties. Owner/Operators of facilities-will benefit from having the onus of being an active site removed from their books. The New Mexico Petroleum Storage Tank Bureau will benefit by being able to direct limited resources more appropriately and close sites that would otherwise remain on the State's books indefinitely. Finally, Owners of once contaminated properties will benefit by the increase value of a once contaminated property that has now achieved no further action status.

4. How was it implemented:

To obtain approval of alternative abatement standards (AAS), a petition to the New Mexico Water Quality Control Commission (WQCC) must, at a minimum,

meet all requirements set forth in 20.6.2.4103.F NMAC (1-15-01). To maximize the potential for success of an AAS petition to the WQCC, the following outline of requirements should be addressed in the petition:

1. Implementation of Adequate Source Control
2. Implementation of Abatement
3. Site Characterization and Abatement Alternatives Analysis
4. Technical or Economic Infeasibility
5. Characterization of the Contaminant Now and in the Future
6. Preventing Hazards and Undue Damage to Property
7. Procedural Requirements
8. Evidentiary Hearing Requirements

Implementation of Adequate Source Control

This should be a fairly straightforward demonstration for Mn only sites. A detailed description of underground storage tank (UST) removal activities and hydrocarbon source removal, including a site chronology, a description of contamination encountered during tank removal, any initial abatement activities conducted, and any other corrective action performed, is necessary and should be sufficient to demonstrate that adequate source control was implemented at the site

Implementation of Abatement

Documented remediation efforts used to address the primary hydrocarbon contamination at the site should be presented. The remediation systems typically have been successful at remediating the hydrocarbons but are not efficacious in addressing the Mn. Again this should be a straightforward demonstration to the WQCC through description of the remedial actions that have occurred at the site.

Site Characterization and Abatement Alternative Analysis

To petition for AAS, the petitioner must have completed the abatement process up to the submission of both Stage 1 and Stage 2 Abatement Plans, or equivalent as required by 20.6.2.4103.F NMAC. The Stage 1 abatement plan coincides with the PSTB Phase 1 Investigation and the Stage 2 Abatement Plan coincides with the PSTB Phase 3-Final Remediation Plan requirements. The WQCC regulations, 20.6.2 NMAC, “*exempt persons abating water pollution: from an underground storage tank, under the authority of the Underground Storage Tank Regulations (20.5 NMAC)*” from the Abatement Plan requirements (20.6.2.4105.A.1 NMAC). This exemption is recognition that the PSTB regulations are substantively equivalent to the WQCC regulations. Sites that will be petitioning for AAS must have gone through Phases 1 and 3 and a review of the results of those abatement efforts in the petition should suffice to demonstrate equivalency with Stage 1 and

2 Abatement Plans.

Technical or Economic Infeasibility

To petition for AAS, a petitioner may pursue alternate theories of technical infeasibility or economic infeasibility. A petition for AAS for Mn only sites should be based on the theory that remediation of Mn is not technically feasible. A discussion of technical infeasibility for remediation of Mn only sites should discuss the practical limit of effectiveness of previous remediation efforts and discuss the practical limit of effectiveness of other commercially available alternative technologies to show whether there are feasible alternative methods to abate Mn contamination at the site. Assuming that there is no commercially available and technically feasible method to abate Mn contamination at the site, the petitioner need not conduct an analysis of the petitioner's economic capability. It is assumed that the petitioner will not pursue the alternative theory of economic feasibility which would require a detailed cost-benefit analysis (CBA), therefore minimum requirements for a CBA in an AAS petition are not outlined here.

Characterization of Contaminant Now and in the Future

A petitioner for AAS must specify the water contaminants for which AAS are proposed, identify the extent to which the standards of 20.6.2.4103.A and B NMAC are now, and will be in the future, violated and identify the three-dimensional body of water for which approval of AAS is sought. Due to the nature of the contaminant being dealt with, this should be a straightforward demonstration to the WQCC. The contaminants of concern and the extent of current violation should already be answered by the Phase 1 through 3 remediation process. Available maps, graphs, and cross sections from the completed investigation and remediation design and implementation work should readily identify the three-dimensional body of water affected. The petitioner must take this characterization a step further and predict future concentrations and locations of exceedances and present a scale map of the proposed boundaries of the enforceable AAS. Reliable predictions of the future of the contaminant should be discernable from analysis of the corrective action data. If the location and concentrations of contaminants in the future is potentially variable, predictions of future concentrations and locations should be based on a reasonable worst case scenario to ensure that subsequent petitions for AAS are not necessary to bring the site into compliance.

AAS are granted only for a period of time specified by the Commission. The time for AAS must be based on "substantial evidence" in the record "showing the length of time the standards are expected to be exceeded". This could allow for a perpetual time limit, if that is justified by the evidence. The petition should address the justification for the requested time period for AAS.

The applicable ground water quality standard at a site is background levels or the WQCC numerical standards, whichever is higher. 20.6.2.4101.B NMAC. If background concentrations at the site exceed WQCC numerical standards, a background determination must be made to determine the extent of exceedance at the site. The basis for the background determination must be justified in the petition.

Preventing Hazards and Undue Damage to Property

A petitioner for AAS must take all reasonable efforts to minimize damage to property and actual or potential threat to human health. Reasonable efforts would include adequate source control (see above) and abatement of the contamination (see above) to the extent it is technically feasible. Assuming the petition is only for non-health based contaminants, threat to human health should not be a concern. Nevertheless it is strongly recommended that the petition address whether it would ever be possible for a neighboring landowner to draw out or capture contaminated water if they placed a production well at the property boundary, as this has been a historic concern of the WQCC. The petition should also discuss and propose any appropriate means to notify future landowners of the presence of the contamination or restrictions on future access. Possible mechanisms could include deed notices or covenants. If future groundwater monitoring is not proposed, the petition must explain and justify why long term groundwater is not necessary at the site. This justification must take the following considerations into account: site hydrogeology, characteristics of the contaminant(s), proximity of contamination to neighboring properties and production wells, degree of confidence in predictions of future concentrations and locations of contamination, length of time proposed for AAS, and any other relevant factors.

Procedural Requirements

To initiate an AAS a petitioner must:

1. File the petition with the WQCC meeting the filing requirements of the QCC;
2. Serve a copy of the petition on the Department and on the PSTB.

The Department has 60 days to file its recommendation with the WQCC and serve it on the petitioner. The Department may recommend that the WQCC deny the petition, grant the petition, or grant the petition with conditions.

A public hearing is required to grant any AAS.

If the Department recommends denial of the Petition, the petitioner has 15 days to appeal this recommendation. If the denial recommendation is appealed, a public

hearing is required. If the denial recommendation is not appealed, the denial is final

Evidentiary Hearing

The petitioner must address all the issues discussed above by presenting testimony of expert witnesses and detailed documentary evidence at an evidentiary hearing before the WQCC. The petitioner must also be prepared to address potential conditions on granting the AAS proposed by the Department, WQCC, or other interested parties.

Site Specific Factors

The minimum requirements outlined above are general in nature and each site must be analyzed for any site specific issues that must be taken into account when preparing an AAS petition. Site specific factors may necessitate additional requirements to support and grant an AAS petition.

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South Dakota

State Fund Success Story – The South Dakota Triad Challenge

1. Describe the Success:

In the fall of 2004, the South Dakota Petroleum Release Compensation Fund (PRCF) initiated a study to determine the cost and effectiveness of using the Triad approach at relatively small petroleum release sites. The results of the study suggest that the Triad approach will work well managing data uncertainty at small sites and may be preferential to other more conventional methods of site characterization.

Five sites were chosen for the study which included three active gas stations, one closed gas station and a railroad fueling site. The EPA provided the PRCF with a \$50,000 grant to assist with the study. All locations were considered "legacy"

sites because the petroleum releases had been discovered some time ago, yet none of the sites were effectively moving toward regulatory closure. Some of the sites had been in the assessment process for over a decade with no remediation to date. The known tanks at the closed gas station had been removed over 10 years ago, but no assessment had been conducted. The goal of the study was to apply the principals of the Triad in order to rapidly characterize the sites, develop accurate conceptual site models, establish clear cleanup goals and move the languishing sites toward regulatory closure as rapidly as possible.

The principles of the Triad approach involve 1) systematic planning; 2) rapid site characterization using real-time field analyses; and 3) dynamic work plans. The PRCF applied these principles and incorporated the use of direct push technology (DPT) and direct sensing field assessment techniques to assess the five sites. All of the sites were assessed in less than 16 work-days. The results of the assessments allowed the regulatory personnel in collaboration with the PRCF and consultant to establish a corrective plan for each site and move it toward closure. Two sites will be issued letters requiring No Further Action and the remaining will proceed with corrective action.

In addition to moving the five languishing sites toward closure in a cost-effective manner, the SD Triad Challenge also led some procedural changes in how we manage sites. We saw a tremendous value in the up-front systematic planning aspects of the Triad and now require it at all sites undergoing a RBCA tier II assessment. We also learned that rapid, real-time, on-site measurements are better for reducing uncertainty (i.e. lots of data points of less precision are better than a few data points of high precision). In other words, data density may take precedence over data quality in some respects (and within reason).

We have also learned that while conventional lab data may offer a relatively precise measurement of the chemicals extracted from a very *small soil sample or ground water sample*, the data density from a large number of DPT membrane interface probe (MIP) soil profiles offers a much more precise measurement of the *overall site conditions*. In developing a conceptual site model, it is more useful to obtain an accurate measurement of the overall site conditions than to have precise measurements of a few small lab samples.

2. What Problem(s) Did It Resolve and Describe Results:

The PRCF is authorized to reimburse tank owners only expenses for *necessary and reasonable* corrective action expenses. To comply with this mandate, it has been the policy of the PRCF to work with the Dept. of Environment and Natural Resources (DENR), environmental professionals and site owners to promote faster and less expensive assessments and cleanups without compromising the protection of human health and the environment. Despite this, a substantial

number of release sites have tended to “languish” over a long period of time. There are numerous instances where it has taken years to gather sufficient site assessment data to develop a reliable corrective action plan. There is still insufficient site information at many sites to prepare a suitable site conceptual model despite numerous drilling and monitoring events. The results of the Triad Challenge helped the PRCF to establish a protocol for moving languishing sites to closure using the Triad approach.

3. Who Are the Beneficiaries of the Success:

The beneficiaries of the success include the following:

1. The tank owners or responsible parties because the use of Triad should accelerate the site assessment and cleanup;
2. The environmental consultants because they receive clear direction through the up-front systematic planning and can move more confidently knowing that they are working from the same objectives as the PRCF and DENR;
3. The DENR because the Triad can help move sites to more rapid and cost-effective assessments and cleanups and can help assure directives are clearly laid out; and
4. The PRCF because sites can move more quickly and cost-effectively toward closure.

4. How Was It Implemented?

The principals of the Triad were used in the management of the project sites. In accord with the graded approach endorsed by Triad, planning and site work were tailored to fit the relatively small nature of the petroleum release sites. The PRCF contracted with Columbia Technologies to conduct the field analyses and Mid-continent laboratories to perform collaborative analyses as necessary using quality assured laboratory methods. A team was assembled for each site which included personnel from the PRCF, the DENR, the owner or his agent, the environmental consultant and personnel from Columbia Technologies. Systematic planning was conducted with the use of an experienced Triad mentor to establish clear objectives for each site. Direct push and direct sensing technologies were used in the field to gather site data and conduct the rapid, real-time measurement aspect of the Triad approach. All team members remained on site until uncertainty was minimized and data gaps were filled. Decisions regarding the depth and location of borings and the type and number of collaborative lab samples were made by the team on site, relying on the real-time measurements. The team did not move to the next site until all members were satisfied that data uncertainty had been

minimized to an acceptable level. Columbia Technology's "Smart Data Solutions" was used to convey field collected data to a secure internet website where it was posted as it was collected. The site model was updated several times per day using 3-D graphic images to aid the team in reducing uncertainty and filling data gaps. All 5 sites were successfully characterized within a single three-week period. All sites now have clear objectives for remediation and site closure.

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3. Success with Stakeholders

Colorado - 1

Attempted legislation to break up the Division of Oil and Public Safety

1. Describe the Success

Legislation intended to break up the Division of Oil and Public Safety (OPS) within the Colorado Department of Labor and Employment (CDLE) and move several functions currently within OPS to other areas of Colorado State government was soundly defeated. The State Fire Chief's Association and a small division within another state department that has coveted the programs of Boiler Inspection, Explosives, Carnival & Amusement Parks, and Public School Safety that currently are within OPS proposed this legislation.

With the strong support and lobbying efforts of the Petroleum Marketers Association, major oil companies, ski industry, school boards, and supportive legislators, this bill was soundly defeated in a Senate hearing.

2. What Problem(s) did it Resolve and Describe the Results

The oil industry was especially opposed to this bill because they believe this attempt was the first step in transferring all of our division programs including the Petroleum Storage Tank and State Fund programs to another department. In their

view this would have interfered with the continuing success of the Colorado Fund. When they received notice of this legislative proposal they immediately came to our support.

3. Who are the Beneficiaries of the Success?

Citizens and taxpayers, the regulated community of OPS division programs including, Fund applicants, Owner/Operators of petroleum storage tanks, environmental consultants and staff of OPS.

4. How was it implemented

Defeating the legislation took many hours of lobbying to legislators by the petroleum and other affected industries. OPS provided technical information but other than that was required to be supportive of the proposed bill.

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Colorado - 2

Inspection Requirements For Internally Lined USTs

1. Describe the Success:

Several UST owner/operators in Colorado met the 1998 UST upgrade requirement for corrosion protection by internal tank lining with or without the addition of cathodic protection. Now, almost a decade later, these owner/operators need to conduct the 10-year and subsequent 5-year internal inspections of these lined tanks. The purpose of the inspection is to determine if the lining continues to perform according to the manufacturer's specifications and if the lined tank is still structurally sound.

In light of the re-inspection requirements, and variables associated with the

addition of cathodic protection to an UST, which can sometimes be overwhelming, the Division of Oil and Public Safety (OPS) realized the need to provide guidance to these owner/operators. OPS formed a stakeholder group to jointly work on the development of a guidance document to assist the regulated community in understanding the requirements for continued operation of UST system(s) that met the corrosion protection requirement either by interior tank lining, or interior tank lining combined with cathodic protection. With active participation from stakeholders, this guidance document was developed, finalized, and made available to owner/operators in less than six months.

2. What Problem(s) did it Resolve and Describe the Results:

OPS realized that there was some uncertainty and misconception within the regulated community and with contractors, on the requirements and options for conducting periodic inspections of internally lined tanks, as well as on the criteria and procedures for adding cathodic protection to lined tanks. With the 10-year internal inspection deadline quickly approaching, it was imperative that the regulated community and contractors clearly understood the regulatory requirements for continued operation of internally lined tanks.

This guidance document helps the regulated community understand the requirements for continued operation of UST system(s) that met the corrosion protection requirement either by interior tank lining, or interior tank lining combined with cathodic protection. The document covers in detail the internal lining re-inspection requirements. The document also includes an alternative assessment procedure available for those owners who want to change their corrosion protection method from internal lining to cathodic protection to avoid the recurring costs of internal inspections. Included are several standardized forms for documenting Internal Lining Inspections, Tank Integrity Certification, Cathodic Protection Monitoring, and 60-Day Inspection Logs. Use of these comprehensive standardized forms benefit all stakeholders (owner/operators, contractors and the OPS).

3. Who are the Beneficiaries of the Success?

By gaining a better understanding of the requirements and options for continued operation of internally lined tanks and/or cathodically protected steel tanks, UST owner/operators, contractors, consultants, the OPS, Colorado citizens, and the environment, are all direct or indirect beneficiaries of the success. The solvency of the state fund also benefits, especially if future releases are reduced or eliminated as a result of implementing these requirements. As a further incentive to comply, owner/operators may face additional percentage reductions on their state fund reimbursement, if the inspections for internal lining and cathodic protection are not performed on schedule.

4. How was it implemented?

In Fall 2004, OPS formed the stakeholder group, comprised of three tank owner/operators, representatives from the two local petroleum marketers associations, a former tank lining contractor, two cathodic protection contractors, and two tank service contractors. The diversity of the stakeholder's backgrounds and expertise, allowed for unique perspectives, that resulted in stimulating and challenging discussions and thorough research, which strengthened the groups understanding of the issues, and their decision making abilities. Solutions for several issues which could otherwise have been obstacles were addressed and resolved by the group through consensus. In order to ensure adequate documentation of inspections by owner/operators and contractors, several standardized forms were developed for use with the guidance document.

Over the course of three focused meetings with the stakeholder group, OPS was able to develop a draft guidance document. The stakeholder group worked closely with OPS on the review and revision of the draft guidance, and after only two additional meetings, with group consensus, OPS finalized the guidance document. In March 2005, the final guidance document entitled "Inspection Requirements For Internally Lined USTs" was posted on the OPS website (<http://oil.cdle.state.co.us>).

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Colorado - 3

MTBE

1. Describe the Success

A risk-based screening level (RBSL) for MTBE was adopted by OPS on March 30, 2005, effective May 30, 2005. The RBSL is 20 parts per billion (ppb) based

on taste and odor for the groundwater ingestion pathway. The RBSL is applied at points of exposure other than the property boundary. Prior to adoption of the standard OPS organized several outreach sessions including meetings, talks, and a two-day intensive MTBE training course produced with assistance from Interstate Technology and Regulatory Council (ITRC).

2. What Problem(s) did it Resolve and Describe the Results

The problem relates to the Colorado Department of Public Health and Environment, Water Quality Division and Commission decision not to develop a statewide cleanup standard for MTBE until EPA has developed a maximum contaminant level (MCL). This decision has created current and future problems for petroleum storage tank owners and operators because they receive complaints from third parties who have MTBE contamination on their sites. OPS has applied a site-specific RBSL for MTBE of 20 ppb when there are known impacts to water supply wells and has reimbursed costs related to MTBE in the past. But without designating MTBE as a chemical of concern (COC) there was no requirement to assess for MTBE to define the extent and require remediation to protect potential receptors and prevent impacts.

The solution was to develop an RBSL under the individual regulatory authority of OPS for petroleum storage tank owners and operators only.

3. Who are the Beneficiaries of the Success?

Petroleum storage tank owners and operators, third party property owners impacted by MTBE, and the environment.

4. How was it implemented

OPS Remediation Section staff have made extensive efforts over the last two years researching and developing a state RBSL for MTBE that was technically and economically acceptable to all affected parties. These efforts included obtaining input and advice from other regulatory agencies, petroleum marketers associations, major oil companies, national workgroups, environmental consultants, attorneys and laboratories. Prior to adoption of the RBSL, several outreach efforts were made to introduce the RBSL to the environmental community. These efforts included the following:

1. Stakeholder Group Meetings – August and December 2004;
2. Presentation to the Colorado Groundwater Protection Council – August 2004;
3. ITRC MTBE & TBA Comprehensive Site Assessment and Successful Groundwater Remediation Workshop, presentation, panel participation and in-

depth training (2-day training course) – December 16-17, 2004

The RBSL was formally adopted by publishing in the Colorado Code of Regulations (7 CCR 1101-14, Article 5) on March 30, 2005, effective May 30, 2005. In addition, the new regulation and discussion is posted on the OPS web page.

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