

103D CONGRESS
1ST SESSION

S. 588

To regulate aboveground storage tanks used to store regulated substances,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 16 (legislative day, MARCH 3), 1993

Mr. ROBB introduced the following bill; which was read twice and referred to
the Committee on Environment and Public Works

A BILL

To regulate aboveground storage tanks used to store
regulated substances, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Safe Aboveground Storage Tank Act of 1993”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definitions.
- Sec. 4. Notification.
- Sec. 5. Release detection, prevention, and correction regulations and inspection
requirement.
- Sec. 6. State programs.

- Sec. 7. Access to information.
- Sec. 8. Federal enforcement.
- Sec. 9. Federal facilities.
- Sec. 10. Studies of aboveground storage tanks.
- Sec. 11. Consolidation with underground tank program.
- Sec. 12. Authorization of appropriations.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—The Congress finds that—

3 (1) as a result of pressing environmental con-
4 cerns about undetected leaking underground tanks,
5 and increased regulation of such tanks, increasing
6 amounts of petroleum products are being stored
7 aboveground in tanks of all sizes;

8 (2) aboveground tanks, originally in disfavor be-
9 cause of fire protection concerns, are increasingly
10 popular because of their ability to be easily mon-
11 itored for leaks and spills;

12 (3) State and local fire authorities have consist-
13 ently regulated small aboveground tanks and their
14 current strict fire safety requirements have proven
15 to provide excellent environmental protection as well;
16 and

17 (4) to date no Federal legislation has existed
18 that comprehensively regulates aboveground tanks of
19 all sizes and their associated piping for environ-
20 mental protection concerns.

21 (b) PURPOSES.—The purpose of this Act is to estab-
22 lish a comprehensive program for the regulation of above-

1 ground storage tanks to promote environmental protection
2 and protection against fires by ensuring that all above-
3 ground storage tanks are managed in accordance with
4 Federal environmental standards designed to prevent
5 leaks and spills and to assure expeditious spill reporting
6 and cleanup.

7 **SEC. 3. DEFINITIONS.**

8 As used in this Act:

9 (1) ABOVEGROUND STORAGE TANK.—

10 (A) IN GENERAL.—The term “above-
11 ground storage tank” means any one or com-
12 bination of tanks located aboveground (includ-
13 ing any pipe connected to the tank) that is used
14 to contain an accumulation of regulated sub-
15 stances and that is located at least 90 percent
16 above the surface of the ground (as measured
17 by volume), including—

18 (i) a field-erected tank;

19 (ii) a rebuilt tank;

20 (iii) a shop-fabricated tank; and

21 (iv) a storage tank situated in an un-
22 derground area (including a basement, cel-
23 lar, mineworking, drift, shaft, or tunnel) if
24 the storage tank is situated on or above
25 the surface of the floor.

1 (B) EXCLUSIONS.—The term shall not in-
2 clude any of the following:

3 (i) A farm or residential tank of 1,100
4 gallons or less capacity used for storing
5 motor fuel for noncommercial purposes.

6 (ii) A tank of 1,100 gallons or less ca-
7 pacity used for storing heating oil for con-
8 sumptive use on the premises where stored.

9 (iii) A stationary tank of 1,100 gal-
10 lons or less capacity used for storing fuel
11 to supply stationary fuel-fired equipment
12 through a system of fixed valves and pip-
13 ing.

14 (iv) A storm water or waste water col-
15 lection system.

16 (v) A flow-through process tank.

17 (vi) A liquid trap or associated gath-
18 ering lines directly related to oil or gas
19 production and gathering operations.

20 (vii) Except as provided in section 4
21 and in subsections (i) and (j) of section 5,
22 a fire-protected tank regulated by State or
23 local fire regulatory authorities with a ca-
24 pacity of not more than 12,000 gallons lo-

1 cated at a facility with a cumulative tank
2 capacity of not more than 42,000 gallons.

3 (viii) Except as provided in section 4,
4 a production tank.

5 (ix) A pipe connected to a tank, sys-
6 tem, trap or line described in clauses (i)
7 through (vi).

8 (2) ADMINISTRATOR.—The term “Adminis-
9 trator” means the Administrator of the Environ-
10 mental Protection Agency.

11 (3) FACILITY.—The term “facility” means,
12 with respect to an owner or operator, all above-
13 ground storage tanks and their associated piping
14 used for the storage of regulated substances that are
15 owned or operated by the owner or operator and lo-
16 cated on a single parcel of property (or on contig-
17 uous or adjacent property).

18 (4) FIELD-ERECTED TANK.—The term “field-
19 erected tank” means an aboveground storage tank
20 that is primarily assembled, erected, inspected, and
21 tested for releases on the site where the tank is in-
22 tended to be operated.

23 (5) FLOW-THROUGH PROCESS TANK.—

24 (A) IN GENERAL.—The term “flow-
25 through process tank” means a tank that forms

1 an integral part of a production process
2 through which there is a steady, variable, recur-
3 ring, or intermittent flow of materials during
4 the operation of the process.

5 (B) EXCLUSIONS.—The term does not in-
6 clude a tank used—

7 (i) for the storage of materials prior
8 to introduction of the materials into the
9 production process; or

10 (ii) for the storage of finished prod-
11 ucts or byproducts from the production
12 process.

13 (6) NONOPERATIONAL STORAGE TANK.—The
14 term “nonoperational storage tank” means an
15 aboveground storage tank in which regulated sub-
16 stances are not deposited, and from which regulated
17 substances are not dispensed, after the date of en-
18 actment of this Act.

19 (7) OPERATOR.—The term “operator” means a
20 person who is in control of, or has responsibility for,
21 the daily operation of an aboveground storage tank.

22 (8) OWNER.—

23 (A) The term “owner” means—

24 (i) in the case of an aboveground stor-
25 age tank in use on the date of enactment

1 of this Act, or brought into use after that
2 date, a person who owns an aboveground
3 storage tank used for the storage, use, or
4 dispensing of regulated substances; and

5 (ii) in the case of an aboveground
6 storage tank in use before the date of en-
7 actment of this Act, but no longer in use
8 after that date, a person who owned the
9 tank immediately before the discontinu-
10 ation of its use.

11 (B) EXCLUSION.—The term does not in-
12 clude a person who holds indicia of ownership
13 primarily to protect his security interest in the
14 tank, unless, through foreclosure or other relat-
15 ed actions, the person takes possession of the
16 tank.

17 (9) PERSON.—The term “person” has the same
18 meaning as provided in section 1004(15) of the
19 Solid Waste Disposal Act (42 U.S.C. 6903(15)), ex-
20 cept that the term also includes any consortium,
21 joint venture, or commercial entity, and the United
22 States Government.

23 (10) PETROLEUM.—The term “petroleum”
24 means petroleum, including crude oil or a fraction of
25 crude oil, that is liquid at standard conditions of

1 temperature and pressure (60 degrees Fahrenheit
2 and 14.7 pounds per square inch absolute).

3 (11) PRODUCTION TANK.—The term “produc-
4 tion tank” means a tank used to contain fluids de-
5 rived from, or associated with, oil or natural gas ex-
6 ploration or production.

7 (12) FIRE-PROTECTED TANK.—

8 (A) IN GENERAL.—The term “fire-pro-
9 tected tank” means an inner tank that is sur-
10 rounded by a barrier that provides not less than
11 a 2-hour pool fire resistive rating, that is im-
12 pact-resistant, that has integral or external sec-
13 ondary containment, that contains liquid with a
14 flash point below 140 degrees Fahrenheit,
15 whose exterior surface (including connecting
16 piping) and the floor beneath the tank is mon-
17 itored, and that is constructed and installed in
18 accordance with the model fire code require-
19 ments described in subparagraph (B).

20 (B) MODEL FIRE CODE REQUIREMENTS.—

21 (i) Subject to clause (ii), the requirements re-
22 ferred to in subparagraph (A) are the require-
23 ments of 1 or more of the following model fire
24 codes: National Fire Protection Association
25 (30) or (30-A), the National Fire Code of the

1 Building Officials and Code Administrators
2 International, Inc., the Uniform Fire Code of
3 the International Fire Code Institute, and the
4 Standard Fire Prevention Code of the Southern
5 Building Code Congress International.

6 (ii) A model fire code listed in clause (i)
7 may be used for purposes of subparagraph (A)
8 only if the requirements of the code are as
9 stringent as, or more stringent than, the re-
10 quirements of the code as the code existed on
11 the date of the enactment of this Act.

12 (C) NEW TECHNOLOGIES.—The term
13 “fire-protected tank” includes any tank with a
14 capacity of not more than 12,000 gallons that
15 uses technologies developed after the date of the
16 enactment of this Act and that provides protec-
17 tion against fire, and protection of the environ-
18 ment, that is equivalent or superior (as deter-
19 mined by the Administrator) to the protection
20 provided by a tank meeting the requirements of
21 subparagraph (A).

22 (D) APPLICATION OF PROTECTION MATE-
23 RIAL ON NEW TANKS.—In the case of a tank
24 brought into use after the date of the enact-
25 ment of this Act, the tank shall be considered

1 a fire-protected tank only if the protection ma-
2 terial required by industry and model fire codes
3 is fully applied or installed on the inner storage
4 tank at the manufacturing site prior to inspec-
5 tion and testing for release and shipment.

6 (E) FLASH POINT DEFINED.—As used in
7 this paragraph, the term “flash point” shall
8 have the meaning provided by the Adminis-
9 trator, determined in accordance with—

10 (i) testing methods under the regula-
11 tions on management standards for haz-
12 ardous waste under subtitle C of the Solid
13 Waste Disposal Act (42 U.S.C. 6921 et
14 seq.); and

15 (ii) the model fire code requirements
16 described in subparagraph (B).

17 (13) REBUILT TANK.—The term “rebuilt tank”
18 means an aboveground storage tank that was in use,
19 was disassembled, and was subsequently erected
20 elsewhere.

21 (14) REGULATED SUBSTANCE.—The term “reg-
22 ulated substance” means—

23 (A) a substance defined in section 101(14)
24 of the Comprehensive Environmental Response,
25 Compensation, and Liability Act of 1980 (42

1 U.S.C. 9601(14)) (but not including a sub-
2 stance regulated as a hazardous waste under
3 subtitle C of the Solid Waste Disposal Act (42
4 U.S.C. 6921 et seq.)); and

5 (B) petroleum.

6 (15) RELEASE.—The term “release” means any
7 spilling, leaking, pumping, pouring, emptying, dump-
8 ing, emitting, discharging, escaping, leaching, or dis-
9 posing from an aboveground storage tank into
10 ground water, surface water, or soil.

11 (16) SECONDARY CONTAINMENT.—The term
12 “secondary containment” means a system that is
13 used for release prevention (including release preven-
14 tion underneath the tank), including any of the fol-
15 lowing:

16 (A) A system capable of catching and hold-
17 ing 110 percent of the full capacity of the tank
18 and the associated piping of the tank.

19 (B) A double-walled tank with appropriate
20 venting and double-walled piping.

21 (C) An external liner.

22 (D) A fire-protected tank, the secondary
23 containment portion of which is capable of re-
24 taining at least 100 percent of the contents of

1 the inner tank and the associated piping of the
2 inner tank.

3 (E) A system or structure constructed in
4 such manner that any release would be collected
5 by a drainage system or structure and routed to
6 a waste water treatment system with an appro-
7 priate permit issued by the Administrator, plant
8 recirculating process system, or alternate con-
9 tainment system approved by the Adminis-
10 trator.

11 **SEC. 4. NOTIFICATION.**

12 (a) ABOVEGROUND STORAGE TANKS.—

13 (1) IN GENERAL.—

14 (A) EXISTING TANKS.—Not later than 18
15 months after the date of enactment of this Act,
16 and every 2 years thereafter, each owner of an
17 aboveground storage tank shall notify the State
18 or local department or agency designated pur-
19 suant to subsection (b) of the existence of the
20 aboveground storage tank. The notification
21 shall specify the age, size, type, location, and
22 uses of the tank.

23 (B) TANKS NOT IN OPERATION.—

24 (i) IN GENERAL.—For each above-
25 ground storage tank taken out of operation

1 after January 1, 1977, the owner shall, not
2 later than 1 year after the date of enact-
3 ment of this Act, notify the State or local
4 department or agency designated pursuant
5 to subsection (b) of the existence of the
6 tank.

7 (ii) CONTENTS OF NOTICE.—The no-
8 tice required under clause (i) shall specify
9 each of the following, to the extent known
10 to the owner:

11 (I) The date the tank was taken
12 out of operation.

13 (II) The age of the tank on the
14 date it was taken out of operation.

15 (III) The size, type, and location
16 of the tank.

17 (IV) The type and quantity of
18 substances remaining in the tank on
19 the date it was taken out of operation,
20 or if the tank was cleaned and purged
21 of residue after that date.

22 (V) The type and quantity of
23 substances remaining in the tank on
24 the date the notification is made.

1 (VI) The type of release detection
2 system, if any, and the extent of any
3 known soil or ground water contami-
4 nation.

5 (VII) The materials out of which
6 the tank was constructed.

7 (C) FUTURE TANKS.—An owner who
8 brings into use an aboveground storage tank
9 after the initial notification period specified
10 under subparagraph (A) shall, not later than 30
11 days after the bringing of the tank into use,
12 and every 2 years thereafter, notify the State or
13 local department or agency designated pursuant
14 to subsection (b) of the existence of the tank,
15 specifying each of the following:

16 (i) The age of the tank.

17 (ii) The size, type, and location of the
18 tank.

19 (iii) The uses of the tank.

20 (iv) The type of release detection sys-
21 tem.

22 (v) The materials out of which the
23 tank was constructed.

24 (2) EXCEPTION.—Paragraph (1) shall not
25 apply to hazardous waste tanks for which notice was

1 given pursuant to section 103(c) of the Comprehen-
2 sive Environmental Response, Compensation, and
3 Liability Act of 1980 (42 U.S.C. 9603(c)).

4 (3) NOTIFICATION BY DEPOSITORS.—During
5 the period beginning on the date that is 30 days
6 after the Administrator prescribes the form of notice
7 pursuant to subsection (c) and ending on the date
8 that is 18 months after that date, a person who de-
9 posits regulated substances in an aboveground stor-
10 age tank shall immediately notify the owner or oper-
11 ator of the notification requirements of the owner
12 under this subsection.

13 (4) NOTIFICATION BY SELLERS.—Beginning 30
14 days after the Administrator issues new tank per-
15 formance standards pursuant to section 5(e), a per-
16 son who sells a tank intended to be used as an
17 aboveground storage tank shall notify the purchaser
18 of the tank of the notification requirements of the
19 owner under this subsection.

20 (5) NOTICE OF PETROLEUM RELEASE OR
21 SPILL.—Each owner of an aboveground storage tank
22 shall, immediately upon discovery, notify the Admin-
23 istrator (or the State department or agency des-
24 igned under subsection (b) in the case of a State
25 exercising primary enforcement responsibility) of any

1 spill or other release of one barrel (42 gallons) or
2 more of petroleum from such tank.

3 (b) AGENCY DESIGNATION.—Not later than 180 days
4 after the date of enactment of this Act, the Governor of
5 each State shall designate an appropriate department or
6 agency of the State, or of a political subdivision of the
7 State, to receive the notifications under paragraphs (1)
8 and (5) of subsection (a).

9 (c) REGULATIONS.—Not later than 18 months after
10 the date of enactment of this Act, the Administrator, in
11 consultation with State and local officials designated pur-
12 suant to subsection (b), and after notice and opportunity
13 for public comment, shall issue regulations prescribing the
14 form of the notice and the information to be included in
15 the notifications required under subsection (a)(1). In pre-
16 scribing the form of the notice, the Administrator shall
17 take into account the effect of the requirements on small
18 business concerns (as defined in section 3(a)(1) of the
19 Small Business Act (15 U.S.C. 632(a)(1))), and on other
20 owners and operators.

21 (d) STATE INVENTORIES.—

22 (1) IN GENERAL.—Each State shall prepare
23 two separate inventories of all aboveground storage
24 tanks in the State containing regulated substances,
25 one inventory with respect to petroleum, and one

1 with respect to other regulated substances. In pre-
 2 paring the inventories, the State shall utilize and ag-
 3 gregate the data in the notification forms submitted
 4 pursuant to subsection (a).

5 (2) SUBMISSION OF DATA.—Each State shall
 6 submit the aggregated data described in paragraph
 7 (1) to the Administrator not later than 2 years after
 8 the date of enactment of this Act.

9 (e) FEES.—

10 (1) IN GENERAL.—Each notice submitted under
 11 paragraph (1) of subsection (a) shall be accom-
 12 panied by the payment of a fee payable to the de-
 13 partment or agency designated under subsection (b).
 14 The amount of the fee shall be determined in ac-
 15 cordance with the following schedule:

Total tank capacity	Total amount of fee
0 to 42,000 gallons	\$50
42,001 to 100,000 gallons	100
100,001 to 1,000,000 gallons	200
1,000,001 to 10,000,000 gallons	500
10,000,001 or more gallons	1,000

16 (2) USE OF FEES.—The fees collected under
 17 this subsection shall be used for any or all of the fol-
 18 lowing:

19 (A) To conduct training for inspection person-
 20 nel on environmental and fire protection factors re-
 21 lating to tank safety.

1 (B) To fund the costs of the department or
2 agency of administering notification and inspection
3 requirements under this section.

4 (C) To fund research approved by the Adminis-
5 trator to determine methods for better assessing and
6 remedying soil and water contamination from leak-
7 ing aboveground storage tanks.

8 (D) To reimburse departments and agencies of
9 States and departments and agencies of political
10 subdivisions of States for the reasonable costs of re-
11 sponding to, and overseeing the cleanup or abate-
12 ment of, any incident or disaster involving an above-
13 ground storage tank spill or release.

14 (f) APPLICABILITY TO CERTAIN FIRE-PROTECTED
15 TANKS.—Notwithstanding section 3(1)(B)(vii), the notifi-
16 cation provisions of this section shall apply to fire-pro-
17 tected tanks under the jurisdiction of a fire regulatory au-
18 thority of a State or of a political subdivision of a State.

19 (g) APPLICABILITY TO PRODUCTION TANKS.—Not-
20 withstanding section 3(1)(B)(viii), the notification provi-
21 sions of this section, other than subsection (e), shall apply
22 to production tanks.

1 **SEC. 5. RELEASE DETECTION, PREVENTION, AND CORREC-**
2 **TION REGULATIONS AND INSPECTION RE-**
3 **QUIREMENT.**

4 (a) REGULATIONS.—Not later than 6 months before
5 the applicable effective date specified in subsection (g), the
6 Administrator, after providing notice and opportunity for
7 public comment, including convening a public meeting,
8 shall issue such release detection, prevention, and correc-
9 tion regulations applicable to all owners and operators as
10 are necessary to protect human health and the environ-
11 ment.

12 (b) DISTINCTIONS IN REGULATIONS.—

13 (1) IN GENERAL.—

14 (A) IN GENERAL.—Subject to subpara-
15 graph (B), in issuing regulations under this sec-
16 tion, the Administrator may distinguish above-
17 ground storage tanks by type, class, or age.

18 (B) PETROLEUM TANKS.—The regulations
19 for aboveground storage tanks containing petro-
20 leum shall be no less stringent than the regula-
21 tions for aboveground storage tanks containing
22 other regulated substances.

23 (2) FACTORS.—In making the distinctions de-
24 scribed in paragraph (1), the Administrator may
25 take into consideration each of the following factors:

26 (A) Location of tanks.

1 (B) Soil and climate conditions.

2 (C) Uses of tanks.

3 (D) History of maintenance of tanks.

4 (E) Ages of tanks.

5 (F) Industry standards at the time of issu-
6 ance of the regulations.

7 (G) National consensus codes.

8 (H) National fire protection codes.

9 (I) Hydrogeology.

10 (J) Water table.

11 (K) Sizes of tanks.

12 (L) Quantity of regulated substances peri-
13 odically deposited in or dispensed from tanks.

14 (M) Technical capability of owners and op-
15 erators.

16 (N) Compatibility of the regulated sub-
17 stance and the materials of which the tanks are
18 fabricated.

19 (O) Other factors that the Administrator
20 considers appropriate.

21 (c) REQUIREMENTS.—The regulations issued pursu-
22 ant to this section shall include each of the following, with
23 respect to all aboveground storage tanks:

24 (1) RELEASE DETECTION SYSTEM.—Require-
25 ments for maintaining a release detection system for

1 the facility at which the tank is located or a com-
2 parable system or method designed to identify re-
3 leases in a manner consistent with the protection of
4 human health and the environment.

5 (2) RECORDKEEPING.—Requirements for main-
6 taining records of any monitoring or release detec-
7 tion system or inventory control system (and tank
8 testing) or comparable system.

9 (3) PREVENTION OF RELEASES.—Requirements
10 for the prevention of releases, including—

11 (A) certified inspection of field-erected
12 tanks, rebuilt tanks, and shop-fabricated tanks,
13 for which the Administrator shall establish a
14 timetable;

15 (B) maintaining records of regular visual
16 inspection and of the certified inspection re-
17 quired pursuant to subparagraph (A);

18 (C) inspection procedures, including—

19 (i) periodic emptying of aboveground
20 storage tanks; and

21 (ii)(I) internal inspection; or

22 (II) standards for tanks that cannot
23 be entered;

24 (D) corrosion protection of tank bottoms in
25 contact with the ground;

1 (E) labeling of tanks; and

2 (F) spill and overflow prevention devices and
3 containment and recovery procedures.

4 (4) REPORTING OF RELEASES.—Requirements
5 for reporting of releases and corrective action taken
6 in response to a release (including reporting to the
7 national response center established pursuant to the
8 Federal Water Pollution Control Act (33 U.S.C.
9 1251 et seq.)), except for those releases required to
10 be reported under any other provision of Federal
11 law.

12 (5) CORRECTIVE ACTION.—Requirements for
13 taking corrective action in response to a release, in-
14 cluding the recovery of petroleum for reuse, in any
15 case in which the recovery is practicable.

16 (6) TANK CLOSURE.—Requirements for the clo-
17 sure of a tank from which a release has occurred in
18 order to prevent another release from occurring.

19 (7) UPGRADING CERTAIN TANKS.—Require-
20 ments for the upgrading of existing tanks (in exist-
21 ence on the date of the enactment of this Act), in-
22 cluding the upgrading of associated piping, to new
23 tank performance standards promulgated pursuant
24 to subsection (e) not later than 10 years after the
25 date of enactment of this Act. The requirements

1 shall include a requirement that any underground
2 piping associated with a tank in existence on the
3 date of promulgation of the regulations shall be
4 moved above ground at the time the tank is up-
5 graded unless moving the piping is infeasible be-
6 cause of road layouts or other similar obstacles.

7 (8) FINANCIAL RESPONSIBILITY.—Require-
8 ments for maintaining evidence of financial respon-
9 sibility for taking corrective action and compensating
10 third parties for bodily injury and property damage
11 caused by sudden and nonsudden accidental releases,
12 in accordance with subsection (d).

13 (9) SOIL AND GROUND WATER ASSESSMENT.—
14 In any case in which a fire-protected tank is located
15 at a facility with a cumulative tank capacity of more
16 than 42,000 gallons, or in which any unprotected
17 tank is located at a facility with a cumulative tank
18 capacity of 42,000 gallons or less, requirements for
19 the facility—

20 (A) to carry out an assessment of the soil
21 and ground water; and

22 (B) to report any releases to the national
23 response center established pursuant to the
24 Federal Water Pollution Control Act (33 U.S.C.
25 1251 et seq.) and to the department or agency

1 of the State or department or agency of a polit-
2 ical subdivision of the State designated pursu-
3 ant to section 4(b).

4 (d) FINANCIAL RESPONSIBILITY.—

5 (1) IN GENERAL.—

6 (A) IN GENERAL.—An owner or operator
7 of an aboveground storage tank shall be re-
8 quired to demonstrate financial responsibility in
9 accordance with regulations issued by the Ad-
10 ministrator pursuant to subsection (c)(8).

11 (B) METHODS.—Financial responsibility
12 may be demonstrated by any one, or any com-
13 bination, of the following: insurance, guarantee,
14 surety bond, letter of credit, qualification as a
15 self-insurer, or any other method satisfactory to
16 the Administrator.

17 (C) CONTRACTUAL TERMS.—In issuing
18 regulations under this subsection, the Adminis-
19 trator may specify a term of an insurance policy
20 or any other contractual term, condition, or de-
21 fense as necessary for, or as unacceptable for,
22 the establishment of evidence of financial re-
23 sponsibility in order to carry out this Act.

24 (2) BANKRUPTCY.—

1 (A) IN GENERAL.—If the owner or opera-
2 tor is in bankruptcy, reorganization, or arrange-
3 ment, pursuant to the Federal Bankruptcy
4 Code (11 U.S.C. 1 et seq.), or if, with reason-
5 able diligence, jurisdiction in a Federal court or
6 State court cannot be obtained over an owner
7 or operator likely to be solvent at the time of
8 judgment, a claim arising from conduct for
9 which evidence of financial responsibility is re-
10 quired to be provided under this subsection may
11 be asserted directly against the guarantor pro-
12 viding the evidence of financial responsibility.

13 (B) RIGHTS AND DEFENSES.—In an action
14 pursuant to this paragraph, the guarantor shall
15 be entitled to invoke all rights and defenses
16 that would have been available to—

17 (i) the owner or operator, if an action
18 had been brought against the owner or op-
19 erator by the claimant; and

20 (ii) the guarantor, if an action had
21 been brought against the guarantor by the
22 owner or operator.

23 (3) LIABILITY OF GUARANTOR.—

24 (A) LIMITATION OF AMOUNT.—The total
25 amount of liability of a guarantor shall be lim-

1 ited to the aggregate amount that the guaran-
2 tor has provided as evidence of financial respon-
3 sibility to the owner or operator under this sub-
4 section.

5 (B) EFFECT ON OTHER LIABILITY.—Noth-
6 ing in this subsection is intended to limit any
7 other Federal or State statutory, contractual, or
8 common law liability of a guarantor to an
9 owner or operator, including the liability of the
10 guarantor for bad faith in negotiating or in fail-
11 ing to negotiate the settlement of a claim.

12 (C) EFFECT ON LIABILITY UNDER THE
13 COMPREHENSIVE ENVIRONMENTAL RESPONSE,
14 COMPENSATION, AND LIABILITY ACT OF 1980.—
15 Nothing in this subsection is intended to dimin-
16 ish the liability of a person under section 107
17 or 111 of the Comprehensive Environmental
18 Response, Compensation, and Liability Act of
19 1980 (42 U.S.C. 9607 or 9611), or other appli-
20 cable law.

21 (4) AMOUNT OF COVERAGE.—

22 (A) IN GENERAL.—In issuing financial re-
23 sponsibility regulations under this section, the
24 Administrator shall establish an amount of cov-
25 erage for particular classes and categories of

1 aboveground storage tanks that shall satisfy the
2 regulations.

3 (B) PETROLEUM TANKS.—

4 (i) IN GENERAL.—The amount of cov-
5 erage for an aboveground storage tank
6 containing petroleum shall be an amount—

7 (I) greater than or equal to
8 \$1,000,000 and not to exceed
9 \$2,000,000 for each release; and

10 (II) not to exceed \$2,000,000 for
11 the aggregate of all releases occurring
12 from the tank during a 1-year period.

13 (ii) REDUCTION.—The Administrator
14 may set an amount lower than the amount
15 required by clause (i) for aboveground
16 storage tanks containing petroleum that—

17 (I) are located at facilities not
18 engaged in petroleum production, re-
19 fining, transportation, or marketing;
20 and

21 (II) are not used to handle sub-
22 stantial quantities of petroleum.

23 (C) FACTORS.—In establishing a class or
24 category of aboveground storage tanks for the

1 purpose of this paragraph, the Administrator
2 may consider—

3 (i) the size, type, location, storage,
4 and handling capacity of aboveground stor-
5 age tanks in the class or category and the
6 volume stored by the tanks;

7 (ii) the likelihood of release and the
8 potential extent of damage from a release
9 from tanks in the class or category;

10 (iii) the economic impact of the
11 amount of coverage required under this
12 subsection on the owners and operators of
13 aboveground storage tanks in the class or
14 category, particularly on small business
15 concerns (as defined in section 3(a)(1) of
16 the Small Business Act (15 U.S.C.
17 632(a)(1))), in relation to the impact of a
18 potential release on any affected commu-
19 nity and affected natural resources;

20 (iv) the availability to owners and op-
21 erators of aboveground storage tanks of
22 methods of financial responsibility that
23 provide for financial responsibility in
24 amounts greater than the applicable

1 amounts established by this paragraph;
2 and

3 (v) such other factors as the Adminis-
4 trator considers appropriate.

5 (D) SUSPENSION OF ENFORCEMENT.—

6 (i) IN GENERAL.—The Administrator
7 may suspend enforcement of the financial
8 responsibility requirements for a particular
9 class or category of aboveground storage
10 tanks or in a particular State, if—

11 (I) the Administrator makes a
12 determination that methods of finan-
13 cial responsibility satisfying the re-
14 quirements of this subsection are not
15 generally available for aboveground
16 storage tanks in the class or category;
17 and

18 (II) the State has taken meas-
19 ures to form a risk retention group
20 for the class of tanks, or to establish
21 a fund pursuant to section 6(c)(1) to
22 be submitted as evidence of financial
23 responsibility.

24 (ii) LENGTH OF SUSPENSION.—A sus-
25 pension of enforcement by the Adminis-

1 trator pursuant to this paragraph shall be
2 for a period not to exceed 180 days after
3 the date on which the Administrator sus-
4 pends enforcement.

5 (iii) EXTENSION.—A determination to
6 suspend enforcement may be made with re-
7 spect to the same class or category or for
8 the same State upon the termination of the
9 period of suspension referred to in clause
10 (ii), if—

11 (I) the State has made substan-
12 tial progress in establishing a risk re-
13 tention group; or

14 (II) the owners or operators in
15 the class or category demonstrate, to
16 the satisfaction of the Administrator,
17 that the formation of such a group is
18 not possible and that the State is un-
19 able or unwilling to establish a fund
20 pursuant to clause (i)(II).

21 (5) COORDINATION WITH UPGRADING.—In pro-
22 mulgating the regulations under this subsection, the
23 Administrator shall ensure that, in the case of an
24 existing tank that is upgraded to meet new tank
25 standards, pursuant to subsection (c)(7), the owner

1 or operator shall not be required to demonstrate fi-
2 nancial responsibility until the tank is upgraded.

3 (6) DEFINITION.—As used in this subsection,
4 the term “guarantor” means a person, other than
5 the owner or operator, who provides evidence of fi-
6 nancial responsibility for an owner or operator under
7 this subsection.

8 (e) NEW TANK PERFORMANCE STANDARDS.—

9 (1) IN GENERAL.—Not later than 3 months be-
10 fore the applicable effective date specified in sub-
11 section (g), the Administrator shall issue perform-
12 ance standards for aboveground storage tanks
13 brought into use on or after the effective date.

14 (2) CONTENTS.—The performance standards
15 for new aboveground storage tanks and associated
16 piping shall include design, construction, installation,
17 maintenance, inspection, secondary containment, la-
18 beling, corrosion protection, integrity, and compat-
19 ibility standards. The performance standards also
20 shall include a requirement that any piping associ-
21 ated with new aboveground storage tanks shall be
22 situated aboveground, except where infeasible be-
23 cause of road layouts or other similar obstacles.

24 (3) PLACE OF ASSEMBLY.—The Administrator
25 shall consider the differences between shop-fab-

1 ricated and field-erected tanks in issuing the stand-
2 ards.

3 (f) REBUILT TANK PERFORMANCE STANDARDS.—

4 (1) IN GENERAL.—Not later than 3 months be-
5 fore the applicable effective date specified in sub-
6 section (g), the Administrator shall issue perform-
7 ance and testing standards for rebuilt tanks reintro-
8 duced for use on or after the effective date.

9 (2) CONTENTS.—The standards described in
10 paragraph (1) shall include design, construction, in-
11 stallation, maintenance, inspection, secondary con-
12 tainment, labeling, corrosion protection, integrity,
13 and compatibility standards.

14 (g) EFFECTIVE DATES.—

15 (1) PETROLEUM TANKS.—For aboveground
16 storage tanks containing regulated substances de-
17 fined in section 3(14)(B), regulations issued pursu-
18 ant to subsections (c) and (d), and standards issued
19 pursuant to subsections (e) and (f), shall take effect
20 not later than 30 months after the date of enact-
21 ment of this Act.

22 (2) NONPETROLEUM TANKS.—For aboveground
23 storage tanks containing regulated substances de-
24 fined in section 3(14)(A)—

1 (A) standards issued pursuant to sub-
2 sections (e) and (f) shall take effect not later
3 than 3 years after the date of enactment of this
4 Act; and

5 (B) regulations issued pursuant to sub-
6 sections (c) and (d) shall take effect not later
7 than 4 years after the date of enactment of this
8 Act.

9 (h) INTERIM PROHIBITION.—During the period be-
10 ginning on the date that is 180 days after the date of
11 enactment of this Act and ending on the day before the
12 effective date of the standards issued by the Administrator
13 under subsection (e), no person may install any above-
14 ground storage tank (including a tank of single wall or
15 double wall construction) for the purpose of storing regu-
16 lated substances unless the tank—

17 (1) will prevent releases due to corrosion or
18 structural failure for the operational life of the tank;

19 (2) is in compliance with applicable fire codes;
20 and

21 (3) is made of a material, used in the construc-
22 tion or lining, that is compatible with the substance
23 to be stored.

24 (i) ENVIRONMENTAL PROTECTION AGENCY RE-
25 SPONSE PROGRAM.—

1 (1) APPLICABILITY.—This subsection shall
2 apply to all regulated substances that are not sub-
3 ject to cleanup response requirements under the
4 Comprehensive Environmental Response, Compensa-
5 tion, and Liability Act of 1980 and that are released
6 from an aboveground tank, including, notwithstand-
7 ing section 3(1)(B)(vii), any fire-protected tank
8 under the jurisdiction of State or local fire regu-
9 latory authorities.

10 (2) UNDERTAKING CORRECTIVE ACTIONS.—

11 (A) BEFORE REGULATIONS.—

12 (i) IN GENERAL.—Before the effective
13 date of regulations issued pursuant to sub-
14 section (c), the Administrator (or a State
15 or political subdivision pursuant to para-
16 graph (7)) may—

17 (I) require the owner or operator
18 to undertake corrective action with re-
19 spect to a release when the Adminis-
20 trator (or the State or political sub-
21 division pursuant to paragraph (7))
22 determines that the corrective action
23 by the owner or operator will be done
24 properly and will follow an expeditious
25 timetable; or

1 (II) undertake corrective action
2 with respect to a release if the action
3 is necessary, in the judgment of the
4 Administrator (or the State or politi-
5 cal subdivision pursuant to paragraph
6 (7)), to protect human health and the
7 environment.

8 (ii) EXTENT OF ACTION.—The correc-
9 tive action undertaken or required under
10 this paragraph shall be such as is nec-
11 essary to protect human health and the en-
12 vironment.

13 (iii) PRIORITY.—Subject to the prior-
14 ity requirements of paragraph (3), the Ad-
15 ministrator (or the State or political sub-
16 division pursuant to paragraph (7)) shall
17 give priority in undertaking the actions
18 under clause (i)(II) to cases in which the
19 Administrator (or the State or political
20 subdivision pursuant to paragraph (7))
21 cannot identify an owner or operator who
22 is—

23 (I) financially solvent (as deter-
24 mined by the Administrator); and

1 (II) capable of undertaking cor-
2 rective action in a manner that is sat-
3 isfactory to the Administrator (or the
4 State or political subdivision pursuant
5 to paragraph (7)).

6 (B) AFTER REGULATIONS.—After the ef-
7 fective date of regulations issued pursuant to
8 subsection (c) all actions or orders of the Ad-
9 ministrator (or a State or political subdivision
10 pursuant to paragraph (7)) described in sub-
11 paragraph (A) shall conform to the regulations.
12 After the effective date of such regulations the
13 Administrator (or the State or political subdivi-
14 sion pursuant to paragraph (7)) may undertake
15 corrective action with respect to a release only
16 if the action is necessary, in the judgment of
17 the Administrator (or the State or political sub-
18 division pursuant to paragraph (7)), to protect
19 human health and the environment, and if—

20 (i) within 90 days after the release (or
21 within such shorter period after the release
22 as is necessary to protect human health
23 and the environment), the Administrator
24 (or the State or political subdivision pursu-
25 ant to paragraph (7)) cannot identify an

1 owner or operator who is financially sol-
2 vent (as determined by the Administrator),
3 subject to the corrective action regulations,
4 and capable of undertaking corrective ac-
5 tion in a manner that is satisfactory to the
6 Administrator (or the State or political
7 subdivision pursuant to paragraph (7));

8 (ii) prompt action is required by the
9 Administrator (or the State or political
10 subdivision pursuant to paragraph (7))
11 under this paragraph to protect human
12 health and the environment; or

13 (iii) the owner or operator has failed
14 or refused to comply with an order of the
15 Administrator under this subsection or sec-
16 tion 8, or with the order of a State under
17 this subsection, that requires compliance
18 with the corrective action regulations is-
19 sued pursuant to this section.

20 (3) PRIORITY OF CORRECTIVE ACTIONS.—In
21 undertaking corrective actions under this subsection,
22 and in issuing orders requiring owners or operators
23 to undertake corrective actions, the Administrator
24 (or a State or political subdivision pursuant to para-
25 graph (7)) shall give priority to releases that pose

1 the greatest threat to human health and the environ-
2 ment.

3 (4) CORRECTIVE ACTION ORDERS.—

4 (A) ADMINISTRATOR.—The Administrator
5 may issue an order to an owner or operator to
6 carry out paragraph (2)(A)(i)(I) or to carry out
7 a requirement of the regulations issued under
8 subsection (c)(5).

9 (B) STATE OR POLITICAL SUBDIVISION.—
10 A State or political subdivision acting pursuant
11 to paragraph (7) may issue an order pursuant
12 to paragraph (2)(A)(i)(I) only until such time
13 as the Administrator approves the program of
14 the State and the State is exercising primary
15 enforcement responsibility pursuant to section
16 6.

17 (C) ISSUANCE AND ENFORCEMENT.—Each
18 order issued under this paragraph shall be is-
19 sued and enforced in the same manner and sub-
20 ject to the same requirements as orders issued
21 under section 8.

22 (5) ALLOWABLE CORRECTIVE ACTIONS.—

23 (A) IN GENERAL.—The corrective actions
24 with respect to a release from an aboveground
25 storage tank that may be undertaken by the

1 Administrator (or by a State or political sub-
2 division pursuant to paragraph (7)) under para-
3 graph (2) shall include—

4 (i) measures to contain the release;

5 (ii) measures to prevent additional re-
6 leases;

7 (iii) water and air quality monitoring;

8 (iv) the temporary or permanent relo-
9 cation of residents;

10 (v) the provision of alternative house-
11 hold water supplies or treatment of sup-
12 plies;

13 (vi) the recovery of the regulated sub-
14 stance that has been released;

15 (vii) the installation of any necessary
16 venting; and

17 (viii) the control of the movement of
18 contamination plumes.

19 (B) EXPOSURE ASSESSMENT.—

20 (i) IN GENERAL.—In connection with
21 the performance of any corrective action
22 under paragraph (2), the Administrator
23 may undertake an exposure assessment (as
24 defined in paragraph (11)) or provide for
25 such an assessment in a cooperative agree-

1 ment with a State or political subdivision
2 pursuant to paragraph (7).

3 (ii) COSTS.—The costs of the expo-
4 sure assessment may be treated as costs
5 associated with corrective action for the
6 purpose of paragraph (6).

7 (iii) DELAY.—The assessment may
8 not delay corrective action to abate imme-
9 diate hazards or reduce exposure.

10 (6) RECOVERY OF COSTS.—

11 (A) IN GENERAL.—

12 (i) LIABILITY FOR A COST.—When-
13 ever a cost has been incurred by the Ad-
14 ministrators (or by a State or political sub-
15 division pursuant to paragraph (7)) for un-
16 dertaking any corrective action or enforce-
17 ment action with respect to a release, the
18 owner or operator shall be liable to the Ad-
19 ministrators or the State or political sub-
20 division for the cost.

21 (ii) STANDARD OF LIABILITY.—The
22 standard of liability under this paragraph
23 applicable to an owner or operator shall be
24 equivalent to the standard of liability de-
25 scribed in section 311 of the Federal

1 Water Pollution Control Act (33 U.S.C.
2 1321).

3 (B) RECOVERY.—In determining the equi-
4 ties for seeking the recovery of costs under sub-
5 paragraph (A), the Administrator (or a State or
6 political subdivision pursuant to paragraph (7))
7 may consider—

8 (i) the amount of financial responsibil-
9 ity required to be maintained under sub-
10 sections (c)(7) and (d)(4); and

11 (ii) the factors considered in establish-
12 ing the amount of financial responsibility
13 under subsection (d)(4).

14 (C) INDEMNIFICATION AGREEMENTS.—

15 (i) AGREEMENTS NOT PROHIBITED.—
16 Nothing in this Act prohibits any agree-
17 ment to ensure, hold harmless, or indem-
18 nify a party to such agreement for any li-
19 ability under this Act.

20 (ii) LIABILITY NOT TRANSFERRED.—
21 No indemnification, hold harmless, or simi-
22 lar agreement or conveyance shall be effec-
23 tive to transfer liability imposed under this
24 Act from an owner or operator or from any

1 person who may be liable for a release
2 under this Act to any other person.

3 (iii) RELATIONSHIP TO OTHER
4 CAUSES OF ACTION.—Nothing in this Act,
5 including clause (ii), bars a cause of action
6 that an owner or operator or any other
7 person subject to liability under this Act,
8 or a guarantor, has or would have, by rea-
9 son of subrogation or otherwise, against
10 any person.

11 (7) STATE AND POLITICAL SUBDIVISION AU-
12 THORITIES.—

13 (A) IN GENERAL.—A State, and any politi-
14 cal subdivision of a State, may exercise the au-
15 thorities described in paragraph (2), subject to
16 the terms and conditions of paragraphs (3), (5),
17 (9), and (11), and including the authorities de-
18 scribed in paragraphs (4), (6), and (8), if—

19 (i) the Administrator determines that
20 the State or political subdivision has the
21 personnel necessary to carry out, and is ca-
22 pable of carrying out, effective corrective
23 actions and enforcement activities; and

24 (ii) the Administrator enters into a
25 cooperative agreement with the State or

1 political subdivision that establishes the ac-
2 tions to be undertaken by the State or po-
3 litical subdivision.

4 (B) COST SHARE.—

5 (i) IN GENERAL.—After the effective
6 date of regulations issued pursuant to sub-
7 section (c), and subject to clause (ii), the
8 State or political subdivision shall pay 10
9 percent of the cost of each corrective ac-
10 tion undertaken by the Administrator or
11 by the State or political subdivision under
12 a cooperative agreement described in sub-
13 paragraph (A)(ii).

14 (ii) EXCEPTION FOR EMERGENCIES.—
15 With respect to a corrective action, if the
16 State or political subdivision of the State
17 fails to pay the cost share amount specified
18 in clause (i), the Administrator may take
19 corrective action at a facility if the Admin-
20 istrator determines that immediate action
21 is necessary to respond to an imminent
22 and substantial endangerment to human
23 health or the environment.

24 (8) EMERGENCY PROCUREMENT POWERS.—The
25 Administrator may authorize such use of emergency

1 procurement powers as the Administrator considers
2 necessary for purposes of carrying out this sub-
3 section.

4 (9) FACILITIES WITHOUT FINANCIAL RESPON-
5 SIBILITY.—

6 (A) AUTHORITIES OF ADMINISTRATOR.—

7 At a facility with respect to which the owner or
8 operator has failed to maintain evidence of fi-
9 nancial responsibility in an amount at least
10 equal to the amount established by subpara-
11 graph (A) or (B) of subsection (d)(4), the Ad-
12 ministrator shall exercise the authorities pro-
13 vided in paragraph (2)(A)(i), paragraph (4),
14 and section 8 to order corrective action to clean
15 up any release at the facility.

16 (B) AUTHORITIES OF STATES AND POLITI-
17 CAL SUBDIVISIONS.—A State or political sub-
18 division acting pursuant to paragraph (7) shall
19 exercise the authorities provided in paragraphs
20 (2)(A)(i) and (4) to order corrective action to
21 clean up any release.

22 (C) PROTECTION OF HEALTH.—Notwith-
23 standing this subparagraphs (A) and (B), the
24 Administrator—

1 (i) may take any corrective action au-
2 thorized under paragraph (5) at a facility
3 that is necessary to protect human health
4 and the environment; and

5 (ii) shall seek full recovery of the costs
6 of any corrective action conducted pursu-
7 ant to paragraph (6)(A) and without con-
8 sideration of the factors described in para-
9 graph (6)(B).

10 (D) INSOLVENCY AND EMERGENCY.—

11 Nothing in this paragraph is intended to pre-
12 vent the Administrator (or a State or political
13 subdivision pursuant to paragraph (7)) from
14 taking corrective action at a facility if the Ad-
15 ministrator (or State or political subdivision)
16 determines that—

17 (i) no financially solvent owner or op-
18 erator exists; or

19 (ii) immediate action is necessary to
20 respond to an imminent and substantial
21 endangerment of human health or the en-
22 vironment.

23 (10) PUBLIC PARTICIPATION.—Before under-
24 taking a corrective action under this subsection or
25 issuing an order requiring an owner or operator to

1 undertake a corrective action, the Administrator (or
2 a State pursuant to paragraph (7)) shall provide no-
3 tice to the public and an opportunity for public com-
4 ment on the proposed corrective action.

5 (11) DEFINITIONS.—As used in this subsection:

6 (A) OWNER.—The term “owner” does not
7 include a person who, without participating in
8 the management of an aboveground storage
9 tank and otherwise not engaged in the produc-
10 tion, refining, transportation, and marketing of
11 a regulated substance, holds indicia of owner-
12 ship primarily to protect the owner’s security
13 interest in the tank.

14 (B) EXPOSURE ASSESSMENT.—The term
15 “exposure assessment” means an assessment to
16 determine the extent of exposure of, or potential
17 for exposure of, individuals to regulated sub-
18 stances from a release, based on such factors
19 as—

20 (i) the nature and extent of contami-
21 nation;

22 (ii) the existence of or potential for
23 pathways of human exposure (including
24 ground or surface water contamination, air
25 emissions, and food chain contamination);

1 (iii) the size of the community within
2 the likely pathways of exposure; and

3 (iv) the comparison of expected
4 human exposure levels to the short-term
5 and long-term health effects associated
6 with identified contaminants and any avail-
7 able recommended exposure or tolerance
8 limits for the contaminants.

9 (j) INSPECTIONS.—The Administrator (or the State
10 in the case of a State exercising primary enforcement re-
11 sponsibility) shall inspect aboveground storage tanks and
12 related facilities for the purposes of administering and en-
13 forcing the provisions of this Act. Such inspections shall
14 be conducted in accordance with the following schedule
15 commencing with the first calendar year after the date of
16 the enactment of this Act:

Tank facility capacity	Inspection frequency
Over 1,000,000 gallons	Annually.
42,0001 to 1,000,000 gallons	Every 2 years.
0 to 42,000 gallons	At discretion of Administrator or State or local agency.

17 **SEC. 6. STATE PROGRAMS.**

18 (a) ELEMENTS.—

19 (1) IN GENERAL.—Beginning on the date that
20 is 30 months after the date of enactment of this Act,
21 a State may submit an aboveground storage tank re-

1 lease detection, prevention, and correction program
2 for review and approval by the Administrator.

3 (2) COVERAGE.—The program may cover
4 aboveground storage tanks used to store the regu-
5 lated substances defined in subparagraph (A) or (B)
6 of section 3(14), or both.

7 (3) COMPLIANCE WITH REQUIREMENTS.—

8 (A) IN GENERAL.—The Administrator may
9 approve a program under this section only if
10 the State demonstrates that the program—

11 (i) includes the requirements and
12 standards listed in subparagraph (B) at a
13 level no less stringent than the correspond-
14 ing requirements and standards issued by
15 the Administrator pursuant to section 5(a);
16 and

17 (ii) provides for adequate enforcement
18 of compliance with the requirements and
19 standards.

20 (B) REQUIREMENTS.—The requirements
21 and standards referred to in subparagraph (A)
22 are—

23 (i) the requirements listed in section
24 5(c);

1 (ii) the standards required under sub-
2 sections (e) and (f) of section 5; and

3 (iii) requirements—

4 (I) for notifying the appropriate
5 department or agency designated ac-
6 cording to section 4(b) of the exist-
7 ence of an operational or non-
8 operational storage tank; and

9 (II) for providing the information
10 required on the form issued pursuant
11 to section 4(c).

12 (b) INTERIM STANDARDS.—

13 (1) NO STATE LEGISLATIVE ACTION RE-
14 QUIRED.—If State regulatory action, but no State
15 legislative action, is required in order to adopt a
16 State program that meets the requirements of sub-
17 section (a), the Administrator may approve the State
18 program without regard to whether the implementa-
19 tion by the State of the requirements under para-
20 graphs (1) through (4), and (6) of section 5(c)
21 would be less stringent than the implementation of
22 corresponding standards issued by the Administrator
23 pursuant to section 5(a) for the 1-year period begin-
24 ning on the date of issuance of the regulations under
25 section 5(a).

1 (2) STATE LEGISLATIVE ACTION REQUIRED.—If
2 State legislative action is required to adopt a State
3 program that meets the requirements of subsection
4 (a), the Administrator may approve a State program
5 without regard to whether the implementation by the
6 State of the requirements listed in paragraphs (1)
7 through (4), and (6) of section 5(c) would be less
8 stringent than the corresponding standards issued
9 by the Administrator pursuant to section 5(a) for—

10 (A) the 2-year period beginning on the
11 date of issuance of regulations under section
12 5(a); and

13 (B) an additional 1-year period beginning
14 on the date of the legislative action by the State
15 if regulations are required to be issued by the
16 State pursuant to the legislative action.

17 (c) FINANCIAL RESPONSIBILITY.—Corrective action
18 and compensation programs administered by State or local
19 agencies or departments may be submitted for approval
20 under subsection (a)(3) as evidence of financial respon-
21 sibility. A State program shall comply with paragraphs (1)
22 through (4) of section 5(d).

23 (d) TECHNICAL ASSISTANCE.—The Administrator
24 shall provide technical assistance to States, local govern-

1 ments, and owners and operators, to assist in compliance
2 with this section.

3 (e) REVIEW AND APPROVAL OF PROGRAM.—

4 (1) REVIEW.—Not later than 180 days after
5 the date of receipt of a proposed State program, the
6 Administrator shall, after notice and opportunity for
7 public comment, determine whether the State pro-
8 gram complies with this section and provides for
9 adequate enforcement of compliance with the re-
10 quirements and standards adopted pursuant to this
11 section.

12 (2) APPROVAL.—If the Administrator deter-
13 mines that a State program complies with this sec-
14 tion and provides for adequate enforcement of com-
15 pliance with the requirements and standards adopted
16 pursuant to this section—

17 (A) the Administrator shall approve the
18 State program in lieu of the Federal program;
19 and

20 (B) the State shall have primary enforce-
21 ment responsibility with respect to the require-
22 ments of the program.

23 (f) WITHDRAWAL OF APPROVAL.—If, after holding a
24 public hearing, the Administrator determines that a State
25 is not administering and enforcing a program authorized

1 under this Act in accordance with this section, the Admin-
2 istrator shall so notify the State. If appropriate action is
3 not taken within a reasonable period of time, not to exceed
4 120 days after the notification, the Administrator shall
5 withdraw approval of the program and reestablish the
6 Federal program pursuant to this Act.

7 (g) STATE AUTHORITY.—Nothing in this Act shall
8 preclude or deny a right of a State or political subdivision
9 of a State—

10 (1) to adopt or enforce a regulation, require-
11 ment, or standard of performance respecting above-
12 ground storage tanks that is more stringent than a
13 regulation, requirement, or standard of performance
14 in effect under this Act; or

15 (2) to impose any additional liability with re-
16 spect to a release within the State or political sub-
17 division.

18 **SEC. 7. ACCESS TO INFORMATION.**

19 (a) FURNISHING INFORMATION.—

20 (1) IN GENERAL.—Subject to paragraph (2),
21 and for the purpose of developing or assisting in the
22 development of a regulation, conducting a study,
23 taking a corrective action, or enforcing this Act—

24 (A) an owner or operator of an above-
25 ground storage tank (or a tank subject to study

1 under section 10) shall, upon request of an offi-
2 cer, employee, or representative of the Environ-
3 mental Protection Agency, duly designated by
4 the Administrator, or upon request of a duly
5 designated officer, employee, or representative
6 of a State acting pursuant to section 5(i)(7)
7 with a program approved under section 6—

8 (i) furnish information relating to the
9 tank, associated equipment, and contents;

10 (ii) conduct monitoring or testing; and

11 (iii) permit the officer, employee, or
12 representative at all reasonable times to—

13 (I) have access to, and to copy,
14 all records relating to the tanks; and

15 (II) have access for corrective ac-
16 tion; and

17 (B) an officer, employee, or representative
18 may referred to in subparagraph (A)—

19 (i) enter at reasonable times an estab-
20 lishment or other place where an above-
21 ground storage tank is located;

22 (ii) inspect and obtain samples from a
23 person of a regulated substance contained
24 in the tank;

1 (iii) conduct monitoring or testing of
2 a tank, associated equipment, contents, or
3 surrounding soils, air, surface water or
4 ground water; and

5 (iv) take corrective action.

6 (2) PROMPT INSPECTIONS.—Each inspection
7 required under paragraph (1)(B) shall be com-
8 menced and completed within a reasonable amount
9 of time.

10 (b) CONFIDENTIALITY.—

11 (1) IN GENERAL.—

12 (A) AVAILABILITY TO PUBLIC.—Subject to
13 subparagraph (B), any record, report, or infor-
14 mation obtained from a person under this sec-
15 tion shall be available to the public.

16 (B) EXCEPTION FOR CONFIDENTIAL IN-
17 FORMATION.—

18 (i) IN GENERAL.—Subject to clause
19 (ii), and upon a showing satisfactory to the
20 Administrator or the State by a person
21 that a record, report, or piece of informa-
22 tion, or a particular portion of the record,
23 report or piece of information, to which the
24 Administrator or the State, or an officer,
25 employee, or representative of the Adminis-

1 trator or State, has access under this sec-
2 tion, would, if made public, contain infor-
3 mation entitled to protection under section
4 1905 of title 18, United States Code, the
5 record, report, or information shall be con-
6 sidered confidential in accordance with sec-
7 tion 1905 of such title.

8 (ii) EXCEPTION.—The record, report,
9 document, or information referred to in
10 clause (i) may be disclosed to other offi-
11 cers, employees, or authorized representa-
12 tives of the United States concerned with
13 carrying out this Act, or when relevant in
14 a proceeding under this Act.

15 (2) DESIGNATION OF PROTECTED INFORMA-
16 TION.—

17 (A) IN GENERAL.—In submitting data
18 under this Act, a person required to provide the
19 data may—

20 (i) designate the data that the person
21 believes is entitled to protection under this
22 subsection; and

23 (ii) submit the designated data sepa-
24 rately from other data submitted under
25 this Act.

1 (B) METHOD OF DESIGNATION.—A des-
2 ignation under this paragraph shall be made in
3 writing and in such manner as the Adminis-
4 trator may prescribe.

5 (3) PENALTY FOR DISCLOSURE.—A person not
6 subject to section 1905 of title 18, United States
7 Code, who knowingly and willfully divulges or dis-
8 closes any information entitled to protection under
9 this subsection shall, upon conviction, be subject to
10 a fine of not more than \$5,000 or to imprisonment
11 not to exceed 1 year, or both.

12 (4) DISCLOSURE TO CONGRESSIONAL COMMIT-
13 TEES.—Notwithstanding any limitation under this
14 section or any other provision of law, any record, re-
15 port, or other information obtained by the Adminis-
16 trator (or a representative of the Administrator)
17 under this Act shall be made available to a duly au-
18 thorized committee of Congress, upon written re-
19 quest.

20 **SEC. 8. FEDERAL ENFORCEMENT.**

21 (a) COMPLIANCE ORDERS.—

22 (1) IN GENERAL.—

23 (A) IN GENERAL.—Except as provided in
24 paragraph (2), whenever, on the basis of any
25 information, the Administrator determines that

1 a person is in violation of a requirement of this
2 Act, the Administrator may—

3 (i) issue an order requiring compli-
4 ance within a reasonable specified time pe-
5 riod; or

6 (ii) commence a civil action in the
7 United States district court in which the
8 violation occurred for appropriate relief, in-
9 cluding a temporary or permanent injunc-
10 tion.

11 (B) ORDERS AFTER A RELEASE.—After a
12 release, the Administrator may issue an order
13 prohibiting the use or operation of all or any
14 portion of a facility in which an aboveground
15 storage tank is located until the Administrator
16 (or the State if a State program has been ap-
17 proved pursuant to section 6) determines
18 that—

19 (i) the prohibition is not necessary to
20 protect human health and the environment;
21 or

22 (ii) adequate corrective action has
23 been taken.

24 (2) NOTICE TO STATE.—If a violation of a re-
25 quirement of this Act occurs in a State with a pro-

1 gram approved pursuant to section 6, the Adminis-
2 trator shall give notice to the State before issuing an
3 order or commencing a civil action under this sec-
4 tion.

5 (3) PENALTY.—If a violator fails to comply
6 with an order under this subsection within the time
7 specified in the order, the violator shall be liable for
8 a civil penalty of not more than \$25,000 for each
9 day of continued noncompliance.

10 (b) PROCEDURE.—

11 (1) HEARING.—An order issued under this sec-
12 tion shall become final unless, not later than 30 days
13 after the order is served, the person named in the
14 order requests a public hearing. Upon receipt of the
15 request, the Administrator shall promptly conduct a
16 public hearing.

17 (2) SUBPOENAS AND DISCOVERY.—In connec-
18 tion with a proceeding under this section the Admin-
19 istrator may—

20 (A) issue subpoenas for the attendance and
21 testimony of witnesses and the production of
22 relevant papers, books, and documents; and

23 (B) issue rules for discovery procedures.

24 (c) CONTENTS OF ORDER.—An order issued under
25 this section shall—

1 (1) state with reasonable specificity the nature
2 of the violation;

3 (2) specify a reasonable time for compliance;
4 and

5 (3) assess a penalty, if any, that the Adminis-
6 trator determines is reasonable, taking into account
7 the seriousness of the violation and any good faith
8 efforts to comply with the applicable requirements.

9 (d) CIVIL PENALTIES.—

10 (1) FAILURE TO NOTIFY OR FALSE INFORMA-
11 TION.—An owner who knowingly fails to notify or
12 submits false information pursuant to section 4(a)
13 shall be subject to a civil penalty not to exceed
14 \$10,000 for each tank with respect to which notifi-
15 cation is not given or false information is submitted.

16 (2) FAILURE TO COMPLY.—An owner or opera-
17 tor shall be subject to a civil penalty in an amount
18 not to exceed \$10,000 for each tank for each day of
19 violation if the owner or operator fails to comply
20 with—

21 (A) a requirement or standard issued by
22 the Administrator under section 5;

23 (B) a requirement or standard of a State
24 program approved pursuant to section 6; or

25 (C) section 5(h).

1 **SEC. 9. FEDERAL FACILITIES.**

2 (a) APPLICABILITY OF STORAGE TANK REQUIRE-
3 MENTS.—

4 (1) IN GENERAL.—

5 (A) APPLICABILITY.—Each department,
6 agency, and instrumentality of the executive,
7 legislative, and judicial branches of the Federal
8 Government having jurisdiction over an above-
9 ground storage tank shall be subject to and
10 comply with all Federal, State, interstate, and
11 local requirements, applicable to the tank, both
12 substantive and procedural, in the same man-
13 ner, and to the same extent, as any other per-
14 son is subject to the requirements (including
15 payment of reasonable service charges).

16 (B) REQUIREMENTS.—The Federal, State,
17 interstate, and local substantive and procedural
18 requirements referred to in this paragraph in-
19 clude, but are not limited to, all administrative
20 orders and all civil and administrative penalties
21 and fines, regardless of whether such penalties
22 or fines are punitive or coercive in nature or are
23 imposed for isolated, intermittent, or continuing
24 violations.

25 (C) WAIVER.—The United States hereby
26 expressly waives any immunity otherwise appli-

1 cable to the United States with respect to any
2 such substantive or procedural requirement (in-
3 cluding, but not limited to, any injunctive relief,
4 administrative order, or civil or administrative
5 penalty or fine referred to in subparagraph (B),
6 or reasonable service charge). The reasonable
7 service charges referred to in this paragraph in-
8 clude, but are not limited to, fees or charges as-
9 sessed in connection with the review of plans,
10 studies, and other documents, and inspection
11 and monitoring of facilities, as well as any other
12 nondiscriminatory charges that are assessed in
13 connection with a Federal, State, interstate, or
14 local aboveground storage tank regulatory pro-
15 gram.

16 (2) INJUNCTIVE RELIEF.—Neither the United
17 States, nor an agent, employee, or officer of the
18 United States, shall be immune or exempt from a
19 process or sanction of any Federal or State court
20 with respect to the enforcement of any injunctive re-
21 lief.

22 (3) INDIVIDUAL LIABILITY.—

23 (A) IN GENERAL.—No agent, employee, or
24 officer of the United States shall be personally
25 liable for any civil penalty under any Federal,

1 State, interstate, or local aboveground storage
2 tank law with respect to any act or omission
3 within the scope of the official duties of the
4 agent, employee, or officer.

5 (B) CRIMINAL PENALTIES.—An agent, em-
6 ployee, or officer of the United States shall be
7 subject to any criminal sanction (including, but
8 not limited to, any fine or imprisonment) under
9 any Federal or State aboveground storage tank
10 law, but no department, agency, or instrumen-
11 tality of the executive, legislative, or judicial
12 branch of the Federal Government shall be sub-
13 ject to any such sanction.

14 (b) ADMINISTRATIVE ENFORCEMENT ACTIONS.—

15 (1) IN GENERAL.—The Administrator may
16 commence an administrative enforcement action
17 against any department, agency, or instrumentality
18 of the executive, legislative, or judicial branch of the
19 Federal Government pursuant to the enforcement
20 authorities contained in this Act. The Administrator
21 shall initiate an administrative enforcement action
22 against such a department, agency, or instrumentality
23 in the same manner and under the same cir-
24 cumstances as an action would be initiated against
25 another person. Any voluntary resolution or settle-

1 ment of such an action shall be set forth in a con-
2 sent order.

3 (2) OPPORTUNITY TO CONFER.—No adminis-
4 trative order issued to such a department, agency, or
5 instrumentality shall become final until such depart-
6 ment, agency, or instrumentality has had the oppor-
7 tunity to confer with the Administrator.

8 (c) LIMITATION ON STATE USE OF FUNDS COL-
9 LECTED FROM FEDERAL GOVERNMENT.—Unless a State
10 law in effect on the date of the enactment of this Act or
11 a State constitution requires the funds to be used in a
12 different manner, all funds collected by a State from the
13 Federal Government from penalties and fines imposed for
14 violation of any substantive or procedural requirement re-
15 ferred to in subsection (a) shall be used by the State only
16 for projects designed to improve or protect the environ-
17 ment or to defray the costs of environmental protection
18 or enforcement.

19 (d) PRESIDENTIAL EXEMPTION.—

20 (1) IN GENERAL.—The President may exempt
21 an aboveground storage tank of a department, agen-
22 cy, or instrumentality in the executive branch from
23 compliance with a requirement referred to in sub-
24 section (a) if the President determines the exemp-

1 tion to be in the paramount interest of the United
2 States.

3 (2) LACK OF APPROPRIATION.—No exemption
4 shall be granted because of lack of appropriation un-
5 less the President specifically requests the appro-
6 priation in the budget of the United States Govern-
7 ment as submitted by the President and Congress
8 fails to make available the requested appropriation.

9 (3) LENGTH OF EXEMPTION.—An exemption
10 shall be for a period not in excess of 1 year, but ad-
11 ditional exemptions may be granted for periods not
12 to exceed 1 year upon a redetermination by the
13 President.

14 (4) REPORT TO CONGRESS.—The President
15 shall report each January to Congress all exemp-
16 tions from the requirements of this section granted
17 during the preceding calendar year, and the reason
18 for granting each exemption.

19 **SEC. 10. STUDIES OF ABOVEGROUND STORAGE TANKS.**

20 (a) REGULATED SUBSTANCES TANKS.—

21 (1) IN GENERAL.—

22 (A) PETROLEUM TANKS.—Not later than 1
23 year after the date of enactment of this Act,
24 and in accordance with paragraph (2), the Ad-
25 ministrator shall complete a study of above-

1 ground storage tanks used for the storage of
2 petroleum.

3 (B) OTHER TANKS.—Not later than 3
4 years after the date of enactment of this Act,
5 and in accordance with paragraph (2), the Ad-
6 ministrator shall complete a study of above-
7 ground storage tanks used for the storage of
8 regulated substances other than petroleum.

9 (2) ELEMENTS OF STUDIES.—Each study
10 under paragraph (1) shall include an assessment
11 of—

12 (A) the ages, types (including methods of
13 manufacture, coatings, protection systems, com-
14 patibility of the construction materials, and in-
15 stallation methods), and locations (including cli-
16 mate of the locations) of the tanks;

17 (B) the soil conditions, water tables, and
18 hydrogeology of tank locations;

19 (C) the relationship between the factors
20 listed in subparagraphs (A) and (B) and the
21 likelihood of releases;

22 (D) the design and inspection of the tanks;

23 (E) the effectiveness and costs of inventory
24 systems, tank testing, and release detection sys-
25 tems;

1 (F) the percentage of facilities undergoing
2 corrective action and the quantity of recovered
3 regulated substances; and

4 (G) such other factors as the Adminis-
5 trator considers appropriate.

6 (b) FARM AND HEATING OIL TANKS.—

7 (1) IN GENERAL.—Not later than 3 years after
8 the date of enactment of this Act, the Administrator
9 shall conduct a study of the tanks described in
10 clauses (i) and (ii) of section 3(1)(B).

11 (2) ELEMENTS OF STUDY.—The study shall in-
12 clude—

13 (A) estimates of the number and locations
14 of the tanks; and

15 (B) an analysis of the extent to which
16 there may be releases or threatened releases
17 from the tanks.

18 (c) REPORTS.—Upon completion of the studies re-
19 quired under subsections (a) and (b), the Administrator
20 shall submit reports to the President and to Congress con-
21 taining—

22 (1) the results of the studies; and

23 (2) recommendations regarding whether the
24 tanks studied should be subject to the requirements
25 of this Act.

1 (d) GENERAL ACCOUNTING OFFICE STUDY.—

2 (1) IN GENERAL.—Not later than 1 year after
3 the date of enactment of this Act, the Comptroller
4 General should conduct a study to assess whether
5 transportation-related tanks and their associated
6 piping are adequately regulated by the Department
7 of Transportation to protect human health and the
8 environment, and whether such tanks should be reg-
9 ulated by the Environmental Protection Agency for
10 the purposes referred to in this sentence.

11 (2) REPORT.—Upon completion of the study re-
12 quired under paragraph (1), the Comptroller Gen-
13 eral shall submit to Congress a report on the results
14 of the study, along with recommendations regarding
15 which department or agency should regulate such
16 tanks.

17 **SEC. 11. CONSOLIDATION WITH UNDERGROUND TANK PRO-**
18 **GRAM.**

19 In order to provide more effective coordination in the
20 regulation of both underground and aboveground storage
21 tanks by the Administrator, the program established
22 under this Act shall be administered by a Director of an
23 office of underground and aboveground storage tanks and
24 shall be consolidated with the administration of the under-

1 ground tank program under subtitle I of the Solid Waste
2 Disposal Act (42 U.S.C. 6991 et seq.).

3 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

4 For fiscal years 1994 through 1998, there are au-
5 thorized to be appropriated such sums as are necessary
6 to carry out this Act.

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S 588 IS—4

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