



Department of Property & Procurement

Government of the United States Virgin Islands

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October 1, 2019

Jean-Pierre L. Oriol
Commissioner
Department of Planning and Natural Resources
Charles Wesley Turnbull Regional Public Library
4607 Tutu Park Mall
St. Thomas, VI. 00802

Dear Commissioner Oriol:

Transmitted herewith for filing and distribution is one (1) copy of executed Memorandum of Agreement **G009PNRT19** between the Government of the Virgin Islands (Department of Planning and Natural Resources) and **United States Environmental Protection Agency**. Please disseminate to all parties involved.

The original will be retained for the files of this office. You can obtain a certified copy by written request.

Respectfully,

Lisa Alejandro
Chief Deputy Commissioner of Procurement & Central Stores

LA/kd

Encls:



GOVERNMENT OF THE VIRGIN ISLANDS OF THE UNITED STATES

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DEPARTMENT OF PLANNING AND NATURAL RESOURCES

Charles Wesley Turnbull Regional Public Library
4707 Tutu Park Mall
St. Thomas, VI 00802

Office of the Commissioner

Telephone: (340)774-3320

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September 10, 2019

Honorable Anthony D. Thomas
Commissioner
Department of Property & Procurement
Building # 1, Third Floor, Sub Base
St. Thomas, Virgin Islands 00802

SEP 17 2019 11:21 AM
REC'D - DEP. OF PLANNING & NATURAL RESOURCES

Re: Memorandum of Agreement with United States Environmental Protection Agency

Dear Commissioner Thomas:

The Department of Planning and Natural Resources ("DPNR") hereby resubmits the proposed Memorandum of Agreement (MOA) between the Government of the Virgin Islands and the United States Environmental Protection Agency (EPA) for further processing and review.

This MOA was previously signed by you on August 29, 2019. Pursuant to our request, your department then returned it to DPNR and we sent it to EPA for signature. We now have obtained EPA's signature and are returning the MOA to you so that it can complete the review process and be signed by the Governor.

This MOA establishes the respective roles and responsibilities of EPA and DPNR with regard to the implementation of the federal underground storage tank (UST) and the leaking underground storage tank (LUST) programs. The UST and LUST programs implement Subtitle I of the federal Solid Waste Disposal Act (SWDA), which required the U.S. Environmental Protection Agency (EPA) to develop a comprehensive regulatory program for Underground Storage Tank (UST) systems storing petroleum or certain hazardous substances to protect the environment and human health from UST releases. It will replace a similar MOA that was executed in 1992. Updating the MOA with the Virgin Islands is part of a national EPA effort to update similar MOAs across the country.

The MOA becomes effective upon execution and remains in effect unless modified by the mutual consent of both parties, a party withdraws from the Agreement, and/or EPA approves a territorial program under Section 9004 of SWDA, 42 USC § 6991c. The MOA does not impose any legally binding requirements (*see* Section C, 3rd paragraph).

To facilitate your review, the following documents are enclosed:

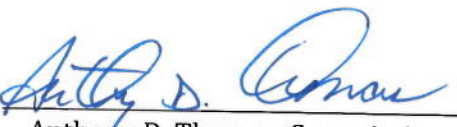
1. Memorandum of Agreement (2 originals)

We have included two originals because EPA has requested an original for its files and we assume that the Virgin Islands will also want to retain an original. Once the MOA completes the signature process, please send one original back to me so that I can transmit it to EPA. Should you have any questions or require additional information to process this request, please contact Ms. Lorie Schmidt, Senior Advisor, Division of Environmental Protection at (571) 444-3503 or Ms. Kathlyn Worrell-George, Director, Division of Environmental Protection, at (340) 774-3320.

Sincerely,


Jean-Pierre L. Oriol
Commissioner

APPROVED/DISAPPROVED:


Anthony D. Thomas, Commissioner
Department of Property & Procurement

Date

9/17/19

Enclosures

MEMORANDUM OF AGREEMENT
Between the
U.S. ENVIRONMENTAL PROTECTION AGENCY
and the
VIRGIN ISLANDS DEPARTMENT OF PLANNING AND NATURAL RESOURCES
For the Activities of the
UNDERGROUND STORAGE TANK PROGRAM
and the
LEAKING UNDERGROUND STORAGE TANK PROGRAM

I. GENERAL

A. Background

In 1984, Congress added Subtitle I to the Solid Waste Disposal Act (SWDA), which required the U.S. Environmental Protection Agency (EPA) to develop a comprehensive regulatory program for Underground Storage Tank (UST) systems storing petroleum or certain hazardous substances to protect the environment and human health from UST releases. EPA promulgated the UST regulations in 1988 (40 CFR Part 280). These regulations set minimum standards for new tanks and required owners and operators of existing tanks to upgrade, replace, or close them. In addition, owners and operators were required to monitor their UST systems for releases using release detection, and maintain financial responsibility for petroleum USTs to ensure that they are financially able to pay for any releases that occur. The regulations in 40 CFR Part 280 also included provisions for responding to suspected and confirmed releases from leaking underground storage tanks (LUSTs) which required investigations and cleanups. In 1988, EPA also promulgated regulations for state program approval (40 CFR Part 281). In 2005, the Energy Policy Act further amended Subtitle I of SWDA. The Energy Policy Act requires states that receive Subtitle I funding from EPA to meet certain requirements. Consequently, between 2006 and 2007, EPA published cooperative agreement guidelines for states regarding operator training, inspections, delivery prohibition, secondary containment, financial responsibility for manufacturers and installers, public record and state compliance reports on government UST systems. In 2015 EPA published revisions to the UST regulations in the *Federal Register*. These revisions strengthen the 1988 federal underground storage tank (UST) regulations by increasing emphasis on properly operating and maintaining UST equipment, among other things. The revisions will help prevent and detect UST releases, which are a leading source of groundwater contamination. The revisions also amended the regulations for state program approval in 40 CFR Part 281. This is the first major revision to the federal UST regulations since 1988.

B. Scope

This Memorandum of Agreement (MOA or Agreement), between the EPA and the Virgin Islands Department of Planning and Natural Resources (Territory or VIDPNR), establishes the respective roles and responsibilities of each agency with regard to the implementation of

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the federal underground storage tank (UST) program and the leaking underground storage tank (LUST) program. This Agreement becomes effective upon the date of the last signature of the parties hereto and remains in effect unless modified by the mutual consent of both parties, a party withdraws from the Agreement, and/or EPA approves the state program under Section 9004 of SWDA, 42 USC § 6991c.

This Agreement is entered into by the Commissioner of the Virgin Islands Department of Property and Procurement on behalf of the VIDPNR, subject to the approval of the Governor of the Virgin Islands, and the Regional Administrator, EPA Region 2. Any party to this Agreement may withdraw from this Agreement or initiate renegotiation of the Agreement by providing 60 days written notice to the other party.

Nothing in this MOA shall be construed as surrendering existing statutory or regulatory authority of the EPA or the VIDPNR. Nothing in this MOA shall be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities under Subtitle I of SWDA. Nothing in this MOA shall be construed to contravene any provisions of 40 CFR parts 280 and 281. This MOA does not impose legally binding requirements.

This MOA does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this Agreement, against VIDPNR or EPA, their officials or employees, or any other person. This MOA does not direct or apply to any person outside of VIDPNR and EPA.

C. Purpose

Under the federal UST regulations promulgated in 1988, EPA is identified as the implementing agency in a state until the state has obtained program approval or the state is designated to act on behalf of EPA pursuant to an MOA. This MOA identifies specific activities that VIDPNR and EPA will carry out to implement the federal UST regulations and the LUST program in the U.S. Virgin Islands.

EPA program funding may assist the Territory in implementing certain activities stated in this Agreement. However, nothing in this MOA, in and of itself, obligates EPA to expend appropriations or incur other financial obligations that would be inconsistent with Agency budget priorities. As required by the Antideficiency Act, 31 USC 1341 and 1342, all commitments made by EPA in this MOA are subject to the availability of appropriated funds. All commitments made by VIDPNR in this MOA are subject to the availability of and appropriation of funds.

D. Authority

Sections 2002, 9001, 9002, 9003, 9004, 9005, 9006, 9007, 9009, 9010, and 9012 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), 6991(h), 6991(i), and 6991(k). These sections implement the UST/LUST programs, including directing EPA to promulgate requirements for detection, prevention, and correction of underground storage tank releases, and for demonstrating financial

responsibility. Section 9003 also provides a procedure by which the state may carry out corrective action and enforcement activities for states that enter into a cooperative agreement with the EPA. Under Section 9004, a state may submit its UST program for EPA approval.

The Energy Policy Act requires states that receive Resource Conservation and Recovery Act (RCRA) Subtitle-I funds from EPA to meet certain requirements. Consequently, between 2006 and 2007, EPA published grant guidelines for states (pursuant to Sections 9002, 9003, 9005, 9010, and 9012) regarding operator training, inspections, delivery prohibition, secondary containment, financial responsibility for manufacturers and installers, public record and state compliance reports on government UST systems.

E. Information Sharing

1. EPA will keep VIDPNR informed of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives, and any other factors that affect the federal UST or LUST programs. EPA will also provide general technical guidance to VIDPNR. EPA will share with VIDPNR any national UST or LUST program reports developed by EPA. EPA will make available to VIDPNR other relevant information, as requested, that VIDPNR needs to implement the federal program.
2. VIDPNR agrees to inform the EPA of any proposed or adopted territorial program changes that would affect the Territory's ability to help implement parts of the federal UST or LUST programs. Territorial program changes of concern include modification of the Territory's legal authorities (for example, statutes, regulations, and judicial or legislative actions affecting those authorities), modifications of memoranda of agreement or understanding with other agencies, and modifications of resource levels (for example, available or budgeted personnel and funds). VIDPNR will provide compliance monitoring and enforcement information to the Regional Administrator or designee. VIDPNR agrees to provide EPA, at its request, with copies of reports resulting from any compliance inspection and subsequent enforcement actions.
3. National Data. EPA maintains certain national data on underground storage tanks. These data are used to report to the President, the Congress, and the public on the achievements of the underground storage tank program and to support EPA's regulatory development efforts. Whenever EPA determines that it needs to obtain certain information that involves the UST or LUST programs in the U.S. Virgin Islands, EPA will generally first seek to obtain this information from VIDPNR (there may be times when, to build an enforcement case against an owner or operator of USTs for violations of the federal regulations, EPA will use its statutory information request authorities to request the information). VIDPNR agrees to provide the Regional Administrator or delegate with this information if readily available and as resources allow. If VIDPNR is unable to provide the underground storage tank information or if it is necessary to supplement the territorial information, EPA will engage in an alternate means of information

collection after notifying VIDPNR. EPA will share with VIDPNR any national reports developed by EPA as a result of such information collection.

4. Confidentiality. VIDPNR will make available to EPA upon request any information obtained or used in VIDPNR's administration of the federal UST and LUST programs without restriction unless the transfer of information is precluded by Territorial law. If the UST owner/operator has submitted the information to VIDPNR under a claim of business confidentiality, VIDPNR will clearly identify that claim of confidentiality to EPA in writing when providing the information. EPA will not disclose, copy, reproduce or otherwise make available to the public any information obtained from VIDPNR that is subject to a claim of confidentiality without the UST owner's/operator's consent, unless otherwise required or allowed by law.

II. IMPLEMENTATION ACTIVITIES

Implementation activities are those tasks that will be conducted by VIDPNR or EPA pursuant to this MOA to implement the federal UST and LUST programs. The specific activities assumed by VIDPNR will be determined by territorial priorities and resources, and the status of the Territory's program development. The specifics of these activities are detailed in the VIDPNR's LUST-Prevention and LUST-Corrective Action cooperative agreements. VIDPNR and EPA agree to assume responsibility for the following activities as specified below.

A. Territory-lead implementation activities

Assumption by the Territory of these activities in no way implies that the Territory's program meets the no less stringent or adequate enforcement requirements of the state program approval process. This determination will be made by EPA in response to the Territory's application for program approval, should the Territory submit one.

1. 40 CFR part 280

VIDPNR will assume, unless otherwise specified, all responsibilities of the implementing agency as written in 40 CFR part 280.

2. Energy Policy Act of 2005

VIDPNR will:

- a. Ensure that UST inspectors are adequately trained so that each are able to identify and document violations of the Territory's UST regulations during on-site inspections and review of documents.

- b. Conduct inspections of each federally regulated UST system at least once every three years by the anniversary of the previous three-year inspection.
- c. Enforce violations of the Territory's promulgated UST Regulations. VIDPNR shall refer all identified violations of federal UST regulations for which it does not have enforcement authority to the Region, which shall appropriately follow up, at its discretion.
- d. Meet the requirements as laid out in EPA grant guidelines issued pursuant to the Energy Policy Act of 2005, including guidelines on UST inspections, secondary containment, operator training, public record and delivery prohibition.
- e. VIDPNR will strive to ensure that:
 - (1) All releases from UST systems are promptly reported and assessed, and further releases are stopped;
 - (2) Actions are taken to identify, contain and mitigate any immediate health and safety threats that are posed by a release (such activities include investigation and initiation of free product removal, if present);
 - (3) All releases from UST systems are investigated to determine if there are impacts on soil and groundwater, and any nearby surface waters. The extent of soil and groundwater contamination must be delineated when a potential threat to human health and the environment exists.
 - (4) All releases from UST systems are cleaned up through soil and groundwater remediation and any other steps are taken, as necessary to protect human health and the environment;
 - (5) Adequate information is made available to VIDPNR to demonstrate that corrective actions are taken in accordance with the requirements of paragraph (e) of this section. This information must be submitted in a timely manner that demonstrates the corrective action's technical adequacy to protect human health and the environment.
- f. In accordance with 40 CFR §280.67, VIDPNR must notify the affected public of all confirmed releases requiring a plan for soil and groundwater remediation, and upon request provide or make available information to inform the interested public of the nature of the release and the corrective measures planned or taken.

B. EPA-lead implementation activities

Unless otherwise stated, EPA-lead implementation activities described in this MOA will be initiated by EPA Region 2.

1. EPA will establish policy for handling variances allowed in 40 CFR Part 280.

2. Enforcement

EPA and VIDPNR will communicate and coordinate closely on enforcement, so that each agency will be aware of the other's enforcement activities. Generally, EPA will defer to VIDPNR's enforcement authority when VIDPNR has taken appropriate enforcement action. Prior to conducting UST compliance inspections or initiating enforcement actions within the Territory, EPA will generally notify the VIDPNR at least 7 days prior, verbally or in writing, for the purpose of coordinating federal and territorial actions, except that EPA will not generally provide notice to VIDPNR prior to issuing field citations.

VIDPNR reserves the right to act independently under territorial authority.

EPA reserves the right to act independently in any SWDA Subtitle I implementation and enforcement activity in the Territory. EPA will undertake enforcement actions as it deems appropriate. These actions may occur as consequences of planned activities (e.g., monitoring compliance with existing system leak detection phase-ins) or random inspections (e.g., site visits).

III. EPA OVERSIGHT

EPA oversight of the VIDPNR's UST and LUST programs shall consist of the following elements:

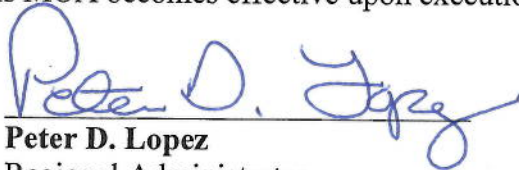
- A. Review of cooperative agreement applications and workplans contained therein;
- B. Review of semi-annual reports of the Territory's UST and LUST programs to be submitted to EPA by the VIDPNR;
- C. Review and evaluation of VIDPNR's UST enforcement and LUST remedial action policies;
- D. Review of other submittals required by UST or LUST cooperative agreement workplans;
- E. At least one annual on-site meeting to discuss performance under the open cooperative agreements and this MOA.

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IV. VIDPNR – U.S. EPA UST/LUST Memorandum of Agreement (MOA)

SIGNATURES

This MOA becomes effective upon execution of the signatures below.



Peter D. Lopez
Regional Administrator
U.S. Environmental Protection Agency
Region 2

9/3/19

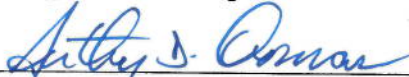
Date



Jean-Pierre L. Oriol
Commissioner
Virgin Islands Department of Planning and Natural Resources

16-Aug-2019

Date



Anthony D. Thomas
Commissioner
Virgin Islands Department of Property and Procurement

8/28/18

Date

APPROVED:



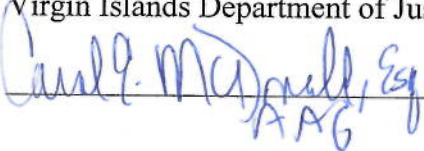
Honorable Albert Bryan Jr.
Governor
Virgin Islands Department of Planning and Natural Resources

9/24/19

Date

APPROVED AS TO LEGAL SUFFICIENCY

Virgin Islands Department of Justice by:


AAG

9/19/19

Date

CERTIFICATE OF APPROVAL

I hereby certify that this is a true and exact copy of MOU No. _____ entered into between the Virgin Islands Department of Planning and Natural Resources and the Department of Property and Procurement, and the United States Environmental Protection Agency.

Anthony D. Thomas
Commissioner
Virgin Islands Department of Property and Procurement