

# Financial Responsibility

AN INSPECTOR'S RESPONSIBILITY





# Regulatory Requirements

FINANCIAL RESPONSIBILITY IN DELAWARE

# Del. C. Ch. 74 Part F

- ✓ Owners and Operators shall certify that they are in compliance with the financial responsibility requirements outlined in Part F of the Delaware Regulations Governing Underground Storage Tank Systems prior to any Regulated Substance being placed in the UST System.
- ✓ Failure to comply with the financial responsibility requirements of these regulations warrant immediate delivery and dispensing prohibitions for Owners and Operators.

# What does FR cover?

Costs associated with:

- ✓ Corrective Action (excluding legal defense and administrative costs)
- ✓ Compensating third parties for
  - ✓ Bodily injury
  - ✓ Property damagecaused by an accidental release arising from the operation of petroleum USTs



# Required Financial Minimum Coverages

- ✓ Per Occurrence ( $\$500K < 10K \text{ gal/month}$  or  $\$1M > 10K \text{ gal/month}$ ): covers costs each time a UST System may leak
- ✓ Annual Aggregate (1-100 USTs/ $\$1M$ ; 100+ USTs/ $\$2M$ ): maximum amount of coverage annually regardless of number of occurrences

# Acceptable Financial Responsibility Mechanisms

## In Delaware...

Guarantee

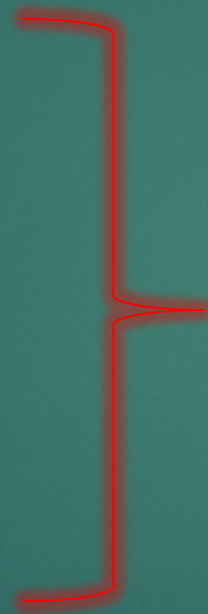
Surety Bonds

Self-Insurance

Standby Trust Fund

Letter of Credit

Trust Fund



20%

Pollution Liability Insurance



80%

Confirmed Release/Suspected Release

# The Players

- ✓ Insurance company/Insurance Carrier/ Insurer – The Company that writes the policy, accepts the premium payments, pays the claims
  - ✓ Agent/Broker/Producer – Middleman between the insured and the insurance company. The producer finds you a policy from an insurance company licensed in your state.
  - ✓ Surplus Lines Producer – A special license allows this producer to procure insurance from a company not licensed in the state. Surplus lines have more flexibility to accept risk and design policies.
- \* Tank policies are often Surplus Lines.



# During the Inspection

A STEP BY STEP APPROACH

# Insurance Verification: The Delaware Way

- The odd relationship of Owner and Operator in Delaware
- If the Owner or Operator of an UST System are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in the event of non-compliance.
- Owners/Operators shall:
  - Maintain evidence of all current and historical financial assurance mechanisms

# The Inspector's Responsibility during Time of Inspection (currently)

The Inspector must review:

- ✓ Form D

  - Certificate of Insurance (An "Accord" Statement is not acceptable)

- ✓ Form R

  - Underground Storage Tank Schedule

# Insure that Form D...

## Form D - Certificate of Insurance

Worded exactly as found in Part F, Del. C. Ch. 74:

- ✓ Includes Amount and Scope of Coverage
- ✓ Includes required 1<sup>st</sup> first dollar language
- ✓ Includes required Cancellation Notification (60 Days)
- ✓ Includes required Extended Reporting Period (6 months after non-renewal/cancellation)



# Insure that Form R...

## Form R – UST Schedule

- ✓ Includes DNREC Facility ID Number
- ✓ Includes Type of FR Mechanism
- ✓ Includes Owner/Operator info (name/address)
- ✓ Includes Facility info/location of UST System
- ✓ Includes Tanks specifically covered by FR Mechanism
  - ✓ Tank ID per registration form submitted
  - ✓ Tank Capacity
  - ✓ Regulated Substance Stored



# During Inspection

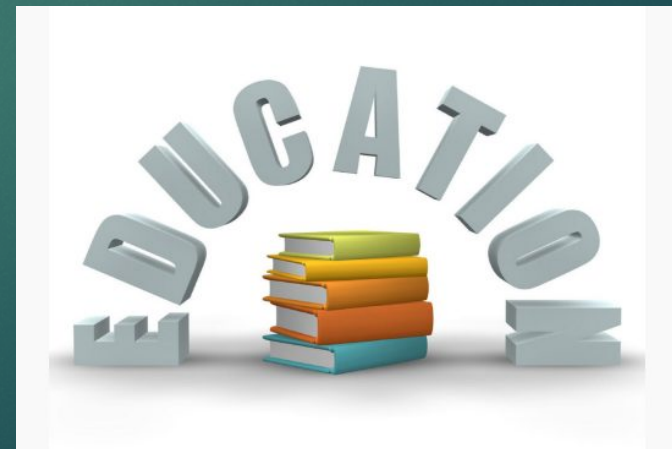
- Inspector Requests proof of Financial Responsibility through documentation
  - Response – I don't have proof here
  - Send Request for Information
- If Owner/Operator indicate they do not have FR
  - Employ an immediate delivery and dispensing prohibition – red tag it! (future regulations)

# New UST Regulations on Horizon

- Submit FR documents annually (currently reviewed every three years)
  - Insurance Policy
  - Certificate of Insurance (Form D)
  - Tank Schedule (Form R)
- Cause for immediate Delivery and Dispensing prohibition (no FR)
- Termination/Non-renewal notification to Department from insured and insurer

# Challenges for Verification

- Educate Owners and Operators to ensure proper paper work at the facility
- Our own Compliance Inspectors
- New Checklists to assist with insurance verification
- An identified staff person to review all policies for compliance annually



# Interesting Situations

- owner and operator leave the site
- operator cancelled insurance before tanks removed because of cost of insurance

# INSURANCE POLICY – what's in that sausage?

- *Declarations Page*: Coverage Summary  
(Insured name, Address, Locations, Limits, Deductibles, Term, etc.)
- *Insuring Agreement*: What is intended to be covered
- *Exclusions*: What is not to be covered
- *Limits of Insurance*: How incident limits apply (relative to the aggregate, the deductible, defense costs, etc.)
- *Policy Conditions*: Insured's duties in event of a claim, cancellation, other insurance, state funds, warranties
- *Extended Reporting Period*: Time period during which the insured can report a release that occurred during the time the policy was in effect, but after the policy end date



# The Insurance Checklist

- ✓ Verify Carrier/Surplus Lines with state insurance department
- ✓ Verify tank schedule with insurance matches tanks registered with the state
- ✓ Verify per-occurrence and annual aggregate amounts
- ✓ Verify 1<sup>st</sup> dollar coverage language
- ✓ Verify Cancellation language “effective only upon written notice after 60 day expiration”
- ✓ Verify policy includes Extended Reporting Period (6 months)
- ✓ Ensure that there are no exclusions that do not comply with **Del. C. Ch. 74**

# Unacceptable Exclusions

## Voluntary Tank Removal or Voluntary Site Investigation Exclusions

Memorandum from EPA-OUST, dated 8/3/2018

“If a tank removal or tank site investigation reveals contamination from an UST release, the UST insurance policy must not exclude insurance coverage for the cleanup of the release or any third-party damages that may result.”

## Examples of Exclusion Language:

- ✓ “any claim arising out of, caused by, resulting from, contributed to, or in any way related to any pollution incident discovered during any voluntary removal or any UST system”
- ✓ “This policy does not apply to any claim arising out of or discovered as a result of any removal or replacement of any UST system”
- ✓ “any claim arising out of release arising from, discovered, or exacerbated as a result of a voluntary investigation of environmental conditions or any storage tank system”



# When is an Owner/Operator no longer required to maintain FR?

When a Tank is  
removed  
closed in place or  
rendered empty (future regulation)



# Emerging Issues

- Aging USTs
  - Higher Premiums
  - Non-Renewals
- With policy review – new issues may result
- Self-Insured Retentions
- Policies for Aging Tanks that have been upgraded with new “tank in a tank” technologies

# Resources

EPA's Reference Manual that reviews all FR Mechanisms

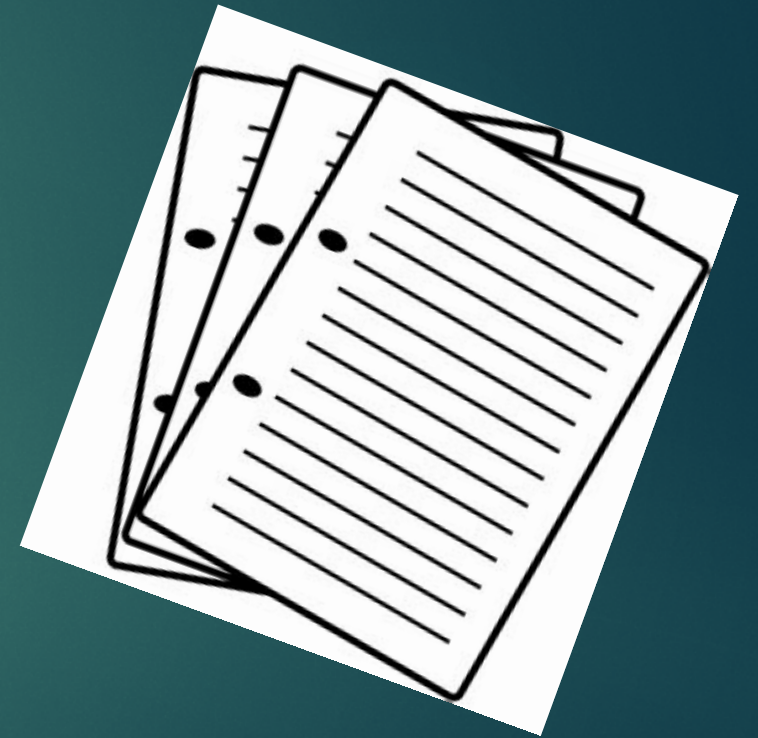
<https://www.epa.gov/ust/financial-responsibility-underground-storage-tanks-reference-manual>

Assoc. of State and Territorial Solid Waste Management Officials Guide to Tank Insurance

[http://astswmo.org/files/policies/Tanks/2011.10\\_Guide\\_to\\_Tank\\_Insurance\\_FINAL.pdf](http://astswmo.org/files/policies/Tanks/2011.10_Guide_to_Tank_Insurance_FINAL.pdf)

LUSTline article focused on how insurance works

[http://click.neiwpcc.org/lustline/lustline\\_pdf/lustline\\_71.pdf](http://click.neiwpcc.org/lustline/lustline_pdf/lustline_71.pdf)



Thank you!

Do you have any questions?

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**Maryland**  
Department of  
the Environment

## Financial Responsibility





# Contents

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- Background
- HO Reimbursement Program
- Documentation Review
- Outreach
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- Enforcement Actions
- Policy Review



# Background

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COMAR 26.10.11 Financial Responsibility.

- **.01 Incorporation by Reference.**
- A. The Department incorporates by reference the provisions contained in 40 CFR §§280.90—280.116, as amended through February 18, 1993, with the exceptions contained in §B of this regulation.
- B. Exceptions.
- (1) "Director of the Implementing Agency" or "Director of the EPA" means the Secretary of the Environment.
- (2) "EPA" or "Environmental Protection Agency" means the State of Maryland.
- (3) The requirements for "owner or operator" as contained in 40 CFR §§280.90—280.116, are to be assumed solely by **the "owner"**, as defined in 40 CFR §280.12 and COMAR 26.10.02.04.

Required to have until UST is properly closed by removal or approved abandonment in place.



# Financial Responsibility Submittal

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- Third Party Inspection Program
  - Submitted with the Inspection
    - Larger multi facility owners submit annually
- Voluntary
  - Some Insurance companies and owner
  - Other than Insurance
    - Local Government
    - Self Insurance
    - Letter of Credit
    - Guarantee
    - Surety Bond



# Before

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- Our FR expert mostly reviewed FR that was not Insurance for approval.
  - Filed for future reference.
  - Some facilities selected for technical review of insurance documentation.
- Certification Section reviewed the Insurance document.
  - Always confirmed financial responsibility.
  - Did not look for required wording per 40CFR 280.97(b).
  - Would accept pages that contained signature, owner name, facility address, number of tanks, policy number, monetary coverage amount, policy period.



# Transition

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- FR Expert retires.
- I am the new FR “Expert”.
- Better Understanding of 40CFR 280 including the required wording for all types of financial responsibility.



# Now- Documentation Review

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- All financial responsibility that is not insurance is reviewed by me for approval.
- Compliance field staff and certification section trained to review endorsements and certificate of insurances worded as required by 40CFR.
  - At times asked to confirm.
- All FR is reviewed to confirm meets all 40CFR 280 requirements including the wording.



# Heating Oil Reimbursement Program

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- Reimburse owners of heating oil tanks (AST or UST) for eligible spill clean up.
- Max \$20K, \$500 deductible.
- Owner must apply for reimbursement within 6 months after completion.
  - Invoices/proof of payment.
  - Significant wait time of several years.



# Documentation Review

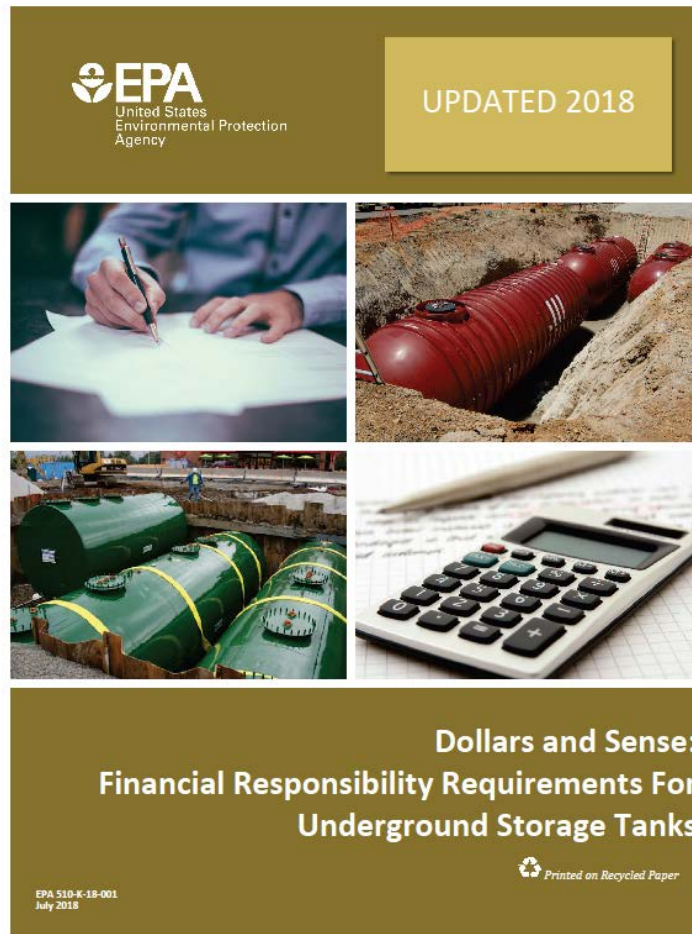
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- Insurance Company on Maryland Insurance Administration Search.
- Wording required by specific 40 CFR 280 (all FR).
- The owner name registered with us matches the name of the insured or listed on an additional insured endorsement.
- Facility address matches what we have registered.
- Tank system information matches what we have registered.



# Tools

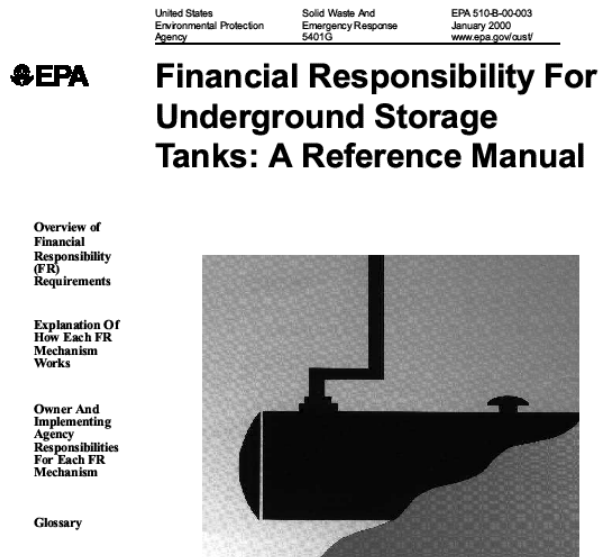
- EPA Dollars and Sense





# Tools

- Financial Responsibility For Underground Storage Tanks: A Reference Manual



# Tools

- MDE Financial Responsibility Check List



## Financial Responsibility Check List For Pollution Liability Insurance

Facility ID No. \_\_\_\_\_

- ☐ Insurance Company, (Name and Address).
- ☐ Date of the policy period is listed and current.
- ☐ Facility address matches the address on the facility summary.
- ☐ UST owner is listed as insured or additional insured on the policy.
- ☐ Policy number and correct monetary coverage amount for pollution liability.
- ☐ Number of tanks at the facility. Either listed on the front page or on a tank schedule page.
- ☐ Signature of Authorized Representative of Insurance Company.
- ☐ Meets 40 CFR 280.97(b) required language.



## Example

### Certificate of Insurance

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Premium
12345	08/1/2017	08/1/2018	\$0.00

Named Insured and Mailing Address:  
Name of Insured  
Insured Address

Name of Insurer:  
Name of Insurer  
Insurer address

### CERTIFICATE:

1. Insurer/Name, the 'Insurer', as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

#### Per Attached Scheduled Locations and Scheduled Storage Tank(s) Systems

for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy, arising from operating the underground storage tank(s) identified above.

The limits of liability are: \$1,000,000 Each Occurrence and: \$2,000,000 Annual Aggregate Policy Limit, exclusive of legal defense costs which are subject to a separate limit under the Policy. This coverage is provided under Policy Number: 12345. The effective date of said policy is: 08/1/2017.

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:
- Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy to which this certificate applies.
  - The Insurer is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95-280.102.
  - Whenever requested by a Director of an implementing agency, the Insurer agrees to furnish to the Director a signed duplicate original of the Policy and all endorsements.
  - Cancellation or any other termination of the insurance by the Insurer, except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the Insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.
  - The insurance covers claims otherwise covered by the Policy that are reported to the Insurer within six (6) months of the effective date of cancellation or non-renewal of the Policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such an extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.

I hereby certify that the wording of this instrument is identical to the wording in 40 CFR 280.97 (b) (2) and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess lines insurer, in one or more states.

*Authorized Representative Signature*

Authorized Representative Name  
Title



# - Tank Schedule

**Schedule of Locations and storage Tanks**  
Effective as of 08/01/2017  
Attached to and forming part of Policy 12345

Covered Storage Tank Systems													
Tank#	Insured Site	City	State	Zip	UST or AST	Install Date	Capacity (gallons)	Tank SW or DW*	Line SW or DW*	Contents	Lined Interior Date	Retro Date	Deductible
1	????????	????	MD	?????	UST	1987	8,000	Sw	Dw	Gasohol	2004	05/05/10	\$\$
2	????????	????	MD	?????	UST	1987	8,000	Sw	Dw	Gasohol	2004	05/05/10	\$\$
3	????????	????	MD	?????	UST	1987	8,000	Sw	Dw	Gasohol	2004	05/05/10	\$\$
4	????????	????	MD	?????	UST	1985	4,000	Sw	Dw	Diesel	2004	05/05/10	\$\$
5	????????	????	MD	?????	AST	1987	3,000	Sw	Dw	Kero	N/A	05/05/10	\$\$
1	????????	????	MD	?????	UST	1974	4,000	Sw	Dw	Gasohol	N/A	07/19/17	\$\$
2	????????	????	MD	?????	UST	1974	4,000	Sw	Dw	Gasohol	N/A	07/19/17	\$\$
3	????????	????	MD	?????	UST	1974	4,000	Sw	Dw	Gasohol	N/A	07/19/17	\$\$
1	????????	????	MD	?????	UST	2008	12,000	Dw	Dw	Gasohol	N/A	06/05/09	\$\$
2	????????	????	MD	?????	UST	2008	12,000	Dw	Dw	Gasohol	N/A	06/05/09	\$\$
1	????????	????	MD	?????	UST	1990	10,000	Dw	Dw	Gasohol	N/A	05/23/03	\$\$
2	????????	????	MD	?????	UST	1990	10,000	Dw	Dw	Gasohol	N/A	05/23/03	\$\$
3	????????	????	MD	?????	UST	1990	10,000	Dw	Dw	Gasohol	N/A	05/23/03	\$\$

\*Single Wall (SW) Double Wall (DW)



# Outreach

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- Certified Inspectors receive checklist and training on what to look for every 2 years to become/remain certified.
- Example FR and website provided to owners/insurance companies that do not meet the wording or are unsure what to submit.
  - [https://www.ecfr.gov/cgi-bin/text-idx?SID=069edc18e4bd5036603f879f55c9dcc1&pitd=20160601&node=se40.27.280\\_197&rgn=div8](https://www.ecfr.gov/cgi-bin/text-idx?SID=069edc18e4bd5036603f879f55c9dcc1&pitd=20160601&node=se40.27.280_197&rgn=div8)
- New Regulations (still pending)
  - Require notification if change in ownership/name of the insured, policy, or cancellation.
  - Required to provide a detailed tank schedule.



# Office VS Field

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## Office

- Reviews all forms of acceptable FR in the State of Maryland.

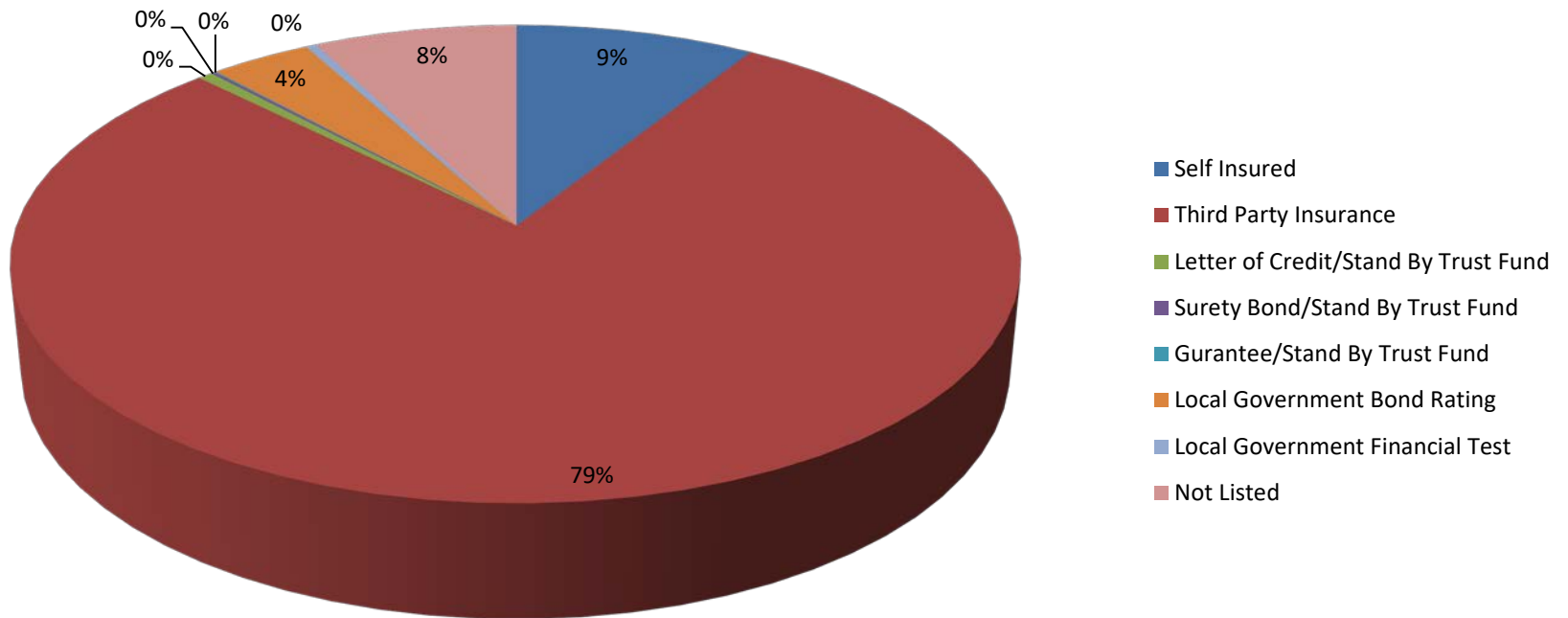
## Field

- Reviews the financial responsibility documents provided for insurance.
  - Trained on what to look for to approve/ “pass” financial responsibility.
  - May submit to me if unsure.
- Submits all other financial responsibility to me for review.



# Numbers

## Types of Financial Responsibility





# Compliance

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- Total Federally Regulated Facilities- 2745
- Fail - 198
- Pass - 2522
- Not Listed - 25



# Common Issues

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- Wording does not match as required.
  - Old version of 40CFR 280.97
- Registered owner name does not match.
- Tank system information in the schedule does not match.
- Does not include all facilities or tanks.
- Tanks installed or added.
- Age of tank.



# Enforcement Action

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## **SOC**

- Notice of Violation
- Red Tag Delivery Ban
- Referral to Ags

## **Not SOC**

- Notice of Non-Compliance
- Notice of Violation
- Red Tag Delivery Ban
- Referral to Ags



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

August 3, 2018

OFFICE OF  
LAND AND EMERGENCY  
MANAGEMENT

#### MEMORANDUM

**SUBJECT:** Underground Storage Tank Insurance Policies – Voluntary Exclusions and Self-Insured Retentions

**FROM:** Tony Rais, Director   
Release Prevention Division, Office of Underground Storage Tanks

**TO:** UST Industry Stakeholders  
State UST, LUST, and Fund Program Contacts  
Tribal UST Contacts

I am writing to provide you with important information about underground storage tank (UST) insurance policies, specifically whether voluntary exclusions and self-insured retentions meet the financial responsibility (FR) requirements of 40 CFR 280. I request that you please share this information with UST owners and operators (referred to as owners) in your states, territories, and Indian Country.

As you know, insurance provides a critical role in providing financial responsibility for underground storage tank owners and operators in many states and Indian Country. To ensure owners are buying and retaining appropriate coverage for their UST systems, it is important that they understand and be attentive to the underlying language, terms, and conditions of their UST insurance policies. Several people asked EPA to evaluate certain provisions in UST insurance policies. Below I discuss whether voluntary exclusions and self-insured retentions meet the financial responsibility requirements of 40 CFR 280, talk about certificates of insurance, and provide additional resources about insurance.

#### **Voluntary Tank Removal And Voluntary Tank Site Investigation Exclusions In UST Insurance Policies**

Insurance policies may include language that lists certain conditions or situations where the insurance company is not required to pay a claim. These circumstances are listed as exclusions. Some exclusions, such as non-payment for claims to pay a state fine for non-compliance meet

## Policy Review

- EPA's List of Known Insurance Providers for Underground Storage Tank Owners and Operators.
- Insurance Companies, Agents and Brokers
- MD or United States
- Submit complete policy for review.



# Letter



**Maryland**  
Department of  
the Environment

Larry Hogan, Governor  
Boyd K. Rutherford, Lt. Governor  
Ben Crumbyles, Secretary  
Horacio Tablada, Deputy Secretary

April 26, 2019

«Owner\_Name»  
«Contact\_Name»  
«Owner\_Address» «Suite»  
«Owner\_City» «Owner\_State» «Owner\_Zip»

**RE: UNDERGROUND STORAGE TANK INSURANCE POLICIES - VOLUNTARY  
EXCLUSIONS AND SELF-INSURED RETENTIONS**

Dear Sir or Madam:

On Aug. 3, 2018, the United States Environmental Protection Agency (EPA) issued the attached memorandum in reference to underground storage tank (UST) insurance policies with voluntary exclusions and self-insured retentions. The Maryland Department of the Environment (MDE) requires that you immediately review the memorandum and your UST insurance policies to determine if they meet all financial responsibility (FR) requirements of Code of Maryland Regulation (COMAR) 26.10.11.01 incorporated by reference 40 CFR 280, Subpart H.

The EPA concluded exclusions for payments for voluntary tank removals and voluntary tank site investigations do not meet FR requirements of 40 CFR 280. If the insurance policy includes an exclusion of insurance coverage for cleanup of a release or any third-party damages from a tank removal or tank site investigation, it would not meet the federal financial responsibility requirements of 40 CR 280, Subpart H.

The EPA also determined that an insurance policy with a self-insured retention may be only a partial financial responsibility mechanism if it is applied to claims made after the inception date. The owner would have to use a combination of mechanisms to meet the full financial responsibility requirements.

**WORK TO BE PERFORMED**

The Maryland Department of the Environment requires that you submit your complete UST policy for review no later than May 31, 2019. If the policy contains an exclusion that does not meet the financial responsibility requirements of 40 CFR 280, Subpart H, the MDE will not accept the policy as a valid policy to provide UST insurance coverage for facilities in the state of Maryland. To continue to provide UST insurance in the state of Maryland, the policy must be revised to ensure it meets all financial responsibility requirements.



# Findings

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- Most Returned as Undeliverable
- No Business in Maryland
- Agent or Broker
  - Still need to ensure insurance companies are compliant
- Ones returned require reporting and not exemption
- Most meet regulation (8 out of 9 reviewed)



## Next Steps

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- Create a list of approved insurance companies.
- Send letters to any insurance company that did not already get them.
- Work with the insurance companies that do not meet requirements to revise and review for approval.



# Questions?

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Melissa Wright

410-537-3938

[Melissa.wright@maryland.gov](mailto:Melissa.wright@maryland.gov)

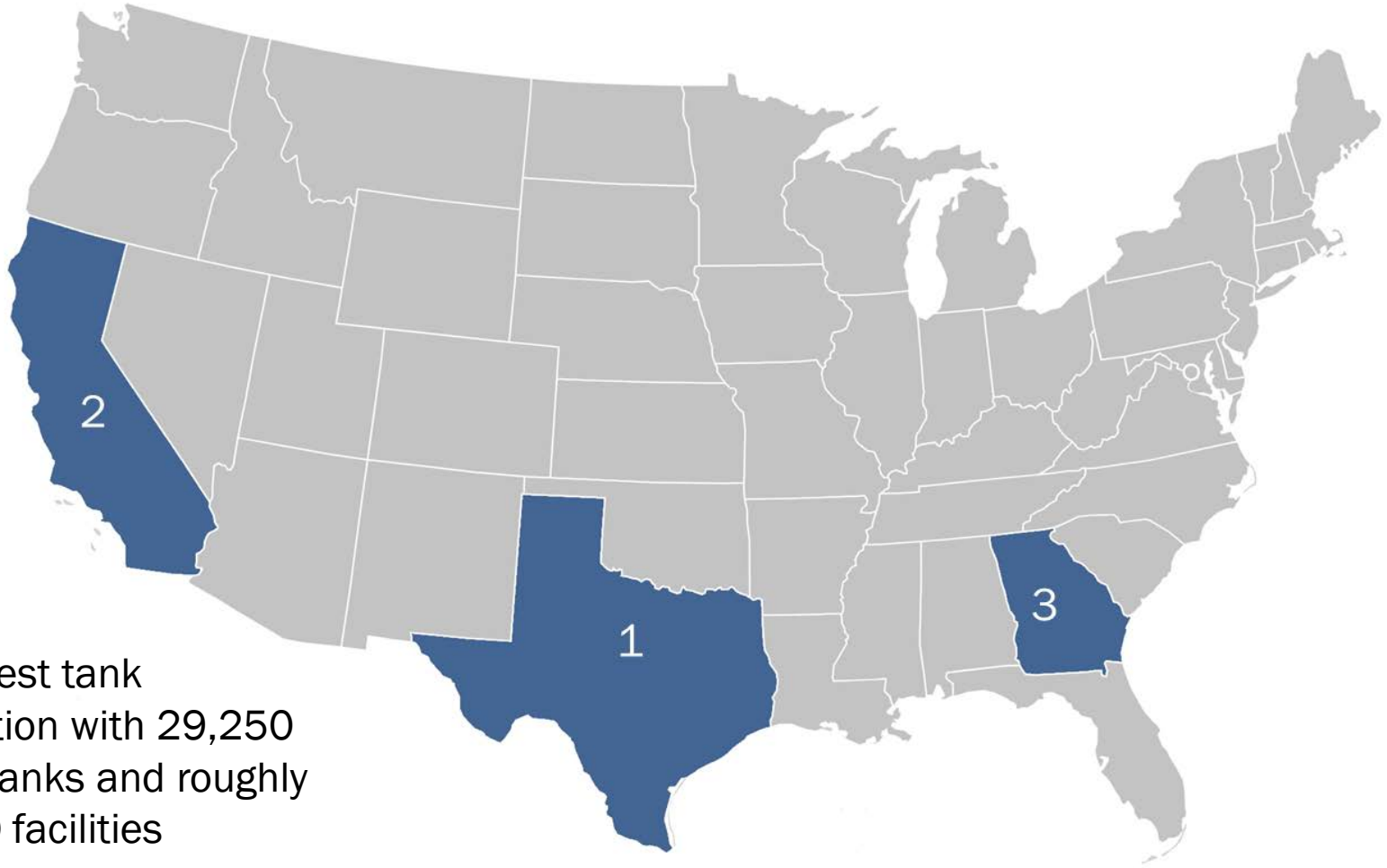
# Financial Responsibility in Georgia's Underground Storage Tank Program



July 2019



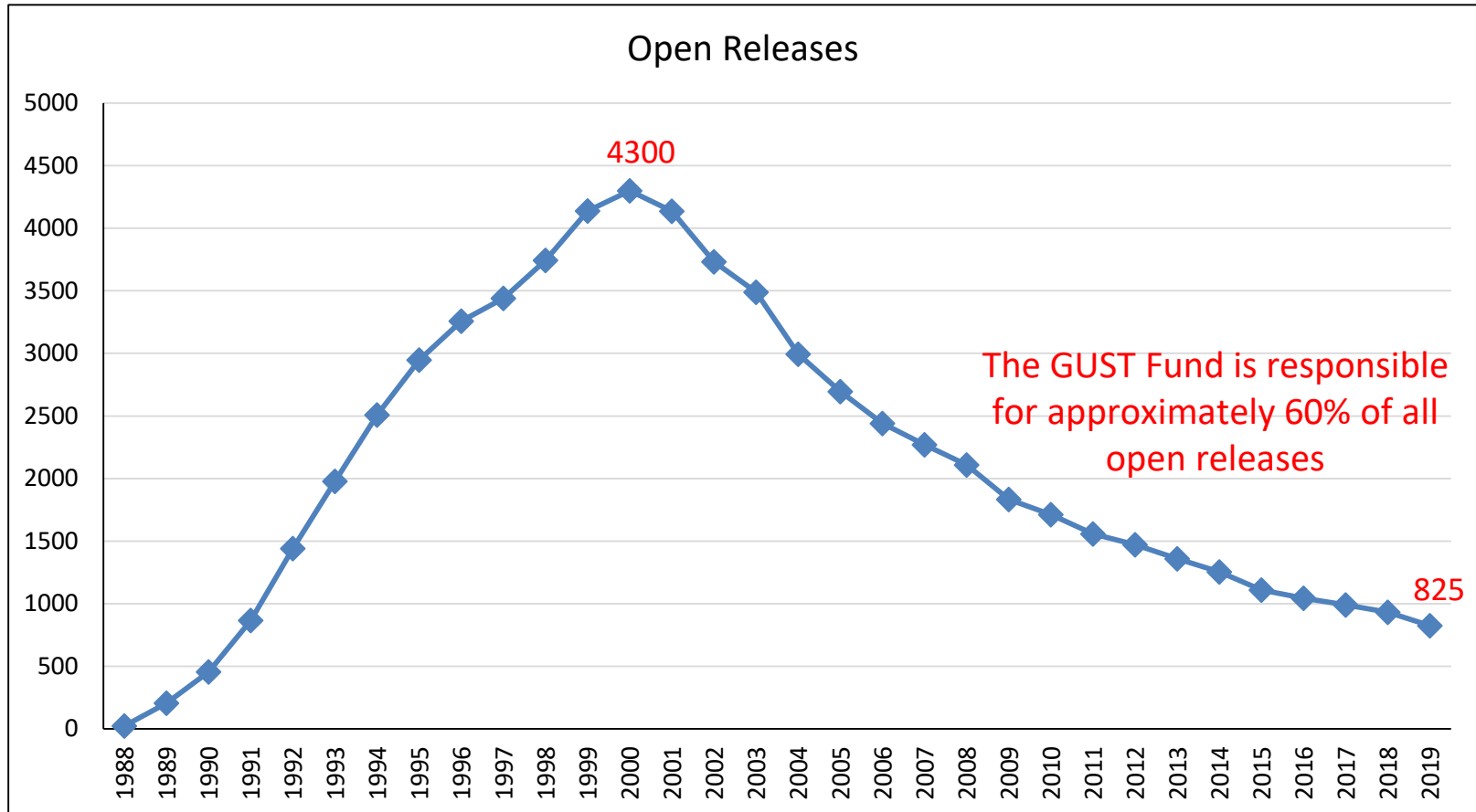
# INTERESTING FACTS



3<sup>rd</sup> largest tank population with 29,250 active tanks and roughly 10,000 facilities



# INTERESTING FACTS



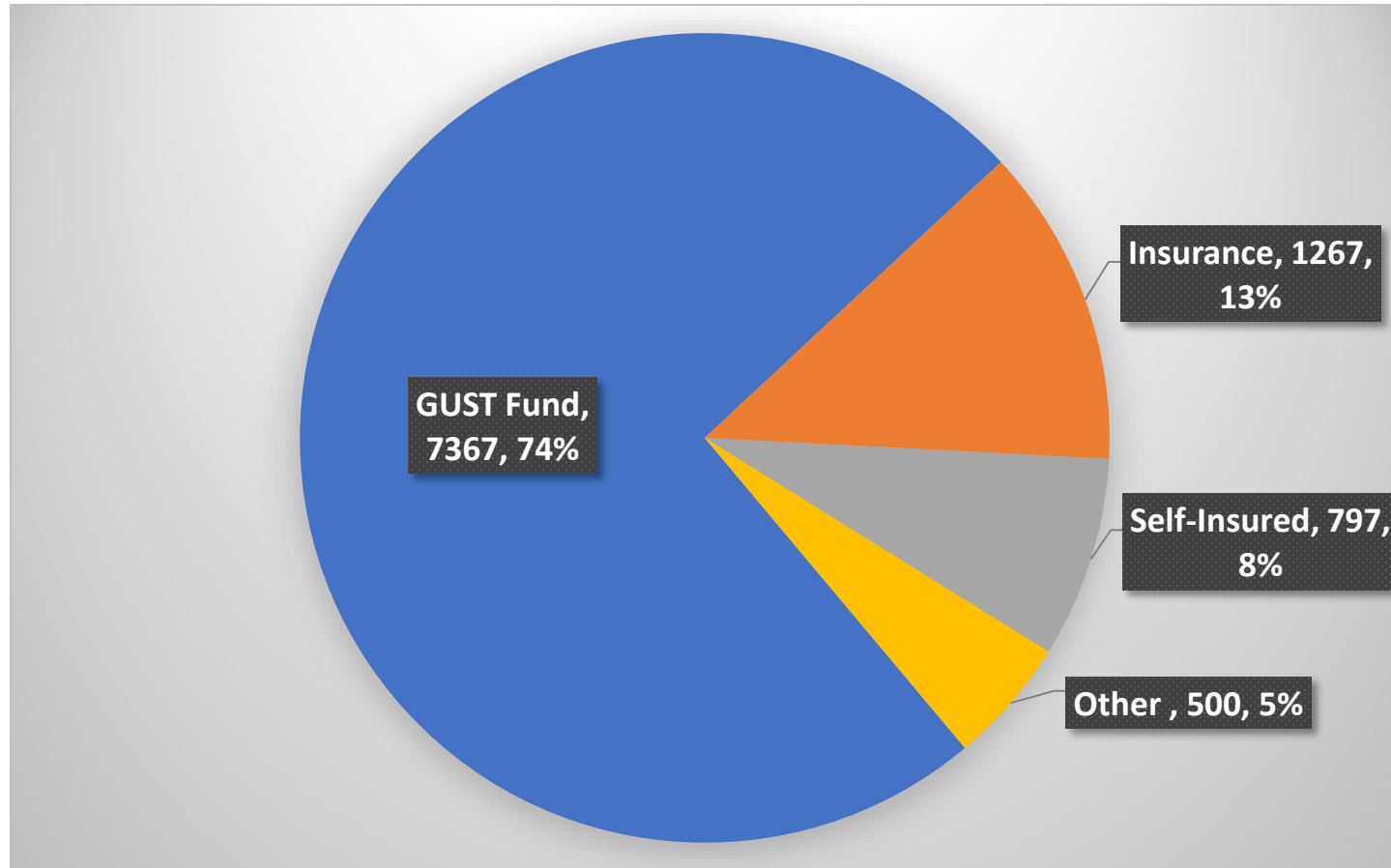


# INTERESTING FACTS

- Small Program: Five managers, 40 FT staff
- Solvent, voluntary fund
- In addition to the Fund, the Program accepts all FR mechanisms outlined in 40 CFR, Subpart H
- Fund has \$10,000 deductible and provides \$1,000,000 coverage for corrective action and 3<sup>rd</sup> party liability (bodily harm and property damage)



# INSTRUMENT DISTRIBUTION (FACILITIES)





SO, HOW DO WE DO IT?



LET'S JUST SAY WE HAVE WORK TO  
DO



# CHALLENGES

- Limited resources
- The size of our universe
- The \$10,000 deductible “headache”
- Insurance policies don’t meet minimum requirements or are non-existent
- Enforcement hurdles
- In short, a high percentage of facilities don’t have adequate financial responsibility\*



**BUT, WE ARE MOVING IN THE RIGHT  
DIRECTION**



**ENVIRONMENTAL PROTECTION DIVISION**



# SUCCESSES SO FAR

- Dedication of resources and establishment of a “financial responsibility” team
- Standardized, easy to understand forms for all instruments
- Inspector training guide
- Outreach efforts underway



# MOVING FORWARD...ADMINISTRATOR'S ROLE

- Development of forms, SOPs, checklists
- Training assistance
- Tracking and storage
- Reviewer of more complex mechanisms
- Coordinates outreach and review of voluntary submissions
- Point of contact for enforcement





# MOVING FORWARD...INSPECTOR'S ROLE

- Compliance assistance
- Verifies instrument with annual tank registration
- Reviews critical elements of existing mechanisms
- Refers issues to administrator
- Recommends enforcement





# INSPECTOR'S CHECKLIST

- ☐ Facility Address and ID
- ☐ Owner/operator same on ALL documents
- ☐ All tanks listed and match database
- ☐ Dates of Coverage
- ☐ Amount of Coverage
- ☐ Scope of Coverage
- ☐ Additional Documents



# OUTREACH EFFORTS

1. Inspectors provide compliance assistance
2. Topic in upcoming stakeholder meetings
3. Participation in expos and symposiums
4. Informational pamphlets and letters to owners and financial institutions

**In summary: Gentle rollout with eventual deadline and enforcement to follow.**



# WORDS OF WISDOM

## Leverage limited resources

1. Create simple forms to standardize review
2. Consider “borrowing” from other states
3. Consider separating FR enforcement from routine compliance enforcement
4. Make it easy to re-enter Fund

## Look for Rule flexibility\*





# IMPORTANCE OF FLEXIBILITY

- Deduct \$10,000 from first payment
- Get deductible through cost recovery later
- Fund can be used for emergencies...even if RP is not a Fund participant





# QUESTIONS?



ENVIRONMENTAL PROTECTION DIVISION