



# **Leaking Underground Storage Tank Trust Fund Corrective Action Cooperative Agreement Guidelines**

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# Introduction

## Purpose And Scope

This document and its companion document, *Cost Recovery Policy For Leaking Underground Storage Tank Trust Fund Corrective Action Cooperative Agreements (LTF Cost Recovery Policy)* provide states<sup>1</sup> and the United States Environmental Protection Agency (EPA) with guidelines and requirements for managing Leaking Underground Storage Tank (LUST) Trust Fund (LTF) corrective action cooperative agreements<sup>2</sup>. LTF corrective action cooperative agreements are Continuing Environmental Program Grants<sup>3</sup>, administered by EPA, to provide money to states to address petroleum<sup>4</sup> releases from underground storage tanks (USTs). These grants are exempt from competition<sup>5</sup>. In addition to other grants application requirements, states must comply with the requirements in these guidelines and EPA's *LTF Cost Recovery Policy* as a condition of receiving LTF corrective action cooperative agreement funding.

This document:

- Replaces the 1994 *LUST Trust Fund Cooperative Agreement Guidelines* Directive 9650.10A and the 1989 *LUST Trust Fund State Financial Management Handbook*
- Incorporates provisions of the 2005 Energy Policy Act
- Clarifies allowable uses of funding
- Provides reporting requirements

This document does not address:

- LTF assistance agreements for preventing underground storage tank (UST) releases
  - Visit [EPA's UST website](#) for more information about LTF prevention assistance agreements
- Grants to address relatively low-risk petroleum contaminated sites
  - Visit [EPA's Brownfields website](#) for more information about grants for petroleum brownfields

For information about the cooperative agreement application process, please contact your [EPA regional UST program](#) and visit [www.grants.gov](http://www.grants.gov).

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<sup>1</sup> This document uses the term states to refer to both states and territories.

<sup>2</sup> A cooperative agreement is an assistance agreement in which the EPA is substantially involved programmatically.

<sup>3</sup> EPA uses the term grants for all federal financial assistance, including cooperative agreements.

<sup>4</sup> See definition of regulated substances describing petroleum in 40 CFR 280.12.

<sup>5</sup> See [www.epa.gov/ogd/competition/5700\\_5A1.pdf](http://www.epa.gov/ogd/competition/5700_5A1.pdf), EPA Order 5700.5A1, 6.c.1 – Exempt from Competition Policy.

## Background

In 1986, Congress created the LTF to address actual or suspected releases from federally regulated USTs by amending Subtitle I of the Solid Waste Disposal Act. The LTF is financed by a one tenth of one cent per gallon tax on gasoline, diesel, and aviation fuels.

Each year, Congress appropriates LTF money to EPA for both the prevention and cleanup<sup>6</sup> of releases from petroleum USTs. EPA provides most of its LTF Congressional appropriation to states through grants and cooperative agreements. LTF prevention and cleanup money is not interchangeable. EPA awards LTF prevention and cleanup money to states under separate cooperative agreements with distinct purposes, eligible uses, and statutory authorities. While states have their own programs and funding to clean up leaking underground storage tank sites, states must comply with the federal requirements when using LTF corrective action money under their EPA cooperative agreements.

EPA's LTF corrective action cooperative agreements provide states with money to:

- Oversee and enforce corrective action by owners or operators
- Investigate suspected petroleum releases
- Clean up releases when UST owners or operators are unknown, unwilling, or unable to perform the corrective action
- Take prompt action to protect human health and the environment
- Administer the LTF corrective action program
- Pursue cost recovery of LTFs

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<sup>6</sup> This document uses the terms cleanup and corrective action interchangeably to refer to all activities related to the investigation, characterization, and cleanup, remediation, monitoring, and closure of an UST release.

## Statutory Authority, Regulatory Requirements, And Guidance

EPA's authority for awarding LTF corrective action money to states is the Solid Waste Disposal Act (SWDA ) of 1976 (also known as the Resource Conservation and Recovery Act (RCRA)), as amended, § 9003(h) [42 US § 6991b(h)], which specifies that EPA must award LTF corrective action money using only cooperative agreements.<sup>7</sup> Therefore, EPA may not award LTF corrective action money as a grant.

States must use LTF money in accordance with the federal statutory requirements and applicable grants regulations:

- Solid Waste Disposal Act (SWDA) of 1976, as amended:
  - § 9003 [42 USC § 6991b](h)(1) through (8)] the EPA response program for petroleum releases
- Grant regulations<sup>8</sup>
  - 2 CFR Parts 200, 1500 and 180
  - 40 CFR Parts 7, 25.11, and 29

EPA's Delegation of Authority 8-38 authorizes EPA's Regional Administrators to take all necessary actions to approve, award, and administer cooperative agreements with states using LTF money under SWDA § 9003(h).

EPA provides additional programmatic and assistance agreement information each fiscal year:

- EPA's National Program Manager's (NPM) Guidance
- Catalog of Federal Domestic Assistance (CFDA)

In 2014, the Office of Management and Budget (OMB) streamlined eight federal grant regulations into the *OMB's Uniform Grants Guidance (UGG)*. The following table provides updated references in the UGG for former grant regulations references in 40 Code of Federal Regulations (CFR) Parts 31 and OMB Circular A-87. The UGG also applies to cooperative agreements.

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<sup>7</sup> With cooperative agreements, EPA's involvement may be substantial.

<sup>8</sup> LTF corrective action cooperative agreements are not subject to 40 CFR Part 35, "State and Local Assistance", which is a supplement to 2 CFR Parts 200 and 1500 for several environmental programs, but does not include the UST program.

Grant Regulations	Former Citations	Current Citations
Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards	OMB Circular A-87	2 CFR Parts 200 and 1500
Grants And Cooperative Agreements With State And Local Governments	OMB Circular A-102	2 CFR Parts 200 and 1500
Nondiscrimination In Programs Or Activities Receiving Federal Assistance From The Environmental Protection Agency	40 CFR Part 7	No change
Public Participation	40 CFR § 25.11	No change
Intergovernmental Review Of Environmental Protection Agency Programs And Activities	40 CFR Part 29	No change
Cost Principles, And Audit Requirements For Federal Awards	40 CFR Part 31	2 CFR Parts 200 and 1500
Payment	40 CFR § 31.21	2 CFR §§ 200.3, 200.305
		2 CFR § 200.305(b)(5)
Cost Sharing Or Matching	40 CFR § 31.24	2 CFR § 200.306
Program Income	40 CFR § 31.25	2 CFR § 1500.7 and 2 CFR § 200.307
	40 CFR § 31.25 (c)	2 CFR § 200.307(b)
	40 CFR § 31.25 (g)(2)	2 CFR § 200.307(e)(2)
Disposition of Equipment And Supplies	40 CFR § 31.32	2 CFR § 200.313
Procurement	40 CFR § 31.36(a)	2 CFR §§ 200.317-200.326 and 2 CFR §§ 1500.9-1500.10
Financial Reporting	40 CFR § 31.40	2 CFR § 200.327
	40 CFR § 31.40(d)	2 CFR § 200.327(d)
Monitoring And Reporting Program Performance	40 CFR § 31.41	2 CFR § 200.328
Subrecipient And Contractor Determinations And Requirements For Pass-Through Entities	40 CFR 31.37	2 CFR 200.330 and 2 CFR 200.331
Records Retention	40 CFR § 31.42	2 CFR § 200.333 through 200.337 and 2 CFR § 1500.6
	40 CFR § 31.42(b)	2 CFR § 200.333 through 200.337 and 2 CFR §1500.6
Remedies For Noncompliance And Termination	40 CFR § 31.43 and § 31.44	2 CFR §§ 200.338 and 200.339
Quality Assurance	40 CFR § 31.45	2 CFR § 1500.11
Government-Wide Debarment And Suspension (Non-procurement)	40 CFR Part 32	2 CFR Part 180

# Uses Of The LUST Trust Fund (LTF) For Corrective Action

## Categories Of Cost (Accounting Activities)

All expenditures of LTF corrective action money under the cooperative agreement must have a direct, primary, and demonstrable benefit to the LTF corrective action program. States should consider the cost effectiveness of LTF activities and expenditures. EPA provides money only for the work identified in the cooperative agreement, and does not commit to fully fund sites. Further, EPA cannot commit money beyond the budget period. Cooperative agreement funding is subject to annual appropriations. States cannot use LTF corrective action cooperative agreement money to support activities that are not authorized (for example, LTF prevention activities). EPA has determined that the Davis-Bacon Act and the Buy American provision in section 1605 of the General Provisions of the 2009 American Recovery And Reinvestment Act do not apply to annual LTF cleanup appropriations.

Costs must be eligible, allowable, necessary, and reasonable.

- A cost is eligible, if it is permitted by statute, program guidance, or regulations. The costs must also conform to any federal limitations
- Allowable costs must be necessary and reasonable for the performance of the award, and authorized by the appropriate OMB Cost Principles
  - A specific cost is necessary for the operation of the organization or performance of the award if it is required for the success of the project
  - A cost is reasonable if it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost

States may use LTF corrective action cooperative agreement money to pay for the following direct costs as well associated indirect costs. Under the terms of the EPA's cooperative agreement, states must account for all LTF expenditures using three accounting activity codes, including expenditures for sites that trigger site-specific accounting:

- **Program administration** (accounting activity code 7) including general program support and management
- **Site corrective action** (accounting activity code E) to protect human health and the environment when prompt action is necessary or when the owner or operator of an UST system is unknown, unwilling, or unable to take corrective actions themselves (as required by SWDA § 9003(h)(2))
- **Enforcement** (accounting activity code 4) including oversight of corrective action undertaken by owners or operators

States must use these accounting activity codes in reports to EPA. For more information about accounting for costs, see page 24.

### **Program Administration**

Consistent with 2 CFR Part 200, Subpart E Cost Principles, states may use cooperative agreement money to support program administration costs that directly benefit the overall LTF corrective action program, as set forth in SWDA § 9003(h). States should charge these expenditures only to program administration (code 7).

Allowable program administration costs, also referred to as general support and management costs, include all reasonable and necessary administrative and planning expenses directly related to site-specific corrective action and for overall program management including:

- Intramural costs, such as:
  - Support and management costs (for example, salary, rent, utilities)
  - Travel
  - Training for state staff
  - Purchases of equipment<sup>9</sup>, supplies, and office materials
  - Administrative support
  - Other costs that benefit the overall LTF program's administration, management, and internal state agency operations
- Extramural costs, such as:
  - Procuring contractors to support general management
  - Program guidance development and implementation
  - General community relations support
  - Report and proposal writing
  - Contingency planning
  - Research

Where certain basic program items do not exist, states may use LTF cooperative agreement money for core program development such as:

- Developing a system for prioritizing sites
- Establishing enforcement policies and procedures
- Securing contractor services to perform corrective action
- Establishing cost recovery policies and procedures
- Establishing a site-by-site tracking system for activities, decisions, and site-specific costs
- Developing public participation procedures
- Developing quality assurance practices

LTF corrective action money used for program administration is not subject to the corrective action priority system requirements of Subtitle I as set forth in SWDA § 9003(h)(3) (see *State Priority Systems*

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<sup>9</sup> Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000 (2 CFR § 200.33). Purchases of personal property under \$5000 are not considered equipment; they are considered supplies (2 CFR § 200.94). The title of these purchases (supplies) vests in the non-federal entity upon acquisition (2 CFR § 200.314). Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the federal awarding agency (2 CFR § 200.313(e)(1)).

For Addressing UST Releases, page 19) because it supports overall program activities rather than LTF site-specific work. Thus, LTFs used for program administration is consistent with EPA’s objective of ensuring that corrective actions proceed at all sites with suspected and confirmed UST releases, regardless of whether UST owners or operators cleaned them up or the LTF was used to pay for cleanup.

**SWDA § 9003(h)(3) Priority of corrective actions**

*The Administrator (or a State pursuant to paragraph (7)) shall give priority in undertaking corrective actions under this subsection, and in issuing orders requiring owners or operators to undertake such actions, to releases of petroleum from underground storage tanks, which pose the greatest threat to human health and the environment.*

**Site Corrective Action**

States may use the LTF to clean up sites when they cannot identify owners or operators who will undertake corrective action properly and promptly or when prompt action is necessary to protect human health and the environment (SWDA § 9003(h)(2)). States may use the LTF for a range of activities for site-specific corrective action (see Allowable Uses page 11-12).

In addition, states “shall” give priority to releases that pose the greatest threat to human health and the environment (SWDA § 9003(h)(3)). Because states often need to focus their limited technical resources on complex or high-risk sites, EPA encourages states to use risk-based priority systems to help inform site priority setting.

**Enforcement**

EPA expects financially viable owners or operators to undertake and pay for corrective action, voluntarily or in response to corrective action orders. When states are notified of a release, unless prompt action is necessary to protect human health and the environment, states should attempt to identify the owner or operator and direct them to perform corrective action at their own expense. States must document efforts to identify an owner or operator.

Site-specific enforcement costs include costs associated with all activities necessary to identify an owner or operator and oversee corrective action such as:

- Owner or operator searches
- Title searches
- Financial assessments
- Letters requesting information
- Notices and orders to potential owners or operators
- Hydrogeologic investigations and forensic analyses
- Salaries for responding to and overseeing responsible party cleanups
- Activities associated with the development and support of cost recovery cases

When time and circumstances permit, states should pursue corrective action by owners or operators through enforcement mechanisms. When states use the LTF for corrective action, owners or operators are liable for costs incurred, and states should pursue cost recovery actions against them. The level of

financial responsibility that owners or operators are required to maintain does not limit their liability. States may settle cost recovery litigation as part of their enforcement discretion conveyed by SWDA § 9003(h) (see EPA's *LTF Cost Recovery Policy*).

## Criteria For Using The LTF At Sites

States may use LTF money for site-specific corrective action when:

- The owner or operator is unknown, unwilling, or unable to perform corrective action properly (SWDA § 9003(h)(2)) and for releases that pose the greatest threat to human health and the environment (SWDA § 9003(h)(3)), or
- Prompt action is necessary to protect human health and the environment SWDA § 9003(h)(2)

States must document the criteria authorizing the use of LTFs for site-specific work.

**SWDA § 9003(h)(2)**...the Administrator (or the State) may undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank only if such action is necessary, in the judgment of the Administrator (or the State), to protect human health and the environment and one or more of the following situations exists:

(A) No person can be found, within 90 days or such shorter period as may be necessary to protect human health and the environment, who is—

- (i) an owner or operator of the tank concerned,
- (ii) subject to such corrective action regulations, and
- (iii) capable of carrying out such corrective action properly.

(B) A situation exists which requires prompt action by the Administrator (or the State) under this paragraph to protect human health and the environment.

(C) Corrective action costs at a facility exceed the amount of coverage required by the Administrator pursuant to the provisions of subsections (c) and (d)(5) of this section and, considering the class or category of underground storage tank from which the release occurred, expenditures from the Trust Fund are necessary to assure an effective corrective action.

(D) The owner or operator of the tank has failed or refused to comply with an order of the Administrator under this subsection or section 6991e of this title or with the order of a State under this subsection to comply with the corrective action regulations.

In determining whether states should use LTF, states should ensure the:

- Release is from a federally regulated UST (see definition in SWDA § 9001(10)<sup>10</sup>)
- Material released is a petroleum substance (see definition in SWDA § 9001(6))
- Corrective action at the site is necessary to protect human health and the environment, and
- Site is a relatively high priority

In determining whether a site is a high priority, states may consider factors such as whether there is physical evidence or the potential to affect:

- Groundwater
- Surface water
- Drinking water
- Unique exposure pathways
- Environmental Justice communities

For more information, see *States Priority System For Addressing UST Releases*, page 19.

#### ***Documenting Use of LUST Trust Funds***

*States must document:*

- *The criteria authorizing the use of LTFs for site-specific work (see *Criteria For Using The LTF At Sites*, page 9)*
- *What they have done to find owners or operators to pay for corrective action (see *Enforcement*, page 7)*
- *LUST Trust Fund expenditures (see *Accounting And Documentation*, page 24)*
- *Cost recovery efforts and resolution (see EPA's *LTF Cost Recovery Policy*)*

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<sup>10</sup> LTF eligibility may include USTs that EPA has excluded or partially excluded from regulation in accordance with 40 CFR 280 since the allowable use of the LTF is based on the statutory definition of an UST in SWDA 9001 (which is not modified by EPA's regulations).

## Allowable LTF Corrective Action Uses

Allowable costs under the cooperative agreement are limited to response actions to an existing or suspected release of petroleum from an UST.

SWDA § 9003(h) allows EPA and states to use the LTF for corrective action for the following activities:

- Site response
  - Preventing or mitigating threats to public health, welfare, or the environment, such as emergency response and initial site hazard mitigation
- Site investigation<sup>11</sup>
- Confirming a release
- Evaluating the source and extent of petroleum contamination
  - Inspecting, investigating, and identifying the source of releases up to the time that a leak is determined to come from an unregulated source
  - Testing tanks for leaks when a leak is suspected
- Exposure assessment<sup>12</sup> to determine
  - Potential effects from releases
  - How many individuals may have been exposed to petroleum contaminants
  - Seriousness of exposure
  - Resulting health risks
- Corrective action of UST petroleum releases
  - Planning and designing corrective action
  - Establishing corrective action priorities (for example, using risk-based priority setting)
  - Developing a corrective action plan
  - Installing remediation systems (for example, groundwater recovery wells, vapor intrusion mitigation)
  - Conducting remediation
  - Evaluating and mitigating the environmental footprint of site-specific corrective action (sometimes known as greener cleanups<sup>13</sup>)
  - Any activity, including tank removal and demolition, if it is necessary for corrective action until the state determines the release may not be from a federally regulated UST
  - Operation and maintenance (O&M) of corrective action (other than permanent water supplies)
  - Monitoring
  - Appropriate restoration of damage to properties that was necessary in order to perform corrective action<sup>14</sup> (for example, repairing public sidewalk, filling trenches)
  - Long term stewardship (for example, monitoring or institutional controls<sup>15</sup>)
- Enforcement

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<sup>11</sup> The term site investigation is often used interchangeably with the terms site assessment, site evaluation, and site characterization as they mean assembling and collecting information and data about a site.

<sup>12</sup> Definition in SWDA 9003(h)(10)

<sup>13</sup> Visit the [EPA's website for more information about greener cleanups](#).

<sup>14</sup> This does not include restoration of damage that is result of petroleum contamination.

<sup>15</sup> Institutional controls are non-engineered instruments, such as administrative and legal controls, that help minimize the potential for human exposure to contamination and protect the integrity of the remedy.

- Identifying an owner or operator (for example, responsible party searches, title searches, and financial assessments such as ability to pay (ATP) analyses)
- Compelling corrective action (for example, issuance of letters, notices, and orders to UST owners or operators requiring them to provide information, test tanks, take corrective action)
- Overseeing corrective action conducted by owners or operators
- Pursuing cost recovery from owners and operators for LTF-financed corrective action
- Environmental Justice
  - Considering cumulative environmental impacts on disproportionately impacted communities
- Temporary and permanent alternative water supplies to residents impacted by UST petroleum releases until corrective action measures take effect
- Relocation of residents temporarily or permanently
- Public participation activities, including developing public participation policies and plans
- Purchase or lease of equipment if necessary for corrective action or enforcement

## Considerations When Using The LTF

### ***Prompt Action***

In addition to emergency responses, states may conclude that a situation requires prompt action pursuant to SWDA § 9003(h)(2)(B) when considering factors such as how long the UST has remained without an assessment or remediation and the proximity to environmental and human receptors.

### ***Identifying A Viable Owner Or Operator***

States should determine whether there is a viable UST owner or operator, as defined in SWDA § 9001(B) and codified in 40 CFR § 280.12. States may rely on the LTF for cleanups when they cannot identify an owner or operator who will undertake corrective action properly or promptly and if such sites are among the states priorities. [EPA's Responsible Party Search Guide For The Underground Storage Tank Program](#) provides guidance on how to search for an UST owner or operator.

In addition, states may use the LTF if an owner or operator is not solvent, willing, or capable of performing corrective action properly. For example, an owner or operator may claim he or she cannot afford the cost of cleanup or refuse to comply with a request or order to take corrective action. For claims of inability to pay, states should conduct a preliminary ability to pay analysis (ATP) and a more detailed analysis later as part of the cost recovery process.

[EPA has five penalty and financial models](#) to analyze the financial aspects of enforcement actions:

- ABEL - Evaluates a corporation or partnership's ability to afford compliance costs, corrective action costs, or civil penalties
- BEN - Calculates a violator's economic savings from delaying or avoiding pollution control expenditures
- INDIPAY - Evaluates an individual's ability to afford compliance costs, corrective action costs, or civil penalties
- MUNIPAY - Evaluates a municipality's or regional utility's ability to afford compliance costs, corrective action costs or civil penalties
- PROJECT - Calculates the real cost to a defendant of a proposed supplemental environmental project

Three of these models (ABEL, INDIPAY, and MUNIPAY) may help states analyze whether the owner or operator has an ability to pay for corrective action.

### ***Suspected Releases With Limited Site Information***

- States may suspect an UST has a release using limited information (for example, when the UST is abandoned). It is not necessary to have physical evidence to conclude there is a suspected release. States may rely on experience or information on the likelihood of a release based on the type, age, or condition of the tank. When states determine that there is a suspected release, they may use the LTF to undertake corrective action activities, including emptying the UST and conducting a limited site assessment to:
  - Confirm the age and condition of the UST and possible dates of release, and
  - Determine further whether the site is LTF eligible
- States must stop using LTF money if there is sufficient information to determine that the site is not LTF eligible. For example, if:
  - They conclude that there is no release or the release is not from an UST as defined by SWDA § 9001, or
  - There is an owner or operator willing and able to perform the corrective action

At that point, states may only use the LTF to remove equipment, finish the site assessment report, and pursue cost recovery.

*States do not necessarily need physical evidence to determine if there is a suspected release from an UST (for example, an abandoned UST or unknown source of contamination). They may rely on information about the tank and the likelihood of a release. If states reasonably suspect a release, they may use the LTF to empty the tank and conduct a limited site assessment. The site assessment will help determine:*

- *Age and condition of tank*
- *The presence and magnitude of a release*
- *Possible date of release*
- *LUST Trust Fund eligibility*

### ***Operation And Maintenance (O&M) Of The Remediation System***

- O&M costs for corrective action, other than permanent water supplies, are allowable LTF costs
- States may use discretion in deciding whether to fund O&M costs through the LTF or other means such as owner or operator contributions or state or local funds
- States are responsible for setting priorities between initiating corrective actions at new sites and continuing O&M at existing sites
- EPA's commitment is limited to providing money only for work identified in the cooperative agreement, and not:
  - Where states may choose to conduct O&M beyond the term of the cooperative agreement
  - To fully fund sites

### ***LTF-Eligible Sites Mixed With Other Types Or Sources Of Contamination***

- If there is an LTF-eligible petroleum release at a site with other types or sources of contamination, states may pay for part of the corrective action costs, including oversight costs, with LTF corrective action money
- States should make a reasonable estimate of costs associated with the UST release versus the other type or sources of contamination and pro-rate the costs. However, if no additional work is needed for the non-UST release, states may fully fund the corrective action costs at the site with the LTF

### ***Temporary And Permanent Alternative Water Supplies***

- Temporary or permanent provision of water to protect human health while waiting for corrective action measures to take effect is an allowable cost
- In some cases, providing a permanent alternative water supply will be necessary, and more cost-effective than corrective action, relocation, or even extended temporary provision of bottled or trucked-in water. Allowable costs for permanent water supplies are limited to the initial capital costs, and do not include operation and maintenance costs of the system
- States should evaluate the cost-effectiveness of providing a permanent water supply in comparison to other corrective action alternatives. When considering the cost of providing permanent water supplies, states should consider both the total cost per site and the cost per affected household. Relatively high total costs may be reasonable if large numbers of households are affected

### ***Relocation Of Residents Temporarily Or Permanently***

- Temporary relocation of residents is allowed when:
  - Necessary to protect human health, and
  - Corrective action activities cannot be undertaken safely while residents remain in their homes

States should evaluate the cost effectiveness of this measure compared to other measures, such as a temporary water supply or in-house air filtration or venting units.

- Permanent relocation is allowed when it is the:
  - Only available option for protecting human health, or
  - Most cost-effective option

If permanent relocation is undertaken, states must comply with the Uniform Relocation Act (42 U.S.C. 4610 et. seq.) regarding property acquisition and relocation of residents.

## LTF Uses That Are Limited

### ***Federal, State, And Local Government Facilities***<sup>16</sup>

States should not ordinarily use the LTF to address petroleum UST releases from government facilities. EPA expects these entities to meet their obligations of addressing environmental hazards at their facilities. They should have the requisite financial strength to cover the costs of taking corrective action. If these entities fail to undertake and pay for the cost of corrective action, states should take enforcement action, as appropriate.

However, some ***exceptions*** apply. States may use the LTF:

- For oversight of corrective action and enforcement at federal, state, and local government facilities
- At local government facilities, if the state determines the local entity is incapable of carrying out corrective action properly and the site is a high priority compared to other eligible sites
- At federal, state, or local government UST facilities (subject to Subtitle I jurisdiction) for:
  - Preliminary site investigations
  - Emergencies, including the mitigation of imminent hazards to human health or the environment

States should pursue recovery for these expenditures from the responsible government entity consistent with these guidelines and EPA's *LTF Cost Recovery Policy*.

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<sup>16</sup> These guidelines do not convey additional authorities to states with regard to access to governmental facilities nor does it intend to alter state policies with regard to intergovernmental relations.

## LTF Uses That Are Not Allowed

States cannot use LTF corrective action money for the following:

- Expenditures:
  - Not related to UST corrective action (i.e., under the jurisdiction of SWDA of 1976, as amended by § 9003(h))
  - For releases from USTs not covered by SWDA § 9001<sup>17</sup>
- Releases from hazardous substance tanks
- Compliance inspections
- Third party liability costs
- Implementation of any prevention activities under the Energy Policy Act (EPAAct) of 2005
- Staff or activities that enhance the general technical or legal capabilities of states and do not relate directly to leaking petroleum USTs (as noted in the Conference Report to the 1986 Subtitle I Amendments)
- Replacement and repair of leaking tanks
- Tank removal and other construction activities unless they are a necessary part of:
  - Corrective action process (for example, to undertake or complete assessment or corrective action activities), or
  - Site restoration
- Activities intended to meet tank closure requirements (40 CFR parts 280.71 and 280.72 or state equivalent). However, site investigation/assessment activities are allowable uses as described in the section on Allowable LTF Corrective Action Uses, page 11
- Redevelopment activities (for example, construction of a new facility, marketing, or purchase of property)
- General education or job training activities
- Lobbying efforts, including those associated with passing LTF legislation, lobbying state legislatures, obtaining grants, cooperative agreements, contracts, or loans
- Costs that are unallowable under OMB Circular A-87 (2 CFR Part 225)
- Funds used to cost share (match) federal funds, including cost recovered matching funds
- Payment of fines or penalties

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<sup>17</sup> Examples of USTs that are not covered by SWDA 9001 include farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes; tanks used for storing heating oil for consumptive use on the premises where stored; septic tanks; pipeline facilities. States often have state funds to cover releases from such USTs.

# LTF Cooperative Agreement Requirements

## Application And Workplan

States must submit an application for an LTF corrective action cooperative agreement. The application must include a budget and a workplan. The budget should include a breakdown of associated costs of each planned activity and output. The workplan should include a proposed schedule for each activity, specifying target dates and milestones for timely project completion. The terms of the cooperative agreement is determined by EPA's regional grants office at the time of the award.

States should also provide descriptions, as appropriate and applicable, of the following:

- Authority and capability similar to SWDA 9003(h)
- Conformity with federal corrective action regulations
- Site priority system, including environmental justice considerations, if applicable
- Enforcement capabilities, policies, and procedures
- Public participation policy
- Assuring data quality
- Cost recovery authority and policy
- Site-specific activities
- Planned purchases of equipment
- 2005 Energy Policy Act certification
- Reporting Requirements: program performance and financial reporting

### ***Authority And Capability***

EPA determines states capability to implement the terms of the cooperative agreement based on the states work plans, milestones, and certifications. States must have adequate legal authority and the programmatic infrastructure (for example, policies, procedures, and enforcement capability) to carry out activities committed to in the cooperative agreement. States must promptly notify EPA of any reduction in its authorities (for example, to perform corrective action, enforcement, and cost recovery) or a successful challenge to state statutory authority that may inhibit their ability to carry out the activities committed to in the cooperative agreement. An amendment to the cooperative agreement or recertification may be necessary in such circumstances.

If necessary, states can recertify their legal authority to carry out the cooperative agreement or workplan activities in three ways:

- Certify that they have specific authorities similar to SWDA § 9003(h)
- Certify that they have general state law authority sufficient to carry out the workplan activities (for example, authority to protect public health, to protect the environment, or to protect any state interest), or
- Certify that they will use the authorities in SWDA § 9003(h) to perform and require corrective action and SWDA § 9003(h)(6)(A) to perform cost recovery

In these instances, states attorneys general, or someone designated by the state attorney general, must either sign or concur on the recertification.

### ***Conformity With Federal Corrective Action Regulations***

The cooperative agreement application must include an assertion that states conform to federal UST corrective action regulations. States without State Program Approval (SPA) must ensure that corrective actions taken by either owners or operators or states comply with the substantive requirements of federal UST regulations (40 CFR § 280.60-280.67). EPA approved state programs have already been determined to be no less stringent than federal regulations.

### ***States Priority System For Addressing UST Releases***

States are required to ensure that a priority system for addressing UST petroleum release sites is established, maintained, and incorporates the two priorities set forth in SWDA § 9003(h). These priorities are:

- Releases which pose the greatest threat to human health and the environment, and
- Sites where states cannot identify a financially solvent owner or operator who will undertake action properly

States are responsible for setting priorities between initiating corrective action at new sites and continuing corrective action operation and maintenance at existing sites. States should have methods to determine capability and solvency of owner or operators. States must include a description of their priority system in their cooperative agreements.

The priority system does not have to be extensive, complex, or numerical in nature. It can use readily available information to establish broad, general classes of priority. States may use criteria contained in state law or regulation to determine the degree of risk a site poses to human health and the environment or develop specific policies and procedures to meet this requirement. This requirement does not necessarily presume the need to rank all UST releases in the state. Rather, states should use a priority system as a screening device to assure that:

- Sites using LTF money are relatively higher priority
- Necessary corrective actions proceed at all sites

States may address the threat to human health and environment criteria by considering site characteristics and factors such as:

- Release volume
- Total population exposed
- Proportion of the population affected in a community
- Proximity or impact to groundwater aquifers
- Number of drinking water wells contaminated
- Sensitive or unique environmental areas, such as source water areas
- Environmental Justice indicators such as impact on or proximity to sensitive populations, including disproportionately impacted minority, low-income, or indigenous communities
- Unique exposure pathways and scenarios

Many states have adopted Risk-Based Corrective Action (RBCA<sup>18</sup>) policies and processes to help set priorities for corrective action.

The priority system requirement (SWDA § 9003(h)(3)) does not apply to a wide variety of allowable activities that EPA or states carry out using the LTF such as:

- General support and management, training, program guidance, and contingency planning
- Enforcement related activities such as letters, notices, and field citations
- Regulatory oversight of corrective actions conducted by owners or operators
- Cost recovery

### ***Enforcement Capabilities, Policies, And Procedures***

States should have a set of clearly defined enforcement policies and procedures for addressing releases from petroleum USTs. The policies and procedures should reflect the underlying philosophy of the LTF to seek corrective action by the responsible party, unless there is an imminent and substantial endangerment of human health and the environment. EPA will consider items such as proper identification of releases and responsible parties, proper documentation of enforcement actions, and timely and appropriate enforcement activity, in evaluating the states enforcement policies and procedures. States should provide a description of their technical and legal capabilities for pursuing enforcement activities.

### ***Public Participation Policies***

SWDA § 7004(b)(1) requires that states provide for, and encourage public participation. In accordance with this requirement, states are responsible for public notices, public meetings, and other public participation activities related to state actions funded by the LTF. Public participation activities must comply with the federal UST regulations, 40 CFR § 280.67 or a state equivalent.

In accordance with 40 CFR § 25.11, states must have or must develop a public participation policy for their LTF corrective action program. The cooperative agreement must include a statement of this policy.

States public participation activities should be commensurate to the circumstances of a release and should consider populations or areas disproportionately impacted by environmental conditions. For guidance on the appropriate level of community engagement at leaking underground storage tank sites, please see [EPA's Guidelines for Tailoring Community Engagement Activities to Circumstances at Leaking Underground Storage Tank Sites](#).

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<sup>18</sup>RBCA decision-making is a process UST implementing agencies can use to make determinations about the extent and urgency of corrective action and about the scope and intensity of their oversight of corrective action by UST owners and operators. [Use Of Risk-Based Decision-Making In UST Corrective Action Programs OSWER Directive 9610.17 March 1, 1995](#).

**Data Quality Assurance**

Organizations performing activities involving the use or generation of environmental data under covered assistance agreements must provide documentation that demonstrates conformance to U.S. EPA quality program and competency requirements. States should contact EPA's regional offices for more information.

**Cost Recovery Authority And Policy**

States must have the authority to recover LTF expenditures made under their cooperative agreements and written cost recovery policies or procedures that are consistent with those outlined in EPA's *LTF Cost Recovery Policy*.

**Site-Specific Activities**

The cooperative agreement workplan should include a description and budget for those activities states plan to undertake at sites. It may include an estimate of the number of sites at which the state intends to undertake the various specific activities, or identification of individual sites at which states contemplate specific work.

**Planned Purchases Of Equipment**

Planned purchases of equipment should be included in states proposed workplans, negotiated, agreed to, and itemized in the Equipment approved budget line item on the Federal Financial Report (Form SF-424a). EPA does not approve individual equipment purchases that are not in the approved workplan. States must obtain EPA's approval through an amendment to the cooperative agreement for any equipment purchases that represent a substantial change from the approved budget or workplan.

**2005 Energy Policy Act Certification**

Under the 2005 Energy Policy Act, and in accordance with EPA's Energy Policy Act grant guidelines, states must submit a certification indicating they meet the applicable Energy Policy Act provisions or submit documentation describing their efforts to meet the ongoing requirements.

**Subawards**

EPA's *Subaward Policy for EPA Assistance Agreement Recipients*, Grants Policy Issuance (GPI) 16-01, provides guidance on transfers of EPA funds between state agencies, see EPA's website <https://www.epa.gov/grants>.

## ***Performance and Financial Reporting Requirements***

States must provide performance and financial reports, as authorized by 2 CFR §§ 200.327 and 200.328. EPA provides information about program goals and measures in its annual [National Program Manager \(NPM\) Guidances](#). EPA conducts program performance monitoring to determine states progress towards meeting overall program goals.

### **Performance Reporting**

- States must incorporate performance measures into their cooperative agreement workplans. As a condition of the LTF corrective action cooperative agreements, states must report program performance results to EPA semi-annually and submit progress reports as part of the yearly review.
- The LTF corrective action performance measures are the number of:
  - Confirmed Releases
  - Cleanups Initiated
  - Cleanups Completed
  - Emergency Responses

Visit EPA's UST website for more information about [Performance Measures](#) and their definitions.

- States must enter their semi-annual data into EPA's Web based database, LUST4. EPA regional and state users are required to request permission from EPA's Office of Underground Storage Tanks to access LUST4.
- States should work with EPA regions to develop a schedule for reporting performance results, as contained in EPA's National Program Manager's (NPM) Guidance.

### **Financial Reporting And Transactions**

- In accordance with 2 CFR § 200.328, states are responsible for providing EPA with Federal Financial Reports (Standard Form (SF) 425). States must submit all financial reports to EPA's Las Vegas Finance Center.
- To support adequate monitoring of financial transactions, as a term and condition of the cooperative agreement, states agree to:
  - Complete the SF 425 as a final report to financially close out the cooperative agreement, and file within 90 days after the close of the budget period or termination of the cooperative agreement. EPA may request Federal Financial Reports more frequently.
  - Apply for payments using the three EPA reporting codes: Program Administration - Code 7, Site corrective action - Code E and Enforcement- Code 4. States may also report expenditures by activity code on their Federal Financial Reports (SF 425).
- States may draw down LTF money through the [Automated Standard Application for Payments \(ASAP\)](#) or by submitting a [payment request form](#) (EPA Form 190-F-04-001). States must use the correct EPA LTF activity code when requesting money for LTF corrective action cooperative agreements.

## Ten Percent Cost Share (Matching Funds)

As required by SWDA § 9003(h)(7)(B), states must pay ten percent of total program expenditures covered by their LTF cooperative agreement. This is known as a cost share or matching funds.

States should negotiate how they intend to provide their cost share in advance and specify it in their cooperative agreement. EPA presumes that states will share all expenditures under the cooperative agreement on the same percentage basis as the overall ratio of federal to state money under the cooperative agreement. Cooperative agreement workplans should reflect a minimum ten percent cost share of the total program budget, not ten percent of the federal award. States do not have to match federal costs on a site-by-site basis.

Any costs incurred by states to satisfy its cost share requirement must be eligible and allowable under the LTF cooperative agreement and 2 CFR § 200.306. States may not meet their cost share requirement by using recovered LTF corrective action money (including recovered state match money under the cooperative agreement) or costs charged to other federal grants. In addition, states must use recovered state cost share funds for LTF eligible expenses and allowable costs under the cooperative agreement (see EPA's *LTF Cost Recovery Policy*)

The ten percent payment may be satisfied with any of the following:

- Direct, non-federal funds expended or obligated by state or local governments for cost-allowable activities
- In-kind contributions (for example, non-LTF funded state program staff or legal services in a cost recovery case, equipment)
- Allowable costs incurred by the state or its contractor
- Third party in-kind contributions, including contributions from local governments and volunteer time from private citizens

Regardless of the source of funds states use to satisfy their cost share requirement, state contributions (for example, direct and in-kind) must be verifiable from state records, in accordance with applicable grant regulations. EPA will use these records to verify that states satisfy their cost share requirement. These records must show how states derived the value placed on in-kind contributions.

Documentation must include the following:

- Support for all direct, non-federal expenses
- Specific amounts claimed as in-kind contributions, and
- Worksheet showing how states derived the value of its in-kind contribution

### ***UST State Financial Assurance Funds For Cost Share***

Many states have UST financial assurance funds (state funds) that provide coverage to UST owners and operators to pay for cleanup or third party liability compensation. States may use state fund money toward the LTF cooperative agreement match only if the expenditure is an allowable cost under the LTF. State funds costs have not typically qualified as allowable LTF costs. For example, reimbursement of costs at sites owned by solvent tank owners or third party liability costs would not be allowable

costs under the LTF. Examples of compatible state fund costs that are compatible for the LTF match include:

- Oversight of owner or operator led corrective actions, regardless of the owner or operator solvency
- State-lead corrective action that meet LTF criteria, such as
  - Emergencies
  - Abandoned tanks (no identifiable owner or operator)
  - Recalcitrant owner or operator
- Investigation of a release to determine its source

States that want to use their state funds toward satisfying the LTF state match requirement should make it clear in the LTF cooperative agreement.

## Accounting And Documentation

This section presents accounting and documentation requirements as well as suggestions to meet specific LTF requirements and manage LTF corrective action dollars effectively.

In addition to complying with state laws and procedures, states must account for LTF money in accordance with:

- The requirements of SWDA Subtitle I
- These cooperative agreement guidelines, and
- EPA's *LTF Cost Recovery Policy*

Fiscal control and accounting procedures must comply with EPA's Uniform Grants Guidance (UGG) 2 CFR Part 200 and 2 CFR Part 1500.

States must maintain accounting and recordkeeping systems that:

- Document all LTF expenditures
- Ensure that LTF money is used for its intended purpose, in compliance with SWDA Subtitle I requirements
- Produce detailed, accurate, and complete reports that identify LTF costs by activity and provide activity information with each accounting entry
- Support cost recovery with site-specific records
- Are in place even if states decide not to pursue cost recovery
- Demonstrate the state has retained and used recovered funds for additional eligible and allowable activities under their cooperative agreements (see: UGG 2 CFR § 1500.7 and 2 CFR § 200.307(e)(2))
- Are easily accessible for litigation purposes
- Aid financial audits
- Generate financial progress reports, as required under the cooperative agreement

Cost documentation to support financial audits and administrative or judicial action includes:

- Proof that states authorized the work or purchases
- Proof that the work was completed, states were billed, and bills were paid
- Documentation to respond to arguments from owners or operators that the costs claimed are unreasonable or unnecessary
- Documentation to negotiate and settle claims

States must make cost documentation records available to EPA upon request.

### ***Site-Specific Accounting***

To ensure that states can effectively recover their costs from responsible owners or operators, states must have a cost accounting system that tracks the cost of corrective action and enforcement on a site and activity-specific basis.

States may incur the following types of expenditures for work at a site:

- Payroll
- Travel
- Supplies and Equipment
- Contractor Support
- Program Administration
- Indirect

States must ensure that site-specific expenses are adequately justified. For each category of expense, legally defensible cost documentation should demonstrate the:

- Work was authorized
- Work was reasonable and necessary
- Work or purchase was completed
- Contractor billed the state
- States paid for the work or purchase

States are required to document costs of cleanup and enforcement activities on a site-specific basis when they, or their contractors, undertake any one of the following action thresholds:

- Initiate an LTF-financed emergency response
- Begin an LTF-financed detailed site investigation or initiate other corrective action activities
- Determine that an owner or operator is likely to be recalcitrant (i.e., a solvent owner or operator who refuses to comply with corrective action order) and that LTF money will be used for enforcement or corrective action at the site

In these cases, states must document all LTF site-specific direct costs, including staff salary, equipment, travel, and contractor costs. An initial site visit may not trigger site-specific accounting because not all sites will be candidates for significant LTF expenditures and cost recovery. Generally, contractor activity at a site would trigger site-specific accounting. If an owner or operator is likely to be recalcitrant, states should begin site-specific accounting as soon as they incur costs.

In addition, when site-specific accounting is required, all costs that can be identified to a particular site should be charged accordingly and state contractors must bill costs on a site-specific basis for corrective action and enforcement work. While states have the discretion to pursue some or all of these costs on a case-by-cases basis, they must document all LTF expenditures for sites that meet these action thresholds even when they decide in advance not to pursue cost recovery. This requirement assures that states use LTF money for their intended purpose and is beneficial for financial auditing purposes. Further, owner or operator finances could improve while conducting the cleanup or states may identify additional assets, states would then have adequate data to support a cost recovery action.

States are not required, but may choose to document, site-specific costs for LTF sites that do not meet any of the action thresholds. For example, sites where an owner or operator has the lead for site investigation and cleanup, and the LTF pays state staff to oversee the work and the state does not intend to pursue recovering oversight costs.

Site-specific information where the LTF is used includes:

- Site location and description
- Results of site investigations (including identifying owners or operators)
- Enforcement actions taken
- Documentation of responses taken and time frames
- Documentation of all costs (identifying LTF monies expended, including contractor invoices)

States may also wish to maintain copies of other documents in site files, including audit reports, site visit reports, and financial transactions. States are encouraged to reconcile site files periodically with accounting system summary reports. This will allow the state to identify records that were not included in site files.

### ***Indirect Costs And Cost Rate***

Indirect costs represent states overhead costs, such as rent, supplies, and utilities for office space or payroll and benefits for state staff that may support multiple programs. Unlike administrative costs, which states charge directly to the LTF appropriation, states initially charge indirect costs to a non-LTF appropriation account, which may be comprised of costs from multiple programs. States then distribute these indirect costs among benefiting state programs using an indirect cost rate.

An indirect cost rate is a percentage of an organization's costs allowed for overhead and administrative expenses, determined to be fair within the boundaries of sound administrative principles. Each state negotiates an indirect cost rate annually with its awarding federal agency, under the terms of the Office of Management and Budget Cost Principles 2 CFR Part 200. Each indirect cost rate agreement identifies the basis of the indirect cost rate and specifies the cost base to which the state will apply the rate. The indirect cost rate is applied to the cost base of the cooperate agreement to determine the amount of indirect costs assignable to the cooperative agreement.

If states do not automatically calculate indirect charges, site files should contain worksheets that outline indirect cost allocations. States should have available a copy of the federal indirect cost agreement and the annual indirect cost rate proposal document.

### **Direct Costs**

Include administrative costs such as payroll and related fringe benefits, travel, supplies, equipment, and contractor costs, which directly support and benefit states LTF program. States must charge these expenditures directly to the LTF program in their accounting system. EPA's three LTF activity codes (Program Administration = code 7, Site Corrective Action = code E, and Enforcement= code 4) must be used in cost reports submitted.

### **Payroll**

State staff who charge time to the LTF for administrative activities or to sites, for which they have not established a site-specific identifier, must indicate the amount of time charged by activity code in their timekeeping and accounting systems. Once states have established a site-specific identifier, employees must reference both the site and activity code. Staff may charge time directly both site-specifically and non-site-specifically depending on the nature of their work during a given time period. For example, a staff member may charge 30 hours to administrative and the rest of his or her time to specific sites.

State employee records should show the time its employees spent working on the site. To recover costs successfully, it is essential that all employee timesheets and travel vouchers agree. If an employee submits a voucher for travel charges related to an LTF site, and the employee's timesheet does not show any time charged to the site for that day, the charges would not be accepted in cost recovery litigation. In addition, both the salary and the travel charges could be disallowed in an audit. States should also retain travel authorization forms or records that delineate the purpose of trips.

States should retain individual time and attendance records and adjustments to the timesheets. Staff titles and salaries should be readily available for those who charged to a particular site. If the state's accounting system does not automatically calculate fringe benefit charges, states should document and make accessible an explanation of how fringe benefits are calculated. If states do not specify an allowable fringe benefit rate in their negotiated indirect cost rate agreement, they should also document the calculation of indirect costs.

### **Travel**

States must record all transportation, meal, and lodging expenses charged to the LTF cooperative agreement on an activity specific basis. Once a state establishes a site-specific identifier, they must charge costs site-specifically. How states charge for site-specific costs may depend on the circumstances:

- For travel to multiple sites, states should divide expenses among the sites in a logical way so that they charge expenditures directly to each site. In most cases, apportioning the total travel cost among sites based on the relative amount of time spent at each site is acceptable. State travel vouchers should provide space for charges to multiple sites.
- Travel that does not directly benefit any one site and cannot be divided in a logical way among multiple sites should be charged by activity only.

Site files should contain travel authorizations, travel vouchers, receipts, and trip reports. These documents will provide proof that employees traveled to specific destinations for specific purposes and that costs were paid. This documentation can also be helpful in verifying contractors' requests for

payments, auditing contractors' services, and recovering costs.

### **Equipment And Supplies**

States may use LTF money to purchase necessary equipment (items with a unit acquisition price over \$5,000) and supplies for corrective action, enforcement, oversight, or program administration activities. When states purchase equipment and supplies for corrective action at a single site, states should charge costs only to that site. However, states may use equipment at multiple sites. Where this occurs, states should allocate the costs of equipment over \$10,000 among the sites where the equipment is used for corrective action. An exception may be made for equipment used at a large number of sites (such as response vehicles or field test equipment) where it would be impractical to allocate costs to individual sites. In these cases, states should charge the equipment and supplies by activity only. States should charge equipment and supplies that they use at multiple sites and that costs less than \$10,000 to the site that predominately benefits from the use of the equipment and supplies.

When states share purchased equipment for more than one site, they should develop a usage rate to facilitate allocating these costs to sites. They should base the rate on the estimated life of the equipment. For example, if a piece of equipment is expected to last 1,000 hours and its cost (purchase price, plus estimated maintenance, less salvage value) equals \$10,000, then the usage rate would be \$10.00 per hour. States should set up a system to record by site the hourly usage of each piece of equipment and then apply the equipment usage rates to calculate direct equipment charges.

States should consult EPA's grant regulations 2 CFR § 200.313 for guidance in final disposition of equipment and supplies purchased with LTF money.

States should retain:

- Documentation on the types of materials or supplies purchased for site uses
- Equipment purchase invoices (unit acquisition cost of \$5,000 or more)
- Contractor invoices, and
- Equipment lease bills

### **Contractor**

States must account for contractor costs on an activity specific basis and by site, when appropriate. Contractor invoices should be organized in such a way that state staff reviewing the invoices for payment can quickly identify which charges apply to which sites and, if the contractor has not already done so, mark the invoices with designated site codes for input into the state accounting system.

Site files should contain:

- Contractor invoices
- Records for invoice approval
- Proof of payment
- Contractors proposals and cost data
- Contracts, statements of work, work or change orders
- Technical progress reports

### **Allocating Non-Site-Specific Direct Costs**

States may elect to allocate administrative costs to sites for cost recovery purposes. States may allocate to specific sites any LTF expenditures that they have not directly charged to sites including administrative costs and non-site specific corrective action and enforcement costs. For example, states may add a non-site specific corrective action "E" and enforcement "4" category to the administrative "7" costs allocated to specific sites. States should consider the amount of the administrative "7" costs as well as the non-site-specific corrective action "E" and enforcement "4" costs when deciding which costs to allocate. States may develop their own methodology for allocating these costs and should provide it to the EPA upon request.

Whenever states allocate such costs, the files should include any worksheets that detail the calculations used for distributing costs. States should retain a copy of the cost allocation methodology used.

### ***Disposition Of Recovered Money***

If states settle a cost recovery case, they:

- May retain any LTF money they recover for use on additional LTF eligible corrective action and allowable costs
- Must inform EPA and maintain appropriate accounting of recovered funds and must document their appropriate use in accordance with 2 CFR § 200.305(b)(5) and 2 CFR § 1500.7 and 2 CFR § 200.307 and applicable requirements of the cooperative agreements
- Must report to EPA (as required by 2 CFR § 200.327 and the terms and conditions of its cooperative agreement) the agreed upon amount and the amount of payment received from the liable owner or operator

When states use their own funds to recover LTF money, they may deduct these costs from gross income to determine net program income in accordance with 2 CFR §§ 1500.7 and 200.307. This provision must be authorized by the cooperative agreement terms and conditions.

## ***Records Retention***

States must:

- Comply with the federal retention and access requirements for records (2 CFR §200.333)
- Maintain documentation<sup>19</sup> and records that support cost recovery actions (for example, original cost documentation) for at least six years after the final Federal Financial Report (Standard Form 425) or for the length of time required by states, whichever is longer, and
- Retain records:
  - If they initiate any litigation, audit, or other action prior to the expiration of the three-year period (2 CFR §200.333), and
  - Until an action is complete and all issues that arise from the action are resolved

States should consider the relevance of any cost documentation to future cost recovery efforts before disposing of it.

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<sup>19</sup> Electronic, open, machine-readable information is preferable to paper, as long as there are appropriate and reasonable internal controls in place to safeguard against any inappropriate alteration of records.

## **Non-Eligibility For Performance Partnership Grants**

With some EPA funding, states and certain interstate agencies can combine two or more environmental program grants into a single Performance Partnership Grant (PPG). Recipients of PPGs may direct EPA grant funds to priority environmental problems or program needs and try multi-media approaches. However, states may not include LTF corrective action cooperative agreements in PPGs.

## **Incurring Pre-Award Costs**

Pre-award costs are costs:

- Incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award
- Necessary to comply with the proposed delivery schedule or period of performance
- In conformance with the appropriate statute and cost principles

Recipients may incur pre-award costs 90 calendar days prior to award provided:

- They include such costs in their application
- The costs meet the definition of pre-award costs
- They are approved by the EPA's project officer and award official

The approval of pre-award costs should be reflected in the budget period on the cooperative agreement and if applicable, under a term and condition of the assistance agreement.

Pre-award costs incurred more than 90 calendar days prior to award require the approval of EPA's award official. Recipients incur pre-award costs at their own risk. EPA is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs.

## **Time Limit For Project Period And Using Funds**

As of October 1, 2010, the total project period of new assistance agreements for LTF appropriations, including any no-cost extensions or supplemental amendments, may not exceed five years.

## EPA's Role

EPA oversees state programs, both formally and informally, in order to:

- Ensure adequate environmental protection through sound administration and the appropriate use of the LTF corrective action money
- Enhance state capabilities through effective communication, evaluation, and support, and
- Describe and analyze the progress of programs on a regional and national scale

EPA's regional staffs are primarily responsible for oversight of state programs. Regions and states should maintain a dialogue so that states can communicate problems encountered in meeting their commitments and regions can be responsive to states needs. State reporting is both informative and important to the dialog between EPA and states regarding the status and progress of LTF program implementation.

In accordance with the *Federal Grant and Cooperative Agreement Act of 1977 (FGCAA)*, the use of cooperative agreements entails substantial federal involvement with recipients during performance of workplan activities. Pursuant to EPA Order 5700.1, *Policy for Distinguishing Between Assistance and Acquisition*, March 22, 1994, EPA's substantial involvement may include considerable monitoring of states program implementation as well as joint operational involvement, participation, or collaboration between EPA and states. For example, EPA may monitor states enforcement, corrective action, and cost recovery policies and procedures for responding to releases from federally regulated USTs. Furthermore, EPA may use the information provided in the workplan to monitor progress of states activities. EPA may also collaborate with states to determine the most effective uses of the LTF.

As part of its oversight responsibility, EPA will formally review state programs at least once a year. These annual reviews may consist of evaluating required reports and state records, and visiting states to identify the successes and problems encountered in state programs. These formal program reviews should focus on states overall performance (including any financial, staffing, and regulatory issues) rather than on individual actions. To the greatest extent possible, EPA should base its state program reviews on objective measures, standards, and expectations that EPA and states agree to in advance and are part of the cooperative agreement.

Effective oversight entails the joint analysis of identified problems to determine their nature, causes, and appropriate solutions. Thus, regions should identify and facilitate the transfer of successful approaches to other states and regions. EPA should include the information and insights gathered from oversight activities in subsequent cooperative agreements. EPA regions should maintain appropriate records and documentation on state implementation issues.

## Allocation And Awards To States

SWDA § 9004(f)(1)(A) (42 U.S.C. sec 6991c) requires EPA to distribute at least 80 percent of its annual Congressional LTF corrective action appropriation to states in the form of non-competitive cooperative agreements. [Note: the 80 percent requirement only applies to the LUST cleanup activities, not the LUST prevention activities.] To distribute LTF corrective action cooperative agreement money among the states, EPA uses a formula that allocates funding to each region. EPA regional program managers, in consultation with EPA's Office of Underground Storage Tanks, determine the state cooperative

agreement awards. EPA uses its remaining appropriated funds to provide oversight and technical assistance to state programs and to implement the LTF program in Indian country.

Since EPA cannot commit money that has not yet been appropriated, cooperative agreement funding is subject to annual appropriations.

**SWDA § 9004(f)(1)(A):**

*“(f) Trust Fund distribution*

*(1) In general*

*(A) Amount and permitted uses of distribution*

*The Administrator shall distribute to States not less than 80 percent of the funds from the Trust Fund that are made available to the Administrator under section 6991m (2)(A) of this title for each fiscal year for use in paying the reasonable costs, incurred under a cooperative agreement with any State for—*

*(i) corrective actions taken by the State under section 6991b (h)(7)(A) of this title;*

*(ii) necessary administrative expenses, as determined by the Administrator, that are directly related to State fund or State assurance programs under subsection (c)(1) of this section; or*

*(iii) enforcement, by a State or a local government, of State or local regulations pertaining to underground storage tanks regulated under this subchapter. “*

## **Federal-Lead Underground Storage Tank Corrective Actions**

EPA's policy is that, except in rare circumstances, states will oversee and conduct LTF-financed corrective action at sites with petroleum underground storage tank releases. EPA anticipates conducting federal-lead corrective action only when:

- A major public health or environmental emergency exists
- States are unable or unwilling to respond, and
- Owners or operators are unable or unwilling to provide an adequate and timely response

In the instances cited above, federal-lead corrective action will be limited to stabilization of the immediate situation, with the expectation that states will conduct further corrective action.

In addition to the criteria presented above, federal-lead response should also depend on the existence of one or more of the following conditions indicative of a major public health or environmental emergency.

- An immediate and substantial threat to direct human, animal, or food chain exposure from petroleum
- Threat of fire or explosion
- Substantial threat to public drinking water supplies
- Threat to a significant population or substantial amounts of property
- Substantial threats to natural resources

If states do not have a cooperative agreement under which it may perform LTF corrective action, regions and states should develop site-specific cooperative agreements under which states will conduct corrective actions at individual sites.

### ***Obtaining Approval For Federal Response***

With limited exceptions, regions must seek approval from the Office of Underground Storage Tanks, to use LTFs for federal-lead corrective action at individual sites. For additional guidance, regions should refer to the [Guidance for Conducting Federal-Lead Underground Storage Tank Corrective Actions \(OSWER Directive 9360.0-16A\)](#).

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