

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL LAWRENCE G. WASDEN

Mr. Dennis J. McLerran

Region 10 Regional Administrator

United States Environmental Protection Agency 1200 Sixth Avenue Suite 900, RA-140

Seattle, WA 98101

*Re: State Underground Storage Tank Program Authorization*

Dear Mr. McLerran,

On behalf of the Office of the Attorney General for the State of Idaho, I hereby certify pursuant to my delegated authority as Idaho State Deputy Attorney General to represent the Idaho Department of Environmental Quality and in accordance with Section 9004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, and 40 CFR Part 281 that in my opinion the laws of the State of Idaho provide adequate authority to (1) carry out the "no less stringent" technical requirements submitted by the Idaho Department of Environmental Quality, (2) adequately enforce compliance with such program, and (3) regulate, at a minimum, the same UST universe as the federal program.

I hereby certify, to the best of my knowledge, that the application submitted by the Idaho Department of Environmental Quality, is legally and factually accurate. The specific authorities provided are contained in statutes or regulations lawfully adopted and effective at this time or which will be effective by the time the program is approved.

Should you require further information, please contact me, Susan E. Hamlin, Deputy Attorney General, at (208) 373-0494 .

Sincerely,



Susan E. Hamlin

Deputy Attorney General Office of the Attorney General State of Idaho

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## Attorney General’s Statement

The following tables contain references to Idaho rules and statutes. Certified copies of all referenced materials are provided in Appendix A (state rules), Appendix B (state statutes), and Appendix C (court rules).

### New UST Systems and Notification

#### Objective 40 CFR § 281.30

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| **The State must have requirements that ensure that all new UST systems conform with the following:** | **State Rule Citation (Idaho Administrative Procedures Act [IDAPA])** | **State Statutory Citation  (Idaho Code)** |
| (a) Be designed, constructed, and installed in a manner that will prevent releases for their operating life due to manufacturing defects, structural failure, or corrosion. [Note: Codes of practice developed by nationally-recognized organizations may be used to demonstrate that the State program requirements are no less stringent in this area.] | IDAPA  58.01.07.004.01 (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07) |
| (b) Be provided with equipment to prevent spills and tank overfills when new tanks are installed or existing tanks are upgraded, unless the tank does not receive more than 25 gallons at one time. | IDAPA  58.01.07.004.01 (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07) |
| (c) All UST system owners and operators must notify the implementing State agency of the existence of any new UST system using a form designated by the State agency. | IDAPA  58.01.07.004.01 (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07) |

**Notes on Objective 40 CFR § 281.30 New UST Systems and Notification**

The State has adopted the Federal regulations by reference and therefore meets the no less stringent criterion for Objective 40 CFR § 281.30(a) and (b).

**40 CFR § 281.30(c)** The State has adopted the Federal regulations by reference and therefore meets the no less stringent criterion for Objective 40 CFR § 281.30(c). The State has designated a form for UST system owners and operators to notify the State of the existence of any new UST system. A copy of this form is provided in Appendix D.

### Upgrading Existing UST Systems

#### Objective 40 CFR § 281.31

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|  | **State Rule Citation**  **(IDAPA)** | **State Statutory Citation  (Idaho Code)** |
| The State must have requirements that ensure existing UST systems will be replaced or upgraded before December 22, 1998, to prevent releases for their operating life due to corrosion, and spills or overfills. | IDAPA  58.01.07.004.01 (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07) |

**Notes on Objective 40 CFR § 281.31 Upgrading Existing UST Systems**

The State has adopted the Federal regulations by reference and therefore meets the no less stringent criterion for Objective § 281.31.

### General Operating Requirements

#### Objective 40 CFR § 281.32

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| **The State must have requirements that ensure that all new and existing UST systems conform to the following:** | **State Rule Citation**  **(IDAPA)** | **State Statutory Citation  (Idaho Code)** |
| (a) Prevent spills and overfills by ensuring that the space in the tank is sufficient to receive the volume to be transferred and that the transfer operation is monitored constantly; | IDAPA  58.01.07.004.01 (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07) |
| (b) Where equipped with cathodic protection, be operated and maintained by a person with sufficient training and experience in preventing corrosion, and in a manner that ensures that no releases occur during the operating life of the UST system. [Note: Codes of practice developed by nationally-recognized organizations and national independent testing laboratories may be used to demonstrate the State program requirements are no less stringent.]; | IDAPA  58.01.07.004.01 (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07) |
| (c) Be made of or lined with materials that are compatible with the substance stored; | IDAPA  58.01.07.004.01 (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07) |
| (d) At the time of upgrade or repair, be structurally sound and upgraded or repaired in a manner that will prevent releases due to structural failure or corrosion during their operating lives; | IDAPA  58.01.07.004.01 (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07) |
| (e) Have records of monitoring, testing, repairs, and closure maintained that are sufficient to demonstrate recent facility compliance status, except that records demonstrating compliance with repair and upgrading requirements must be maintained for the remaining operating life of the facility. These records must be made readily available when requested by the implementing agency. | IDAPA  58.01.07.004.01 (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07) |

**Notes on Objective 40 CFR § 281.32 General Operating Requirements**

The State has adopted the Federal regulations by reference and therefore meets the no less stringent criterion for Objective § 281.32(a) through (d).

**40 CFR § 281.32(e)** IDAPA 58.01.07.004.01 adopts the Federal regulations by reference including §280.34, which requires recent monitoring, testing, and repair records. Per §280.33(f), repair records must be kept for the operating life of the facility. Section 280.45 (b) requires monitoring, testing, and sampling records be kept for at least one year, while §280.74 requires closure records be kept for at least three years. Section 280.34(c)(1)-(2) requires records be made immediately or readily available.

### Release Detection

#### Objective 40 CFR § 281.33(a)

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| **(a) Release detection requirements for owners and operators must consist of a method, or combination of methods, that is:** | **State Rule Citation**  **(IDAPA)** | **State Statutory Citation  (Idaho Code)** |
| (1) capable of detecting a release of the regulated substance from any portion of the UST system that routinely contains regulated substances -- as effectively as any of the methods allowed under the Federal Technical Standards -- for as long as the UST system is in operation. In comparing methods, the implementing agency shall consider the size of release that the method can detect and the speed and reliability with which the release can be detected. | IDAPA  58.01.07.004.01 (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07) |
| (2) designed, installed, calibrated, operated and maintained so that releases will be detected in accordance with the capabilities of the method; | IDAPA  58.01.07.004.01 (Effective 4-2-08);  IDAPA 58.01.07.100 (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07); Idaho Code  § 39-8806 (Effective 5-23-07) |

**Notes on Objective 40 CFR § 281.33(a) Release Detection**

**40 CFR § 281.33(a)(1)** The State has adopted the Federal regulations by reference and therefore meets the no less stringent criterion for Objective § 281.33(a)(1). Idaho Code § 39-8806 and IDAPA 58.01.07.100 require UST systems installed after February 23, 2007, and within 1,000 feet of a potable drinking water source to be secondarily-contained and monitored interstitially for releases.

**40 CFR § 281.33 (a)(2)** The State has adopted the Federal regulations by reference and therefore meets the no less stringent criterion for Objective § 281.33(a)(2). The State has additional measures that meet the no less stringent criterion in Idaho Code § 39-8806 and IDAPA 58.01.07.100, which provide that UST systems installed after February 23, 2007, and within 1,000 feet of a potable drinking water source be designed and installed with secondary containment. The UST system must be calibrated, operated, and maintained so that releases will be detected interstitially. This is consistent with the purpose and intent of the Release Detection requirements in the Code of Federal Regulations.

### Release Detection

#### Objective 40 CFR § 281.33(b)

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| **(b) Release detection requirements must, at a minimum, be scheduled to be applied at all UST systems:** | **State Rule Citation**  **(IDAPA)** | **State Statutory Citation  (Idaho Code)** |
| (1) immediately when a new UST system is installed: | IDAPA  58.01.07.004.01 (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07) |
| (2) on an orderly schedule that completes a phase-in of release detection at all existing UST systems (or their closure) before December 22, 1993, except that release detection for the piping attached to any existing UST that conveys a regulated substance under greater than atmospheric pressure must be phased-in before December 22, 1990. | IDAPA  58.01.07.004.01 (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07) |

**Notes on Objective 40 CFR § 281.33(b) Release Detection**

The State has adopted the Federal regulations by reference and therefore meets the no less stringent criterion for Objective § 281.33(b).

### Release Detection

#### Objective 40 CFR § 281.33(c)

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| **(c) All petroleum tanks must be sampled, tested, or checked for releases at least monthly, except that:** | **State Rule Citation**  **(IDAPA)** | **State Statutory Citation  (Idaho Code)** |
| (1) new or upgraded tanks (that is, tanks and piping protected from releases due to corrosion and equipped with both spill and overfill prevention devices) may temporarily use monthly inventory control (or its equivalent) in combination with tightness testing (or its equivalent) conducted every 5 years for the first 10 years after the tank is installed or upgraded, or until December 22, 1998, whichever is later; and | IDAPA  58.01.07.004.01 (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07) |
| (2) existing tanks unprotected from releases due to corrosion or without spill and overfill prevention devices may use monthly inventory control (or its equivalent) in combination with annual tightness testing (or its equivalent) until December 22, 1998. | IDAPA  58.01.07.004.01 (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07) |

**Notes on Objective 40 CFR § 281.33(c) Release Detection**

The State has adopted the Federal regulations by reference and therefore meets the no less stringent criterion for Objective § 281.33(c).

### Release Detection

#### Objective 40 CFR § 281.33(d)

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| **(d) All underground piping attached to the tank that routinely conveys petroleum must conform to the following:** | **State Rule Citation**  **(IDAPA)** | **State Statutory Citation  (Idaho Code)** |
| (1) if the petroleum is conveyed under greater than atmospheric pressure:  (i) the piping must be equipped with release detection that detects a release within an hour by restricting or shutting off flow or sounding an alarm; and (ii) the piping must have monthly monitoring applied or annual tightness tests conducted. | IDAPA  58.01.07.004.01 (Effective 4-2-08);  IDAPA 58.01.07.100 (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07) |
| (2) if suction lines are used:  (i) tightness tests must be conducted at least once every 3 years, unless a monthly method of detection is applied to this piping; or (ii) the piping is designed to allow the contents of the pipe to drain back into the storage tank if the suction is released and is also designed to allow an inspector to immediately determine the integrity of the piping system. | IDAPA  58.01.07.004.01 (Effective 4-2-08);  IDAPA 58.01.07.100 (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07);  Idaho Code  § 39-8806 (Effective 5-23-07) |

**Notes on Objective 40 CFR § 281.33(d) Release Detection**

The State has adopted the Federal regulations by reference and therefore meets the no less stringent criterion for Objective § 281.33(d). The State has additional measures that meet the no less stringent criterion in Idaho Code § 39-8806 and IDAPA 58.01.07.100, which provide that piping installed after February 23, 2007, and within 1,000 feet of a potable drinking water source use interstitial monitoring as the release detection method. This is consistent with the purpose and intent of the Release Detection requirements in the Code of Federal Regulations.

### Release Detection

#### Objective 40 CFR § 281.33(e)

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| **(e) All UST systems storing hazardous substances must meet the following:** | **State Rule Citation**  **(IDAPA)** | **State Statutory Citation  (Idaho Code)** |
| (1) all existing hazardous substance UST systems must comply with all the requirements for petroleum UST systems in sections 281.33(c) and (d) above, and after December 22, 1998, they must comply with the following subsection (e)(2). | IDAPA  58.01.07.004.01 (Effective 4-2-08);  IDAPA  58.01.07.004.02(b) (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07) |
| (2) all new hazardous substance UST systems must use interstitial monitoring within secondary containment of the tanks and the attached underground piping that conveys the regulated substance stored in the tank, unless the owner and operator can demonstrate to the State (or the State otherwise determines) that another method will detect a release of the regulated substance as effectively as other methods allowed under the State program for petroleum UST systems and that effective corrective action technology is available for the hazardous substance being stored that can be used to protect human health and the environment. | IDAPA  58.01.07.004.01 (Effective 4-2-08);  IDAPA 58.01.07.100 (Effective 4-2-08);  IDAPA  58.01.07.004.02(b) (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07);  Idaho Code  § 39-8806  (Effective 5-23-07) |

**Notes on Objective 40 CFR § 281.33(e) Release Detection**

The State has adopted the Federal regulations by reference and therefore meets the no less stringent criterion for Objective § 281.33(e). For 40 CFR § 281.33(e)(2), the State has additional measures that meet the no less stringent criterion in Idaho Code § 39-8806 and IDAPA 58.01.07.100, which require hazardous substance UST systems installed after February 23, 2007, and within 1,000 feet of a potable drinking water source to be secondarily-contained and monitored interstitially for releases. This is consistent with the purpose and intent of the Release Detection requirements in the Code of Federal Regulations.

### Release Reporting, Investigation, and Confirmation

#### Objective 40 CFR § 281.34

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| **All owners and operators must conform with the following:** | **State Rule Citation**  **(IDAPA)** | **State Statutory Citation  (Idaho Code)** |
| (a) Promptly investigate all suspected releases, including:  (1) when unusual operating conditions, release detection signals and environmental conditions at the site suggest a release of regulated substances may have occurred; and  (2) when required by the implementing agency to determine the source of a release having an impact in the surrounding area; and | IDAPA  58.01.07.004.01 (Effective 4-2-08);  IDAPA 58.01.02.851.01 (Effective 7-1-93);  IDAPA 58.01.02.851.02 (Effective 7-1-93);  IDAPA 58.01.07.200 (Effective 4-2-08);  IDAPA  58.01.24  (Effective 5-8-09) | Idaho Code  § 39-8805 (Effective 5-23-07);  Idaho Code  § 39-107(7) (Amended for effective date of July 1, 2000) |
| (b) Promptly report all confirmed underground releases and any spills and overfills that are not contained and cleaned up. | IDAPA  58.01.07.004.01 (Effective 4-2-08);  IDAPA 58.01.02.851.01 (Effective 7-1-93);  IDAPA 58.01.07.200 (Effective 4-2-08);  IDAPA  58.01.24  (Effective 5-8-09) | Idaho Code  § 39-8805 (Effective 5-23-07);  Idaho Code  § 39-107(7) (Amended for effective date of July 1, 2000) |
| (c) Ensure that all owners and operators contain and clean up unreported spills and overfills in a manner that will protect human health and the environment. | IDAPA  58.01.07.004.01 (Effective 4-2-08);  IDAPA 58.01.02.851.04 (Effective 7-1-93);  IDAPA  58.01.24  (Effective 5-8-09) | Idaho Code  § 39-8805 (Effective 5-3-07);  Idaho Code  § 39-107(7) (Amended for effective date of July 1, 2000) |

**Notes on Objective 40 CFR § 281.34 Release Reporting, Investigation, and Confirmation**

The State has adopted the Federal regulations by reference and therefore meets the no less stringent criterion for Objective § 281.34.

**40 CFR § 281.34(a)(1)** The State has additional measures that meet the no less stringent criterion in IDAPA 58.01.02.851.01.b, which requires owners and operators to report suspected releases due to unusual operating conditions within twenty-four (24) hours. IDAPA 58.01.24 establishes the standards and procedures to determine whether and what risk-based corrective action measures should be applied to property subject to assessment and cleanup requirements under IDAPA 58.01.02, Sections 851 and 852, “Water Quality Standards,” or when assessment and cleanup requirements are incorporated into compliance documents entered into per Chapter 1, Title 39, Idaho Code. (Appendix A contains IDAPA 58.01.02 and IDAPA 58.01.24 in their entirety). These provisions are consistent with the purpose and intent of the Release Reporting, Investigation, and Confirmation requirements in the Code of Federal Regulations.

**40 CFR § 281.34(a)(2)** IDAPA 58.01.02.851.02 requires owners and operators to determine if the UST system is the source of off-site impacts. IDAPA 58.01.07.200 requires owners or operators to report within ninety (90) days the source of the release. IDAPA 58.01.24 establishes the standards and procedures to determine whether and what risk-based corrective action measures should be applied to property subject to assessment and cleanup requirements under IDAPA 58.01.02, Sections 851 and 852, “Water Quality Standards,” or when assessment and cleanup requirements are incorporated into compliance documents entered into per Chapter 1, Title 39, Idaho Code. These provisions are consistent with the purpose and intent of the Release Reporting, Investigation, and Confirmation requirements in the Code of Federal Regulations.

**40 CFR § 281.34(b)**  IDAPA 58.01.02.851.01.b requires owners and operators to report suspected releases due to unusual operating conditions within twenty-four (24) hours. IDAPA 58.01.24 establishes the standards and procedures to determine whether and what risk-based corrective action measures should be applied to property subject to assessment and cleanup requirements under IDAPA 58.01.02, Sections 851 and 852, “Water Quality Standards,” or when assessment and cleanup requirements are incorporated into compliance documents entered into per Chapter 1, Title 39, Idaho Code. These provisions are consistent with the purpose and intent of the Release Reporting, Investigation, and Confirmation requirements in the Code of Federal Regulations.

**40 CFR § 281.34(c)** IDAPA 58.01.02.851.04 requires owners and operators to contain and immediately clean up an above ground spill or overfill of petroleum only after identifying and mitigating any fire, explosion, and vapor hazards. IDAPA 58.01.24 establishes the standards and procedures to determine whether and what risk-based corrective action measures should be applied to property subject to assessment and cleanup requirements under IDAPA 58.01.02, Sections 851 and 852, “Water Quality Standards,” or when assessment and cleanup requirements are incorporated into compliance documents entered into per Chapter 1, Title 39, Idaho Code. These provisions are consistent with the purpose and intent of the Release Reporting, Investigation, and Confirmation requirements in the Code of Federal Regulations.

### Release Response and Corrective Action

#### Objective 40 CFR § 281.35

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| **The State must have requirements that ensure:** | **State Rule Citation**  **(IDAPA)** | **State Statutory Citation  (Idaho Code)** |
| (a) All releases from UST systems are promptly assessed and further releases are stopped; | IDAPA  58.01.07.004.01 (Effective 4-2-08);  IDAPA 58.01.02.852.01 (Effective 7-1-93);  IDAPA 58.01.02.852.02 (Effective 7-1-93);  IDAPA 58.01.02.852.03 (Effective 7-1-93);  IDAPA  58.01.24  (Effective 5-8-09) | Idaho Code  § 39-8805 (Effective 5-23-07);  Idaho Code  § 39-107(7) (Amended for effective date of July 1, 2000) |
| (b) Actions are taken to identify, contain and mitigate any immediate health and safety threats that are posed by a release (such activities include investigation and initiation of free product removal, if present); | IDAPA  58.01.07.004.01 (Effective 4-2-08);  IDAPA 58.01.02.852.01 (Effective 7-1-93);  IDAPA 58.01.02.852.02 (Effective 7-1-93);  IDAPA 58.01.02.852.03 (Effective 7-1-93);  IDAPA 58.01.02.852.04 (Effective 7-1-93) | Idaho Code  § 39-8805 (Effective 5-23-07);  Idaho Code  § 39-107(7) (Amended for effective date of July 1, 2000) |
| (c) All releases from UST systems are investigated to determine if there are impacts on soil and ground water, and any nearby surface waters. The extent of soil and ground-water contamination must be delineated when a potential threat to human health and the environment exists. | IDAPA  58.01.07.004.01 (Effective 4-2-08);  IDAPA 58.01.02.852.03  (Effective 7-1-93);  IDAPA 58.01.02.852.05  (Effective 7-1-93); | Idaho Code  § 39-8805 (Effective 5-23-07);  Idaho Code  § 39-107(7) (Amended for effective date of July 1, 2000) |
| (d) All releases from UST systems are cleaned up through soil and ground water remediation and any other steps, as necessary to protect human health and the environment; | IDAPA  58.01.07.004.01 (Effective 4-2-08);  IDAPA 58.01.02.852.06 (Effective 7-1-93);  IDAPA 58.01.24.200 (Effective 5-8-09);  IDAPA 58.01.24.300 (Effective 5-8-09);  IDAPA 58.01.24.400 (Effective 5-8-09) | Idaho Code  § 39-8805 (Effective 5-23-07);  Idaho Code  § 39-107(7) (Amended for effective date of July 1, 2000) |
| (e) Adequate information is made available to the State to demonstrate that corrective actions are taken in accordance with the requirements of (a) through (d) of this section. This information must be submitted in a timely manner that demonstrates its technical adequacy to protect human health and the environment; and | IDAPA  58.01.07.004.01 (Effective 4-2-08);  IDAPA 58.01.02.852.06 (Effective 7-1-93);  IDAPA  58.01.24  (Effective 5-8-09) | Idaho Code  § 39-8805 (Effective 5-23-07);  Idaho Code  § 39-107(7) (Amended for effective date of July 1, 2000) |
| (f) In accordance with section 280.67, the State must notify the affected public of all confirmed releases requiring a plan for soil and ground water remediation, and upon request provide or make available information to inform the interested public of the nature of the release and the corrective measures planned or taken. | IDAPA  58.01.07.004.01 (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07) |

**Notes on Objective 40 CFR § 281.35 Release Response and Corrective Action**

The State has adopted the Federal regulations by reference and therefore meets the no less stringent criterion for Objective § 281.35.

**40 CFR § 281.35**(a) IDAPA 58.01.02.852.01(b) requires owners and operators to take action to prevent further releases within twenty-four (24) hours. IDAPA 58.01.02.852.02(a) requires owners and operators to remove the petroleum from the petroleum storage tank system to prevent further releases. IDAPA 58.01.02.852.03 requires owners and operators to perform a detailed site assessment. IDAPA 58.01.24 details Risk Based Corrective Action procedures.

**40 CFR § 281.35**(b) IDAPA 58.01.02.852.01 requires owners and operators to take action to mitigate hazards and prevent further releases within twenty-four (24) hours. IDAPA 58.01.02.852.02 requires owners and operators to remove the petroleum from the petroleum storage tank system to prevent further releases, continue monitoring and mitigating, and remedy hazards posed by contaminated soils. IDAPA 58.01.02.852.03 requires owners and operators to perform a detailed site assessment. IDAPA 58.01.02.852.04 requires owners and operators to remove free product in a manner that is safe and minimizes the spread of contamination and provide the State with a detailed free product report. IDAPA 58.01.24 establishes the standards and procedures to determine whether and what risk-based corrective action measures should be applied to property subject to assessment and cleanup requirements under IDAPA 58.01.02, Sections 851 and 852, “Water Quality Standards,” or when assessment and cleanup requirements are incorporated into compliance documents entered into per Chapter 1, Title 39, Idaho Code.

**40 CFR § 281.35**(c) IDAPA 58.01.02.852.03 requires owners and operators to perform a detailed site assessment. IDAPA 58.01.02.852.05 requires owners and operators to investigate the full extent and impacts of soil, groundwater, and surface water contamination.

**40 CFR § 281.35**(d) IDAPA 58.01.02.852.06 requires owners and operators to develop a corrective action plan that addresses the cleanup of the contamination. IDAPA 58.01.02.852.06 and IDAPA 58.01.02.852.07 allow the State to set a cleanup schedule through an enforcement mechanism. IDAPA 58.01.24 establishes the standards and procedures to determine whether and what risk-based corrective action measures should be applied to property subject to assessment and cleanup requirements under IDAPA 58.01.02, Sections 851 and 852, “Water Quality Standards,” or when assessment and cleanup requirements are incorporated into compliance documents entered into per Chapter 1, Title 39, Idaho Code.

**40 CFR § 281.35**(e) IDAPA 58.01.02.852.06 requires owners and operators to develop and submit to the State a technical corrective action plan that addresses the cleanup of the soil, ground water, and/or surface water contamination. IDAPA 58.01.02.852.06 and IDAPA 58.01.02.852.07 allow the State to set a cleanup schedule through an enforcement mechanism. IDAPA 58.01.24 details Risk Based Corrective Action procedures.

**40 CFR § 281.35**(f) The State has adopted the Federal regulations by reference and therefore meets the no less stringent criterion for Objective 40 CFR § 281.35(f).

### Out-of-Service UST Systems and Closure

#### Objective 40 CFR § 281.36

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| **The State must have requirements that ensure UST systems conform with the following:** | **State Rule Citation**  **(IDAPA)** | **State Statutory Citation  (Idaho Code)** |
| (a) All new and existing UST systems temporarily closed must:  (1) continue to comply with general operating requirements, release reporting and investigation, and release response and corrective action;  (2) continue to comply with release detection requirements if regulated substances are stored in the tank;  (3) be closed off to outside access; and  (4) be permanently closed if the UST system has not been protected from corrosion and has not been used in one year, unless the State approves an extension after the owner and operator conducts a site assessment. | IDAPA  58.01.07.004.01 (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07) |
| (b) All tanks and piping must be cleaned and permanently closed in a manner that eliminates the potential for safety hazards and future releases.  The owner or operator must notify the State of permanent UST system closures.  The site must also be assessed to determine if there are any present or were past releases, and if so, release response and corrective action requirements must be complied with. | IDAPA  58.01.07.004.01 (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07) |
| (c) All UST systems taken out of service before December 22, 1988, must permanently close in accordance with paragraph (b) of this section when directed by the State. | IDAPA  58.01.07.004.01 (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07) |

**Notes on Objective 40 CFR § 281.36 Out-of Service UST Systems and Closures**

The State has adopted the Federal regulations by reference and therefore meets the no less stringent criterion for Objective § 281.36.

### Financial Responsibility for USTs Containing Petroleum

#### Objective 40 CFR § 281.37

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| **(a) State requirements for financial responsibility must ensure that:** | **State Rule Citation**  **(IDAPA)** | **State Statutory Citation  (Idaho Code)** |
| (1) owners and operators have $1 million per occurrence for corrective action and third-party claims in a timely manner to protect human health and the environment;  (2) owners and operators not engaged in petroleum production, refining, and marketing and who handle a throughput of 10,000 gallons of petroleum per month or less have $500,000 per occurrence for corrective action and third-party claims in a timely manner to protect human health and the environment;  (3) owners and operators of 1 to 100 petroleum USTs must have an annual aggregate of $1 million; and  (4) owners and operators of 101 or more petroleum USTs must have an annual aggregate of $2 million. | IDAPA  58.01.07.004.01 (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07) |
| (b) Phase-in requirements. Financial responsibility requirements for petroleum UST systems must, at a minimum, be scheduled to be applied at all UST systems on an orderly schedule that completes a phase-in of the financial responsibility requirements within the time allowed in the Federal regulations under 40 CFR § 280.91. | IDAPA  58.01.07.004.01 (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07) |
| (c) States may allow the use of a wide variety of financial assurance mechanisms to meet this requirement. Each financial mechanism must meet the following criteria: be valid and enforceable; be issued by a provider that is qualified or licensed in the State; not permit cancellation without allowing the State to draw funds; ensure that funds will only and directly be used for corrective action and third-party liability costs; and require that the provider notify the owner or operator of any circumstance that would impair or suspend coverage. | IDAPA  58.01.07.004.01 (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07) |
| (d) States must require owners and operators to maintain records and demonstrate compliance with the State financial responsibility requirements, and these records must be made readily available when requested by the implementing agency. | IDAPA  58.01.07.004.01 (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07) |

**Notes on Objective 40 CFR § 281.37 Financial Responsibility for USTs Containing Petroleum**

The State has adopted the Federal regulations by reference and therefore meets the no less stringent criterion for Objective § 281.37.

### Lender Liability

#### Objective 40 CFR § 281.39

**Notes on Objective 40 CFR § 281.39 Lender Liability**

40 CFR § 281.39 is not applicable to the Idaho UST program. Idaho does not have a security interestexemption for petroleum UST owners or operators. Idaho’s UST program does notprovidesecurity interest exemption in the Idaho Underground Storage Tank Act, Title 39, Chapter 88, Idaho Code, nor in “Rules Regulating Underground Storage Tanks,” IDAPA 58.01.07. Idaho does have a lender liability provision that protects security interests for qualifying persons with indicia of ownership from liability under Idaho Land Remediation Act, Idaho Code § 39-7209 (Appendix B), and “Idaho Land Remediation Rules,” IDAPA 58.01.18.026 (Appendix A). This lender liability provision in the Land Remediation Act is no less stringent than, and as broad in scope as, the federal program, and it is analogous to provisions in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and consistent with United States Environmental Protection Agency policy (60 Federal Register 63517, dated December 11, 1995, as amended). This provision in the Land Remediation Act and rules would not apply to liability arising under Idaho Underground Storage Tank Act, Title 39, Chapter 88, Idaho Code, nor in the “Rules Regulating Underground Storage Tanks,” IDAPA 58.01.07.

### Legal Authorities for Compliance Monitoring

#### Objective 40 CFR § 281.40

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| **The State must have the following specific compliance monitoring authorities:** | **State Rule Citation**  **(IDAPA)** | **State Statutory Citation  (Idaho Code)** |
| (a) Any authorized representative of the State engaged in compliance inspections, monitoring, and testing must have authority to obtain by request any information from an owner or operator with respect to the UST system(s) that is necessary to determine compliance with the regulations. | IDAPA  58.01.07.400.01 (Effective 4-2-08);  IDAPA  58.01.07.400.03 (Effective 4-2-08);  IDAPA  58.01.07.004.01 (Effective 4-2-08) | Idaho Code  § 39-108 (Amended for effective date of July 1, 2000); Idaho Code  § 39-8805 (Effective 5-23-07) |
| (b) Any authorized representative of the State must have authority to require an owner or operator to conduct monitoring or testing. | IDAPA  58.01.07.400.03 (Effective 4-2-08);  IDAPA  58.01.07.400.01 (Effective 4-2-08);  IDAPA  58.01.07.004.01 (Effective 4-2-08) | Idaho Code  § 39-108 (Amended for effective date of July 1, 2000); Idaho Code  § 39-8805 (Effective 5-23-07) |
| (c) Authorized representatives must have the authority to enter any site or premises subject to UST system regulations or in which records relevant to the operation of the UST system(s) are kept, and to copy these records, obtain samples of regulated substances, and inspect or conduct the monitoring or testing of UST system(s). | IDAPA  58.01.07.400.01 (Effective 4-2-08);  IDAPA  58.01.07.400.03 (Effective 4-2-08) | Idaho Code  § 39-108 (Amended for effective date of July 1, 2000);  Idaho Code  § 39-108(2)(b) (Amended for effective date of July 1, 2000) |

**Notes on Objective 40 CFR § 281.40 Legal Authorities for Compliance Monitoring**

**40 CFR § 281.40(a)** Idaho Code § 39-108 provides the legal authority for the State to conduct an inspection program. IDAPA 58.01.07.400.01 authorizes the State to inspect UST systems. IDAPA 58.01.07.400.03 requires inspectors to look for records. IDAPA 58.01.07.004.01 references the adoption of the Federal rules by reference and 40 CFR § 280.34(c) requires owners and operators to make records immediately or readily available for inspection.

**40 CFR § 281.40(b)** IDAPA 58.01.07.400.01 authorizes the State to inspect the UST records related to monitoring and/or testing. IDAPA 58.01.07.400.03 requires inspectors to assess compliance with monitoring and testing. IDAPA 58.01.07.004.01 references the adoption of the Federal rules by reference and 40 CFR §§ 280.31 and 280.40 require owners and operators to conduct monitoring and testing. Idaho Code § 39-108 provides various enforcement mechanisms to require monitoring or testing.

**40 CFR § 281.40(c)** IDAPA 58.01.07.400.01 authorizes the State to inspect USTs, their equipment, their records, and their contents. IDAPA 58.01.07.400.03 requires inspectors to inspect records and the monitoring and testing of the USTs. Idaho Code § 39-108 provides the legal authority for the State to enter any site or premises subject to UST system regulations.

### Legal Authorities for Enforcement Response

#### Objective 40 CFR § 281.41

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| **The State must have the following specific enforcement response authorities for State program approval:** | **State Rule Citation**  **(IDAPA)** | **State Statutory Citation  (Idaho Code)** |
| (a) Any State agency administering a program must have the authority to implement the following remedies for violations of State program requirements:  (1) To restrain immediately and effectively any person by order or by suit in State court from engaging in any unauthorized activity that is endangering or causing damage to public health or the environment;  (2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement;  (3) To assess or sue to recover in court civil penalties as follows:  (i) Civil penalties for failure to notify or for submitting false information pursuant to tank notification requirements must be capable of being assessed up to $5,000 or more per violation.  (ii) Civil penalties for failure to comply with any State requirements or standards for existing or new tank systems must be capable of being assessed for each instance of violation, up to $5,000 or more for each tank for each day of violation. If the violation is continuous, civil penalties shall be capable of being assessed up to $5,000 or more for each day of violation. |  | Idaho Code  § 39-8811 (Amended for effective date of March 8, 2011);  Idaho Code  § 39-108  (Amended for effective date of July 1, 2000); Idaho code  § 39-109 (Amended for effective date of July 1, 2000) |

**Notes on Objective 40 CFR § 281.41 Legal Authorities for Enforcement Response**

Idaho Code § 39-8811 provides that failure to comply with the Underground Storage Tank Act, Title 39, Chapter 88, Idaho Code, or the “Rules Regulating Underground Storage Tank Systems,” IDAPA 58.01.07, shall be subject to enforcement pursuant to the enforcement provision of the Idaho Environmental Protection and Health Act, Idaho Code § 39-108, and monetary penalties pursuant to Idaho Code § 39-8811 (Appendix B). Idaho Code § 39-108 of the Idaho Environmental Protection and Health Act, provides broad legal authority for the Director to investigate, inspect, enter property, assess violations, commence enforcement, assess penalties, seek injunctive relief, and bring civil enforcement actions. Idaho Code § 39-8811 provides for monetary penalties as follows:

* Anyone who has been determined in a civil enforcement action to have failed to comply with tank notification requirements, or to have submitted false information pursuant to tank notification requirements, shall be liable for penalties of up to $5,000 per violation.
* Anyone who has been determined in a civil enforcement action to have failed to comply with any provisions of the Idaho Underground Storage Tank Act or rules promulgated pursuant to the Underground Storage Tank Compliance Act, or any order entered related to such violation, for existing or new tank systems, shall be liable for penalties of up to $5,000 for each tank for each day of violation. If the violation is continuous, the violator shall be liable for penalties of up to $5,000 for each day of violation.

Idaho Code § 39-109 provides that upon request of the Director, it shall be the duty of the attorney general to institute and prosecute civil enforcement actions or injunctive actions as provided in Idaho Code § [39-108](http://legislature.idaho.gov/idstat/Title39/T39CH1SECT39-108.htm) and to prosecute actions or proceedings for the enforcement of any criminal provisions.

**40 CFR § 281.41(a)(1)** Idaho Code § 39-108(8) provides that if there is an emergency that creates conditions of imminent and substantial danger to public health or the environment, the prosecuting attorney or the attorney general may institute a civil action for an immediate injunction to halt any activities creating such condition. Further, Idaho Code § 39-109 provides for authority to institute and prosecute civil enforcement actions or injunctive actions as provided in Idaho Code § [39-108](http://legislature.idaho.gov/idstat/Title39/T39CH1SECT39-108.htm) and to prosecute actions or proceedings for the enforcement of any criminal provisions.

**40 CFR § 281.41(a)(2)** Idaho Code § 39-108(3)(b) provides that civil enforcement actions shall be commenced and prosecuted in the district court in and for the county in which the alleged violation occurred.

**40 CFR § 281.41(a)(3)(i) and 40 CFR § 281.41(a)(3)(ii)** Idaho Code § 39-8811 mirrors the language and penalty assessment in 40 CFR § 281.41(a)(3)(i) and (ii).

### Public Participation in Enforcement Proceedings

#### Objective 40 CFR § 281.42

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| **Any State administering a program must provide for public participation in the State enforcement process by providing any one of the following three options:** | **State Rule Citation**  **(IDAPA)** | **State Statutory Citation  (Idaho Code)** |
| (a) Authority that allows intervention analogous to Federal Rule 24(a)(2), and assurance by the appropriate State enforcement agency that it will not oppose intervention under the State analogue to Rule 24(a)(2) on the ground that the applicant's interest is adequately represented by the State. |  | Idaho Rules of Civil Procedures (I.R.C.P. 24(a)). |

**Notes on Objective 40 CFR § 281.42 Public Participation in Enforcement Proceedings**

In a civil action, anyone having an interest that is or may be adversely affected may seek intervention of right pursuant to Idaho Rules of Civil Procedures (IRCP) Rule 24(a) (Appendix C). The State also assures that it will not oppose intervention under IRCP 24(a) on the grounds that the applicant’s interest is adequately represented by the State.

Idaho has provided opportunity for public notice and comment for development of the UST program through the negotiated rulemaking process.

### Underground Storage Tank Compliance Act from Energy Policy Act of 2005—Inspection Requirements

#### Objective: 9005(c)(1), 9005(c)(2) of the Solid Waste Disposal Act, Subtitle I (42 U.S.C. 6991d) Section 1523 of the Energy Policy Act of 2005 Grant Guidelines to States for Implementing the Inspection Provisions of the Energy Policy Act of 2005

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|  | **State Rule Citation**  **(IDAPA)** | **State Statutory Citation  (Idaho Code)** |
| (a) Underground storage tanks that have not been inspected since December 22, 1998 must have an on-site inspection conducted not later than August 8, 2007 to determine compliance with Subtitle I and 40 CFR 280 requirements or requirements or standards of a state program developed under Section 9004. |  | Idaho Code  § 39-8808(1) (Effective 2-23-07) |
| (b) On-site inspections of each underground storage tank must be conducted at least once every three years to determine compliance with Subtitle I and 40 CFR 280 requirements or requirements or standards of a state program developed under Section 9004. |  | Idaho Code  § 39-8808(2) (Effective 2-23-07) |
| (c) At a minimum, an on-site inspection must assess compliance with the following:  • Notification (failure to notify)  • Corrosion protection  - tanks and piping have appropriate corrosion protection  - documentation available including testing, inspections, and other records  • Overfill prevention in place and operational  • Spill prevention in place and operational  • Tank and piping release detection  - appropriate method and appropriate equipment or procedures in place  - documentation of proper monitoring and testing  • Reporting suspected releases  • Records of tank and piping repairs  • Secondary containment where required  • Financial responsibility  • Temporary closure | IDAPA  58.01.07.400.03 (Effective 4-2-08) | Idaho Code  § 39-8805 (Effective 5-23-07) |

**Notes on Objective from the Underground Storage Tank Compliance Act from Energy Policy Act of 2005 for Inspection Requirements, 9005(c)(1), 9005(c)(2) of the Solid Waste Disposal Act, Subtitle I (42 U.S.C. 6991d), Section 1523 of the Energy Policy Act of 2005**

EPA has not yet established stringency criteria in 40 CFR Part 281 for Energy Policy Act requirements. The State has adopted the requirements of this objective in the statutory language of Idaho Code § 39-8808(1)(2) and it should meet the no less stringent criterion for the Inspection Requirements Objective once it has been established by EPA.

A Department inspector, pursuant to IDAPA 58.01.07.400.03, will assess compliance with the following:

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

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

### Underground Storage Tank Compliance Act from Energy Policy Act of 2005—Operator Training

#### Objective: 9010 of the Solid Waste Disposal Act, Subtitle I (42 U.S.C. 6991i(a)) Section 1524 of the Energy Policy Act of 2005 Grant Guidelines to States for Implementing the Operator Training Provisions of the Energy Policy Act of 2005

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|  | **State Rule Citation**  **(IDAPA)** | **State Statutory Citation  (Idaho Code)** |
| (a) The operator training program shall appropriately train the following classes of operators:   * Persons having primary responsibility for on-site operation and maintenance of underground storage tank systems. * Persons having daily on-site responsibility for the operation and maintenance of underground storage tank systems. * Daily, on-site employees having primary responsibility for addressing emergencies presented by a spill or release from an underground storage tank system. | IDAPA 58.01.07.300.03 (Effective 4-2-08) | Idaho Code  § 39-8807 (Effective 2-23-07) |
| (b) The operator training program shall be consistent with 42 U.S.C. 6991i(a) | IDAPA 58.01.07.300.01(a) (Effective 4-2-08) | Idaho Code  § 39-8807 (Effective 2-23-07) |
| (c) The operator training program shall be developed in cooperation with tank owners and operators | IDAPA 58.01.07.300.01(b) (Effective 4-2-08) | Idaho Code  § 39-8807 (Effective 2-23-07) |
| (d) The operator training program shall take into consideration training programs implemented by tank owners and operators as of August 8, 2005 | IDAPA 58.01.07.300.01(c) (Effective 4-2-08) | Idaho Code § 39-8807  (Effective 2-23-07) |
| (e) The operator training program shall be appropriately communicated to tank owners and operators | IDAPA 58.01.07.300.01(e) (Effective 4-2-08) | Idaho Code § 39-8807  (Effective 2-23-07) |
| (f) All persons subject to the operator training requirements must meet the state-specific training requirements | IDAPA 58.01.07.300.03 (Effective 4-2-08) | Idaho Code  § 39-8807  (Effective 2-23-07) |
| (g) All persons subject to the operator training requirements must repeat applicable requirements if the tank for which they have primary daily on-site management responsibilities is determined to be out of compliance with a requirement or standard of 40 CFR 280 or a requirement or standard of a state program approved under Section 9004. | IDAPA 58.01.07.300.03(c) (Effective 4-2-08) | Idaho Code  § 39-8807 (Effective 2-23-07) |
| (h) States must establish a procedure to identify individuals who are required to meet the operator training requirements | IDAPA 58.01.07.300.02 (Effective 4-2-08) | Idaho Code  § 39-8807 (Effective 2-23-07) |

**Notes on Objective from the Underground Storage Tank Compliance Act from Energy Policy Act of 2005 for Operator Training, 9010 of the Solid Waste Disposal Act, Subtitle I (42 U.S.C. 6991i(a)) Section 1524 of the Energy Policy Act of 2005**

EPA has not yet established stringency criteria in 40 CFR Part 281 for Energy Policy Act requirements. The State has adopted the requirements of this objective in the statutory language of Idaho Code § 39-8807 and the rule language of IDAPA 58.01.07.300.01. These provisions substantially meet the requirements described by EPA in the Operator Training Grant Guidelines, and they will likely meet the no less stringent criteria for the Operator Training Objective once they are established by EPA. Specifically, IDAPA 58.01.07.300.03(c) requires owners and operators to repeat the training within 30 days of being out of compliance. IDAPA 58.01.07.300.02 requires owners and operators to notify the Department in writing within 30 days of the designation of operators. IDAPA 58.01.07.300.04 requires unattended sites have a sign posted in a location visible from the dispensers indicating emergency shut-off procedures and emergency contact phone numbers.

The State’s operator training program can be found in full in the *Underground Storage Tank Program Implementation Manual* in Appendix E, but it generally consists of the following:

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

### Underground Storage Tank Compliance Act from Energy Policy Act of 2005—Public Record

#### Objective: 9002(d) of the Solid Waste Disposal Act, Subtitle I (42 U.S.C. 6991a) Section 1526 of the Energy Policy Act of 2005 Grant Guidelines to States for Implementing the Public Record Provisions of the Energy Policy Act of 2005

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|  | **State Rule Citation**  **(IDAPA)** | **State Statutory Citation  (Idaho Code)** |
| (a) The public record of a state must include:   * The number, sources, and causes of underground storage tank releases in the state. * The record of compliance by underground storage tanks in the state with Subtitle I or a state program approved under Section 9004 of Subtitle I. * Data on the number of underground storage tank equipment failures in the state. | IDAPA 58.01.07.200.01(a)(i) (Effective 4-2-08);  IDAPA 58.01.07.200.01(a)(ii) (Effective 4-2-08);  IDAPA 58.01.07.600.01 (Effective 4-2-08) | Idaho Code  § 39-8810  (Effective 2-23-07) |
| (b) The State must update the public record at least annually | IDAPA 58.01.07.600.01 (Effective 4-2-08) | Idaho Code  § 39-8810  (Effective 2-23-07) |
| (c) Each state must develop a web site that does one of the following:   * The public record is posted on or downloadable from the internet. This option may be an interactive web site that retrieves the information, a web site that lists the information, or a file that is downloadable in electronic format. * The web site describes how to receive an electronic copy of the public record (for example via e-mail). | IDAPA 58.01.07.600.04 (Effective 4-2-08) | Idaho Code  § 39-8810  (Effective 2-23-07) |

**Notes on Objective from the Underground Storage Tank Compliance Act from Energy Policy Act of 2005 for the Public Record Provisions, 9002(d) of the Solid Waste Disposal Act, Subtitle I (42 U.S.C. 6991a), Section 1526 of the Energy Policy Act of 2005**

EPA has not yet established stringency criteria in 40 CFR Part 281 for Energy Policy Act requirements. The State has adopted the requirements of this objective in the statutory language of Idaho Code § 39-8810 and the rule language of IDAPA 58.01.07.200.01 and IDAPA 58.01.07.600. These provisions should meet the no less stringent criterion for thePublic Record ProvisionsObjective once it has been established by EPA. Specifically, IDAPA 58.01.07.200.04 requires the reporting of the source and cause of a confirmed release to occur within 90 days of confirming the release. IDAPA 58.01.07.600.01 requires the State to update the public record at least quarterly. IDAPA 58.01.07.600.03 allows for the public to petition the State to correct any inaccurate information and the State shall correct any inaccurate information within 30 days after verification. The database is available on the Department’s website at [www.deq.idaho.gov/applications/ust-lust](http://www.deq.idaho.gov/applications/ust-lust).

### Underground Storage Tank Compliance Act from Energy Policy Act of 2005—Delivery Prohibition

#### Objective: 9012 of the Solid Waste Disposal Act, Subtitle I (42 U.S.C. 6991) Section 1527 of the Energy Policy Act of 2005 Grant Guidelines to States for Implementing the Delivery Prohibition Provisions of the Energy Policy Act of 2005

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|  | **State Rule Citation**  **(IDAPA)** | **State Statutory Citation (Idaho Code)** |
| (a) The State must prohibit the delivery, deposit, or acceptance of product to an underground storage tank that has been determined to be ineligible by the State for such delivery, deposit, or acceptance | IDAPA 58.01.07.500.01 (Effective 4-2-08) | Idaho Code  § 39-8809 (Effective 2-23-07) |
| (b) The State must develop criteria for determining which underground storage tanks are ineligible for delivery, deposit, or acceptance of product; | IDAPA 58.01.07.500.02 (Effective 4-2-08) | Idaho Code  § 39-8809 (Effective 2-23-07) |
| (c) The State must develop a process for reclassifying ineligible underground storage tanks as eligible for delivery, deposit, or acceptance of product; | IDAPA 58.01.07.500.08 (Effective 4-2-08) | Idaho Code  § 39-8809 (Effective 2-23-07) |
| (d) The State must develop a process for providing adequate notice to underground storage tank owners and operators and product deliverers that an underground storage tank has been determined to be ineligible for delivery, deposit, or acceptance of product; | IDAPA 58.01.07.500.04 (Effective 4-2-08) | Idaho Code  § 39-8809 (Effective 2-23-07) |
| (e) The State must delineate a process for the application of delivery prohibition in rural and remote areas. | IDAPA 58.01.07.500.09 (Effective 4-2-08) | Idaho Code  § 39-8809 (Effective 2-23-07) |
| (f) A State must classify an underground storage tank as ineligible for delivery, deposit, or acceptance of product as soon as practicable after the state determines an underground storage tank meets one or more of the following conditions:  • Required spill prevention equipment is not installed;  • Required overfill protection equipment is not installed;  • Required leak detection equipment is not installed;  • Required corrosion protection equipment is not installed; or  • Other conditions a state deems appropriate. | IDAPA 58.01.07.500.02 (Effective 4-2-08);  IDAPA 58.01.07.500.02(a) (Effective 4-2-08);  IDAPA 58.01.07.500.02(b) (Effective 4-2-08);  IDAPA 58.01.07.500.02(c) (Effective 4-2-08);  IDAPA 58.01.07.500.02(d) (Effective 4-2-08) | Idaho Code  § 39-8809 (Effective 2-23-07) |
| (g) A State should also classify an underground storage tank as ineligible for delivery, deposit, or acceptance of product if the owner/operator of that tank has been issued a written warning or citation (notice of violation or other form indicating a violation) under any of the following circumstances and the owner/operator has failed to take corrective action after a reasonable time frame that is determined by the state:  • Failure to properly operate and/or maintain leak detection equipment;  • Failure to properly operate and/or maintain spill, overfill, or corrosion protection equipment;  • Failure to maintain financial responsibility;  • Failure to protect a buried metal flexible connector from corrosion; or  • Other conditions a state deems appropriate. | IDAPA 58.01.07.500.03 (Effective 4-2-08);  IDAPA 58.01.07.500.03(a) (Effective 4-2-08);  IDAPA 58.01.07.500.03(b) (Effective 4-2-08);  IDAPA 58.01.07.500.03(c) (Effective 4-2-08) | Idaho Code  § 39-8809 (Effective 2-23-07) |
| (h) The State, after notification by the owner/operator that the violation(s) has/have been corrected, must do the following as soon as practicable:  • Confirm compliance. If any deficiencies that led to the delivery prohibition remain, the state must notify the owner/operator.  • Return the underground storage tank to being eligible to receive product if the violation(s) has/have been corrected and confirmed by the state. | IDAPA 58.01.07.500.08 (Effective 4-2-08) | Idaho Code  § 39-8809 (Effective 2-23-07) |
| (i) The State must make a reasonable effort to notify tank owners and/or operators in writing (e.g., field notification, mail, e-mail, or fax) prior to prohibiting the delivery, deposit, or acceptance of product. If an owner or operator is not present at the facility at the time the underground storage tank is identified as ineligible, an employee at the facility at the time of identification (in lieu of the owner or operator) may be notified in writing prior to prohibiting delivery. | IDAPA 58.01.07.500.04 (Effective 4-2-08) | Idaho Code  § 39-8809 (Effective 2-23-07) |
| (j) The State must develop processes and procedures for notifying product deliverers when an underground storage tank is ineligible for delivery, deposit, or acceptance of product. The mechanism a state chooses for identifying eligible/ineligible underground storage tanks (e.g., green tags, red tags) may provide adequate notice to product deliverers. | IDAPA 58.01.07.500.05 (Effective 4-2-08) | Idaho Code  § 39-8809 (Effective 2-23-07) |
| (k) The State may only defer application of delivery prohibition for up to 180 days after determining an underground storage tank is ineligible for delivery, deposit, or acceptance of product. | IDAPA 58.01.07.500.09(a) (Effective 4-2-08) | Idaho Code  § 39-8809 (Effective 2-23-07) |

**Notes on Objective from the Underground Storage Tank Compliance Act from Energy Policy Act of 2005 for Delivery Prohibition, 9012 of the Solid Waste Disposal Act, Subtitle I (42 U.S.C. 6991), Section 1527 of the Energy Policy Act of 2005**

EPA has not yet established stringency criteria in 40 CFR Part 281 for Energy Policy Act requirements. The State has adopted the requirements of this objective in the statutory language of Idaho Code § 39-8809 and IDAPA 58.01.07.500. These provisions should meet the no less stringent criterion for theDelivery Prohibition Objective once it has been established by EPA. Specifically, IDAPA 58.01.07.500.06 requires the written notice to include the following:

(a) The specific reasons or violations that led to the ineligible classification

(b) A statement notifying the owner and operator that the petroleum underground storage tank is ineligible for delivery and it is unlawful for any person to deliver to, deposit into, or accept a regulated petroleum substance into the petroleum underground storage tank

(c) The effective date the petroleum underground storage tank is deemed ineligible for delivery

(d) The name and address of the department representative to whom a written request for re-inspection can be made, if a re-inspection is necessary

(e) A statement regarding the right to appeal the State’s action regarding ineligible classification pursuant to IDAPA 58.01.23, “Rules of Administrative Procedure before the Board of Environmental Quality”

(f) The option to request a compliance conference pursuant to Subsection 500.07

IDAPA 58.01.07.500.07 allows for a compliance conference if the owner or operator disagrees with the delivery prohibition. IDAPA 58.01.07.500.11 says a person shall not be in violation of delivery prohibition if the State fails to provide the notice required in IDAPA 58.01.07.500.04 and IDAPA 58.01.07.500.05. IDAPA 58.01.07.500.12 says it is unlawful for any person to tamper with and/or remove the delivery prohibition/red tag without the State’s approval.

The State’s delivery prohibition requirements can be found in the *Underground Storage Tank Program Implementation Manual* (Appendix E).

### Underground Storage Tank Compliance Act from Energy Policy Act of 2005—Additional Measures to Protect Groundwater

#### Objective: 9003 of the Solid Waste Disposal Act, Subtitle I (42 U.S.C. 6991b) Section 1530 of the Energy Policy Act of 2005 Grant Guidelines to States for Implementing the Secondary Containment Provisions of the Energy Policy Act of 2005

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|  | **State Rule Citation**  **(IDAPA)** | **State Statutory Citation  (Idaho Code)** |
| (a) Each new or replaced underground tank, or piping connected to any such new or replaced tank, that is within 1,000 feet of any existing community water system or any existing potable drinking water well must be secondarily contained and monitored for leaks. | IDAPA 58.01.07.100.03(a) (Effective 4-2-08) | Idaho Code  § 39-8806 (Effective 2-23-07) |
| (b) In the case of a replacement of an existing underground tank or existing piping connected to the underground tank, the secondary containment and monitoring shall apply only to the specific underground tank or piping being replaced, not to other underground tanks and connected pipes comprising such system. | IDAPA 58.01.07.100.03(d) (Effective 4-2-08) | Idaho Code  § 39-8806 (Effective 2-23-07) |
| (c) Each new motor fuel dispenser system installed within 1,000 feet of any existing community water system or any existing potable drinking water well must have under-dispenser containment. | IDAPA 58.01.07.100.03(e) (Effective 4-2-08) | Idaho Code  § 39-8806 (Effective 2-23-07) |
| (d) At a minimum, secondary containment systems be designed, constructed, and installed to:  • Contain regulated substances released from the tank system until they are detected and removed,  • Prevent the release of regulated substances to the environment at any time during the operational life of the underground storage tank system, and  • Be checked for evidence of a release at least every 30 days. | IDAPA 58.01.07.100.03(a) (Effective 4-2-08) | Idaho Code § 39-8806 (Effective 2-23-07) |
| (e) Interstitial monitoring must meet the requirements of 40 CFR 280.43(g). | IDAPA 58.01.07. 010.20 (Effective 4-2-08) | Idaho Code  § 39-8806 (Effective 2-23-07) |
| (f) If a new underground storage tank facility will be installed that is not within 1,000 feet of any existing community water system or any existing potable drinking water well **and** the owner will install a potable drinking water well at the new facility that is within 1,000 feet of the underground tanks, piping, or motor fuel dispenser systems as part of the new underground storage tank facility installation, then secondary containment and under-dispenser containment are required, regardless of whether the well is installed before or after the underground tanks, piping, and motor fuel dispenser systems are installed. | IDAPA 58.01.07.100.03(b) (Effective 4-2-08) | Idaho Code  § 39-8806 (Effective 2-23-07) |
| (g) To determine if a new or replaced underground tank or piping or new motor fuel dispenser system is within 1,000 feet of any existing community water system or any existing potable drinking water well, at a minimum the distance must be measured from the closest part of the new or replaced underground tank or piping or new motor fuel dispenser system to:  • The closest part of the nearest existing community water system, including such components as:  - The location of the wellhead(s) for groundwater and/or the location of the intake point(s) for surface water;  - Water lines, processing tanks, and water storage tanks; and  - Water distribution/service lines under the control of the community water system operator.  - The wellhead of the nearest existing potable drinking water well. | IDAPA 58.01.07.100.03(a) (Effective 4-2-08);  IDAPA 58.01.07.010.02 (Effective 4-2-08);  IDAPA 58.01.07.010.16 (Effective 4-2-08);  IDAPA 58.01.07.010.14 (Effective 4-2-08) | Idaho Code  § 39-8806 (Effective 2-23-07) |
| (h) States must have a system in place for determining when new or replaced underground tanks or piping or new motor fuel dispenser systems are not within 1,000 feet of any existing community water system or any existing potable drinking water well. | IDAPA 58.01.07.100.03(c) (Effective 4-2-08) | Idaho Code  § 39-8806 (Effective 2-23-07) |
| (i) States must have a system in place so they will know that secondary containment and under-dispenser containment are installed where required by these guidelines. | IDAPA 58.01.07.100.01 (Effective 4-2-08) | Idaho Code  § 39-8806 (Effective 2-23-07) |

**Notes on Objective from the Underground Storage Tank Compliance Act from Energy Policy Act of 2005 for Additional Measures to Protect Groundwater, 9012 of the Solid Waste Disposal Act, Subtitle I (42 U.S.C. 6991b) Section 1530 of the Energy Policy Act of 2005**

EPA has not yet established stringency criteria in 40 CFR Part 281 for Energy Policy Act requirements. The State has adopted the requirements of this objective in the statutory language of Idaho Code § 39-8806 and the rule language of IDAPA 58.01.07.100. These provisions should meet the no less stringent criterion for the Additional Measures to Protect Groundwater Objective once it has been established by EPA. Specifically, IDAPA 58.01.07.100.01(a) requires an owner, operator, or designee to notify the State 30 days prior to installing a new piping system or a new or replacement petroleum underground storage tank. IDAPA 58.01.07.100.01(b) requires an owner, operator, or designee notify the State 24 hours prior to the installation of a replacement piping system. The State has adopted the definitions in the *Grant Guidelines To States For Implementing The Secondary Containment Provisions Of The Energy Policy Act of 2005* in IDAPA 58.01.07.010.