DOCUMENT 2

MISSOURI ATTORNEY GENERAL'S STATEMENT: OBJECTIVES BOXES AND NARRATIVE EXPLANATIONS

This document includes the objectives boxes for Missouri's SPA application and, together with the discussion of program scope issues below and the narrative text provided following each objective, represents the required Attorney General's analysis of the Missouri underground storage tank (UST) statutes and regulations. The objectives boxes, which contain all relevant statutory and regulatory citations, and the associated narrative text provide the necessary written demonstration from the Office of the Attorney General for the State of Missouri that Missouri laws and regulations provide adequate authority to carry out the state Underground Storage Tank (UST) program described in 40 CFR §281.21.

Because Missouri has adopted rules directly based on the text of the federal UST regulations, in many cases it is only necessary to provide a citation to the appropriate state statutes and regulations along with a simple statement explaining the State's adoption of rules directly based on the federal regulations. Where the state regulations or statutes differ, explanatory text is provided in order to describe what the differences are and whether those differences are more stringent or broader in scope. In the paragraph titled "Discussion of Program Scope Issues" below, areas in which state statutes and regulations differ substantially from the federal UST regulations are discussed. The description includes an analysis of the applicable Missouri laws and regulations that, when taken together with the UST laws and regulations, adequately address the parallel federal technical requirement.

Discussion of Program Scope Issues

The State's regulatory definition of "underground storage tank" explicitly excludes transformers, circuit breakers, and other electrical equipment, whereas the federal definition does not. However, in practice, these types of equipment would likely not be found underground; thus, would never qualify as regulated UST systems. Additionally, such equipment is regulated under other statutory and regulatory authorities, e.g. the Toxic Substances Control Act (TSCA). Therefore, this regulatory exclusion simply makes explicit an exclusion that is implicit in the federal definition. Because this type of equipment is rarely, if ever, found underground, and in the event that it is found, is covered by other statutory and regulatory authorities, the Missouri Attorney General's Office certifies that the scope of the Missouri definition of "underground storage tank" is not lesser in scope than the federal definition.

Missouri statutes and regulations define the term "release" as including, but not limited to, "spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a petroleum storage tank into groundwater, surface water, or subsurface soils." A "petroleum storage tank" is defined in the state statutes and regulations as an aboveground storage tank or underground storage tank used to contain an accumulation of petroleum. However, the definition of "petroleum" is limited to gasoline, kerosene, diesel, lubricants, and fuel oil. The federal regulations define "release" to include spilling, leaking, emitting, discharging, escaping,

leaching, or disposing from any UST system, regardless of whether petroleum or some other regulated substance is stored in the system. As a result, with respect to some petroleum products and all hazardous substances, the state definition of "release" found in the UST law and regulations is not identical to the federal definition.

However, the state "Spill Bill" found in sections 260.500 to 260.550, RSMo. does apply to all hazardous substance emergencies. The definition of "hazardous substance emergency" includes releases of hazardous substances as well as releases of all petroleum products. When a hazardous substance emergency occurs, the department has the authority to require the person having control over the hazardous substance to clean up the release and take any measures necessary to end the emergency. Additionally, the definition of "pollution" found in the Missouri Clean Water Law, section 644.016, RSMo. includes any water contaminant placed, or caused or permitted to be placed, in a location where it is reasonably certain to cause "pollution" of any waters of the state, in violation of 644.051.1(1), RSMo. Taken together, the state definition of "release" found in the UST law and regulations, the state "Spill Bill", and the Missouri Clean Water Law ensure that the state has adequate authority to require the remediation of any release that is covered by the federal UST regulations. Therefore, the definition of "release" in Chapter 319 by no means prevents the state from addressing releases of hazardous substances or any petroleum product from USTs or ASTs. The Missouri Attorney General's Office certifies that the scope of the Missouri definition of "release" is not lesser in scope than the federal definition.

Section 319.100, RSMo. defines a "minor violation" as a "violation that possesses a small potential to harm the environment or human health or cause pollution, was not knowingly committed, and is not defined by the United States Environmental Protection Agency as other than minor." Section 319.139(1), RSMo. states that administrative penalties cannot be imposed for minor violations. However, administrative penalties are optional, not mandatory, and the Department has full authority to pursue civil penalties without the exemption for "minor violation" in section 319.127. Additionally, there is no explicit requirement in the federal SPA regulations that a state has administrative penalty authority. In practice, the Missouri UST program has not yet used administrative penalties as an enforcement tool, and the civil penalty authority more typically relied upon by the State for enforcement does not include a similar exclusion or limitation for minor violations. The state may pursue civil penalties for $10,000 per day per violation under section 319.127, RSMo., and there is no reference to "minor violation" being exempted in that section. Therefore, the state definition of "minor violation" in no practical way affects the ability of the State to implement an effective enforcement program for UST violations consistent with federal SPA requirements.

With respect to a State's security interest exemption,
The federal regulations provide two avenues for determining whether The state program is "no less stringent" than the federal program. One of those avenues is if the state program achieves the effect that a person who, without participating in management of an UST, holds ownership primarily to protect a security interest in the UST, does not participate in management of the UST, and does not engage in petroleum production, refining or marketing--is not an "owner" of an UST for regulatory purposes. 40 CFR § 281.39(a)(2).

Missouri law defines "owner" to "not include anyone who, without participating in management

of an aboveground tank or underground storage tank or both types of tanks, and otherwise not primarily engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect a security interest in or lien on the tank or the property where the tank is located." Section 319.100(9), RSMo. This language is consistent with the federal requirements pertaining to lender liability for state program approval.

However, Section 427.041, RSMo. contains language that limits the application of language in other state statutes imposing liability on lenders for environmental conditions. Of particular interest in evaluating the State's provision for lender liability is the additional clause in Section 427.041 that states that its preemption of other laws does not extend to "those state statutes pertaining to the petroleum storage tank insurance fund." The question is whether this additional clause extends to the entirety of Chapter 319 and thus excludes from preemption the entirety of Chapter 319, or is limited only to the provisions within Chapter 319 relating to the Petroleum Storage Tank Insurance Fund (PSTIF).

At face value, because only the PSTIF statutes are specifically excluded from preemption, the remainder of Chapter 319 pertaining to lender liability could be interpreted to be limited in application, and therefore less stringent than federal law. In resolving the question over the scope of the exclusion of the preemption of Section 427.041, it is necessary to consult the legislative history of Chapter 319 and Section 427.041. If one refers to the original version of Section 427.041 passed by the General Assembly in 1991, there is evidence that the language in Section 427.041 does not apply to any of the UST law found in Chapter 319. This is because the original version of Section 427.041 stated that the preemption did not apply to "those state statutes regulating and pertaining to underground storage tanks." The statute was later amended, in 1997, to state that the preemption did not apply to the "state statutes regulating and pertaining to the petroleum storage tank insurance fund." The question becomes what, if any, effect this change had on the extent to which the remainder of Chapter 319 is excluded from preemption by Section 427.041.

The 1991 version of Section 427.041 seems somewhat contradictory because it provided, as an example of preempted laws, those pertaining to lender liability for underground storage tanks, but went on to state that it did not preempt those state statutes regulating and pertaining to underground storage tanks. However, the statute can be interpreted to give effect to each of these provisions without being self-contradictory. Because state UST statutes were expressly excluded from preemption, it appears evident that the original preemption language was limited to local or federal laws affecting underground storage tanks. Support for this interpretation comes from the fact that the provisions in Chapter 319 relating to owners, operators and lenders were a part of the same bill that created the preemption provision in Chapter 427. It would not have made sense for the legislature, in the same bill, to make changes to Chapter 319, only to immediately preempt them with inconsistent provisions created in a different chapter. Missouri courts follow a rule that seemingly inconsistent statutes addressing the same subject should be harmonized if at all possible. Courts have less difficulty harmonizing provisions that address the same subject in different chapters of the revised statutes when those provisions were enacted together in a single, comprehensive bill.

Given the interpretation of the courts, it is apparent that the 1997 amendment to Section 427.041 to change the exception to preemption to "those state statutes pertaining to the petroleum storage tank insurance fund" is consistent with the original 1991 legislative intent, namely, that the scope of the Section 427.041 preemption does not apply to the lender liability provisions, or any other parts, of Chapter 319.

Because the state statutes pertaining to lender liability for tanks that are set forth in Chapter 319, RSMo. are not preempted by any inconsistent provisions in Section 427.041, and Chapter 319 is otherwise analogous to the federal lender liability requirements for state program approval, the Missouri Attorney General's Office certifies that the state requirements for lender liability are no less stringent than federal law.

B. Discussion of "No Less Stringent" Objectives

The following pages of this Attorney General's Statement provide the relevant state statutory and regulatory citations in "objectives box" format, and also provide narrative text certifying that the cited provisions meet or exceed the standards set forth in the federal SPA regulations at 40 CFR part 281. Where a state provision differs significantly from the corresponding federal requirement, narrative text is provided to explain the difference and certify that the state provision is adequate for SPA purposes.

New UST Systems and Notification

Objective §281.30

The State must have requirements that ensure that all new UST systems conform with the following:	Statutory/Regulatory Citations
(a) Be designed, constructed, and installed in a manner that will prevent releases for their operating life due to manufacturing defects, structural failure, or corrosion. [Note: Codes of practice developed by nationally-recognized organizations may be used to demonstrate that the State program requirements are no less stringent in this area.]	Section 319.105, Revised Statutes of Missouri (RSMo.) 10 CSR 20-10.020(1)(A) 10 CSR 20-10.020(1)(B) 10 CSR 20-10.020(1)(C) 10 CSR 20-10.020(1)(D)
(b) Be provided with equipment to prevent spills and tank overfills when new tanks are installed or existing tanks are upgraded, unless the tank does not receive more than 25 gallons at one time.	Section 319.105, RSMo. 10 CSR 20-10.020(1)(C)
(c) All UST system owners and operators must notify the implementing State agency of the existence of any new UST system using a form designated by the State agency.	Section 319.103, RSMo. 10 CSR 20-10.020(1)(E) 10 CSR 20-10.022 10 CSR 20-10.034(1)(A)(1)

Notes on Fulfilling the Objective:

(a) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding the design, construction, and installation of all new UST systems. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

(b) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding the design, construction, and installation of spill and overfill equipment on all new UST systems. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

(c) Federal objective § 281.30(c) provides that the state program must require all UST system owners and operators to notify the Department "of the existence of any new UST system." 10

CSR 20-10.022(1) requires at least a 30-day advance notice of all proposed new UST system installations. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

(d) In addition, sections 319.120 and 319.123, RSMo. and 10 CSR 20-10.022(7), (8), (9), and (10) require that the Department of Natural Resources issue Certificates of Registration for any tanks which meet the requirements of 10 CSR 20-10.022(1)-(5). These additional requirements render the Missouri regulations more stringent than the federal regulations, which do not address certificates of registration.

(e) Also, sections 319.103(8) and (9), RSMo. establish notification requirements for fuel distributors and UST system sellers, respectively. Because the federal regulations do not assign regulatory responsibilities to fuel distributors or UST system sellers, the state requirements are broader in scope than the federal requirements.

(f) Finally, sections 319.120 and 319.123, RSMo. and 10 CSR 20-10.022(9) and (10) establish application fees for owners and operators applying to DNR for a Certificate of Registration for their UST system. This additional requirement renders the Missouri regulations broader in scope than the federal regulations, as the federal regulations to not include the authority to assess registration fees.

Upgrading Existing UST Systems

Objective §281.31

	Statutory/Regulatory Citations
The State must have requirements that ensure Existing UST systems will be replaced or Upgraded before December 22, 1998, to prevent Releases for their operating life due to Corrosion, and spills or overfills.	Section 319.105, Revised Statutes of Missouri (RSMo.) 10 CSR 20-10.021

Notes on Fulfilling the Objective:

The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding the upgrading of existing UST systems. These requirements ensure that existing UST systems will be replaced or upgraded before December 22, 1998. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

In addition, 10 CSR 20-10.022(5) requires that owners and operators of existing UST systems

complete and file updated registration forms if owner information or information regarding tank equipment and operation changes. The federal regulations do not require that owners and operators update their records. This additional requirement renders the Missouri regulations more stringent than the federal regulations.

General Operating Requirements

Objective §281.32

The State must have requirements that ensure All new and existing UST systems conform to The following:	Statutory/Regulatory Citations
(a) Prevent spills and overfills by ensuring that the space in the tank is sufficient to receive the volume to be transferred and that the transfer operation is monitored constantly;	Section 319.105, Revised Statutes of Missouri (RSMo.) 10 CSR 20-10.030
(b) Where equipped with cathodic protection, be operated and maintained by a person with sufficient training and experience in preventing corrosion, and in a manner that ensures that no releases occur during the operating life of the UST system [Note: Codes of practice developed by nationally-recognized organizations and national independent testing laboratories may be used to demonstrate the State program requirements are no less stringent.];	Section 319.105, RSMo. 10 CSR 20-10.031
(c) Be made of or lined with materials that are compatible with the substance stored;	Section 319.105, RSMo. 10 CSR 20-10.032
(d) At the time of upgrade or repair, be structurally sound and upgraded or repaired in a manner that will prevent releases due to structural failure or corrosion during their operating lives;	Section 319.105, RSMo. 10 CSR 20-10.021(2) 10 CSR 20-10.021(3) 10 CSR 20-10.033(1) 10 CSR 20-10.033(2)
(e) Have records of monitoring, testing, repairs, and closure maintained that are sufficient to demonstrate recent facility compliance status, except that records demonstrating compliance with repair and upgrading requirements must be maintained for the remaining operating life of the facility. These records must be made readily available when requested by the implementing agency.	Sections 319.105 and 319.107, RSMo. 10 CSR 20-10.031(1)(D) 10 CSR 20-10.033(2)(F) 10 CSR 20-10.034(1)(B) 10 CSR 20-10.034(1)(C) 10 CSR 20-10.045 10 CSR 20-10.074

Notes on Fulfilling the Objective:

(a) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding the prevention of spills and overfills of all UST systems. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

(b) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding the operation and maintenance of USTs equipped with cathodic protection. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

(c) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding the requirement that all USTs be made of or lined with materials that are compatible with the substance stored. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

(d) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding the upgrading and repair of UST systems. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

(e) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding the maintenance of records to demonstrate UST facility compliance. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

(f) While 40 CFR §281.32(e) requires that owners and operators maintain upgrading records for the remaining life of a facility, the Missouri regulations do not contain a similar requirement. However, 10 CSR 20-10.033(2)(F) requires maintenance of records of UST system repairs for the remaining life of the facility, and the State considers upgrades to be a type of repair. The Missouri Attorney General certifies that this interpretation is consistent with state law and regulations, and that the Missouri regulations fulfill the objectives of these federal technical requirements.

(g) In addition, 10 CSR 20-10.034(1)(C)(2)-(3) requires that owners and operators keep records at a readily available alternative site and provide them for inspection within three working days or five calendar days upon receipt of written request. 10 CSR 20-10.034(2)(A) and (2)(B) outline how the written request shall be made. 10 CSR 20-10.034(3) states that if owners fail to meet the above requirements, the Department may order them to maintain records on-site in accordance with 10 CSR 20-10.034(1)(C)(1). Although the federal regulations allow owners and operators to keep records at a readily available alternative site, they do not specify a specific time frame within which they are required to be provided to the

implementing agency. Therefore, the Missouri regulations are more stringent than the federal regulations.

Release Detection

Objective §281.33

	Statutory/Regulatory Citations
(a) Release detection requirements for owners and operators must consist of a method, or combination of methods, that is:	
(1) Capable of detecting a release of the regulated substance from any portion of the UST system that routinely contains regulated substances -- as effectively as any of the methods allowed under the Federal Technical Standards—for as long as the UST system is in operation. In comparing methods, the implementing agency shall consider the size of release that the method can detect and the speed and reliability with which the release can be detected.	Section 319.107, Revised Statutes of Missouri (RSMo.) 10 CSR 20-10.040(1)(A) 10 CSR 20-10.040(1)(C) 10 CSR 20-10.041(1)(A)(3) 10 CSR 20-10.043
(2) designed, installed, calibrated, operated and maintained so that releases will be detected in accordance with the capabilities of the method;	Section 319.107, RSMo. 10 CSR 20-10.040(1)(B) 10 CSR 20-10.043
(b) Release detection requirements must, at a minimum, be scheduled to be applied at all UST systems:	Section 319.107, RSMo.
(1) immediately when a new UST system is installed:	10 CSR 20-10.040(3)
(2) on an orderly schedule that completes a phase-in of release detection at all existing UST systems (or their closure) before December 22, 1993, except that release detection for the piping attached to any existing UST that conveys a regulated substance under greater than atmospheric pressure must be phased-in before December 22, 1990.	10 CSR 20-10.040(3)

Release Detection (continued)

Objective §281.33

		Statutory/Regulatory Citations
(c)	All petroleum tanks must be sampled, tested, or checked for releases at least monthly, except that	
	(1) new or upgraded tanks (that is, tanks and piping protected from releases due to corrosion and equipped with both spill and overfill prevention devices) may temporarily use monthly inventory control (or its equivalent) in combination with tightness testing (or its equivalent) conducted every 5 years for the first 10 years after the tank is installed or upgraded, or until December 22, 1998, whichever is later; and	Section 319.107, Revised Statutes of Missouri (RSMo.) 10 CSR 20-10.041(1)(A)(1)
	(2) existing tanks unprotected from releases due to corrosion or without spill and overfill prevention devices may use monthly inventory control (or its equivalent) in combination with annual tightness testing (or its equivalent) until December 22, 1998.	Section 319.107, RSMo. 10 CSR 20-10.041(1)(A)(2) Section 319.107, RSMo.
(d)	All underground piping attached to the tank that routinely conveys petroleum must conform to the following:	10 CSR 20-10.041 (1)(B)(1) 10 CSR 20-10.044
	(1) if the petroleum is conveyed under greater than atmospheric pressure:	
	(i) the piping must be equipped with release detection that detects a release within an hour by restricting or shutting off flow or sounding an alarm; and	
	(ii) the piping must have monthly monitoring applied or annual tightness tests conducted.	10 CSR 20-10.041 (1)(B)(2)
	(2) if suction lines are used:	10 CSR 20-10.044
	(i) tightness tests must be conducted at least once every 3 years, unless a monthly method of detection is applied to this piping; or	

Release Detection (continued)

Objective §281.33

		Statutory/Regulatory Citations
	(ii) the piping is designed to allow the contents of the pipe to drain back into the storage tank if the suction is released and is also designed to allow an inspector to immediately determine the integrity of the piping system.	Section 319.107, Revised Statutes of Missouri (RSMo.) 10 CSR 20-10.041(1)(B)(2)(B) 10 CSR 20-10.044
(e)	All UST systems storing hazardous substances must meet the following:	
	(1) all existing hazardous substance UST systems must comply with all the requirements for petroleum UST systems in sections 281.33(c) and (d) above, and after December 22, 1998, they must comply with the following subsection (e)(2).	Section 319.107, RSMo. 10 CSR 20-10.042(1)(A)
	(2) all new hazardous substance UST systems must use interstitial monitoring within secondary containment of the tanks and the attached underground piping that conveys the regulated substance stored in the tank, unless the owner and operator can demonstrate to the State (or the State otherwise determines) that another method will detect a release of the regulated substance as effectively as other methods allowed under the State program for petroleum UST systems and that effective corrective action technology is available for the hazardous substance being stored that can be used to protect human health and the environment.	Section 319.107, RSMo. 10 CSR 20-10.042(1)(B)

Notes on Fulfilling the Objective:

(a) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding acceptable release detection methods and related operation/maintenance requirements for owners and operators of UST systems. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

(b) In addition, 10 CSR 20-10.040(1)(C) requires that automatic line leak detectors installed after December 22, 1990 be capable of detecting the applicable leak rate or quantity specified in the regulations. The federal regulations contain analogous requirements for automatic line leak detectors installed after September 22, 1991. As a result, the Missouri regulations are broader in scope, as they apply to tank systems not covered by the federal regulations.

(c) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding scheduled application of release detection requirements to all UST systems. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

(d) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding acceptable methods of release detection for tanks based on the age and upgrade status of the tank. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

(e) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding acceptable methods of release detection for piping based on the type of piping (i.e., pressurized or suction) employed. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

(f) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding acceptable release detection methods for UST systems that store hazardous substances. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

Release Reporting, Investigation, and Confirmation

Objective §281.34

All owners and operators must conform with The following:	Statutory/Regulatory Citations
(a) Promptly investigate all suspected releases, including:	Sections 319.107 and 319.109, Revised Statutes of Missouri (RSMo.)
(1) when unusual operating conditions, release detection signals and environmental conditions at the site suggest a release of regulated substances may have occurred; and	10 CSR 20-10.050 10 CSR 20-10.052 10 CSR 20-10.040(2)
(2) when required by the implementing agency to determine the source of a release having an impact in the surrounding area; and	10 CSR 20-10.051 Sections 319.109 and 260.505, RSMo. 10 CSR 20-10.030(2) 10 CSR 20-10.034(1)(A)(2)
(b) Promptly report all confirmed underground releases and any spills and overfills that are not contained and cleaned up.	10 CSR 20-10.050 10 CSR 20-10.052 10 CSR 20-10.053 10 CSR 20-10.061(1)(A)
(c) Ensure that all owners and operators contain and clean up unreported spills and overfills in a manner that will protect human health and the environment.	Section 319.109, RSMo. 10 CSR 20-10.053 10 CSR 20-10.060 10 CSR 20-10.067

Notes on Fulfilling the Objective:

(a) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding the investigation and reporting of suspected releases. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

(b) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding the prompt reporting of all confirmed releases. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these

federal technical requirements.

(c) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations to ensure that all owners and operators contain and clean up unreported spills and overfills in a manner that is protective of human health and the environment. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

Release Response and Corrective Action

Objective §281.35 on next page

The State must have requirements that ensure:	Statutory/Regulatory Citations
(a) All releases from UST systems are promptly assessed and further releases are stopped;	Sections 260.510 and 319.109, Revised Statutes of Missouri (RSMo.) 10 CSR 20-10.034(1)(A)(3) 10 CSR 20-10.061 10 CSR 20-10.068
(b) Actions are taken to identify, contain and mitigate any immediate health and safety threats that are posed by a release (such activities include investigation and initiation of free product removal, if present);	Sections 250.510 and 319.109, RSMo. 10 CSR 20-10.034(1)(A)(3) 10 CSR 20-10.061 10 CSR 20-10.062 10 CSR 20-10.064 10 CSR 20-10.068
(c) All releases from UST systems are investigated to determine if there are impacts on soil and ground water, and any nearby surface waters. The extent of soil and ground-water contamination must be delineated when a potential threat to human health and the environment exists.	Sections 260.510 and 319.109, RSMo. 10 CSR 20-10.034(1)(A)(3) 10 CSR 20-10.062 10 CSR 20-10.063 10 CSR 20-10.065 10 CSR 20-10.068
(d) All releases from UST systems are cleaned up through soil and ground water remediation and any other steps, as necessary to protect human health and the environment;	Sections 260.510 and 319.109, RSMo. 10 CSR 20-10.065 10 CSR 20-10.066 10 CSR 20-10.068
(e) Adequate information is made available to the state to demonstrate that corrective actions are taken in accordance with the requirements of (a) through (d) of this section. This information must be submitted in a timely manner that demonstrates its technical adequacy to protect human health and the environment; and	Sections 260.510 and 319.109, RSMo. 10 CSR 20-10.064 10 CSR 20-10.065 10 CSR 20-10.066 10 CSR 20-10.068
(f) In accordance with section 280.67, the State must notify the affected public of all confirmed releases requiring a plan for soil and ground water remediation, and upon request provide or make available information to inform the interested public of the nature of the release and the corrective measures planned or taken.	Section 319.109, RSMo. 10 CSR 20-10.067

Notes on Fulfilling the Objective:

(a) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding the prompt assessment and abatement of releases from UST systems. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

(b) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding the actions which must be taken to identify, contain and mitigate health and safety threats posed by a release. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

(c) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding the investigation to determine the extent of impact of releases from UST systems on soil and groundwater. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

(d) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations to ensure that all release from UST systems are cleaned up through soil and ground water remediation and any other steps, as necessary to protect human health and the environment. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

(e) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding demonstration of technical adequacy for any corrective actions being conducted in accordance with the requirements cited in paragraphs (a) - (d), above. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

(f) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding state notification of the public affected by a confirmed release. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

(g) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding releases of petroleum and other hazardous substances from Underground Storage Tanks (USTs). Although the state definition of "release" in Chapter 319 does not include releases of non-petroleum hazardous substances, the Attorney General's Office believes that gap is closed by the state spill bill, sections 260.500 to 260.550, RSMo. More specifically, the definitions of "release" and "hazardous substance" and "person having control over a hazardous substance" and "hazardous substance emergency" in 260.500, RSMo. adequately address releases of any hazardous substance. In

addition, it is also closed by our state clean water law definition of "pollution" (644.016, RSMo.) where any water contaminant is placed, or caused or permitted to be placed, in a location where it is reasonably certain to cause "pollution" of any waters of the state, in violation of 644.051.1(1), RSMo. The Missouri Attorney General's Office, therefore, certifies that Missouri and regulations fulfill the objectives of the parallel federal technical requirements for addressing releases from Underground Storage Tanks.

Out-of-Service UST Systems and Closure

Objective §281.36 on next page

The State must have requirements that ensure UST systems conform with the following:	Statutory/Regulatory Citations
(a) All new and existing UST systems temporarily closed must:	Section 319.111, Revised Statutes of Missouri, 1991 (RSMo.)
(1) continue to comply with general operating requirements, release reporting and investigation, and release response and corrective action;	10 CSR 20-10.070(1)
(2) continue to comply with release detection requirements if regulated substances are stored in the tank;	10 CSR 20-10.070(1)
(3) be closed off to outside access; and	10 CSR 20-10.070(2)
(4) be permanently closed if the UST system has not been protected from corrosion and has not been used in one year, unless the State approves an extension after the owner and operator conducts a site assessment.	10 CSR 20-10.070(3)
(b) All tanks and piping must be cleaned and permanently closed in a manner that eliminates the potential for safety hazards and future releases.	Sections 319.103(6) and 319.111, RSMo. 10 CSR 20-10.071(2) 10 CSR 20-10.071(3) 10 CSR 20-10.071(4)
The owner or operator must notify the State of permanent UST system closures.	10 CSR 20-10.071(1) 10 CSR 20-10.034(1)(A)(4)
The site must also be assessed to determine if there are any present or were past releases, and if so, release response and corrective action requirements must be complied with.	10 CSR 20-10.072 Section 319.111, RSMo. 10 CSR 20-10.073
(c) All UST systems taken out of service before December 22, 1988, must permanently close in accordance with paragraph (b) of this section when directed by the State.	

Notes on Fulfilling the Objective:

(a) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding temporary closure of new and existing UST systems. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

(b) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding the permanent closure of UST systems. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

In addition, 10 CSR 20-10.071(2) requires that owners and operators manage all liquids and accumulated sludges removed from permanently closed UST systems in accordance with applicable state and federal regulations. Because the federal regulations do not contain such a requirement, the state requirements are <u>more stringent</u>.

(c) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding the permanent closure and assessment in accordance with paragraph (b), above, of UST systems taken out of service prior to December 22, 1988. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

Financial Responsibility for USTs Containing Petroleum

Objective §281.37

(a) State requirements for financial responsibility must ensure that:	Statutory/Regulatory Citations
(1) owners and operators have $1 million per occurrence for corrective action and third-party claims in a timely manner to protect human health and the environment;	Section 319.114, Revised Statutes of Missouri (RSMo.) 10 CSR 20-11.093(1)(A) 10 CSR 20-11.093(4)
(2) owners and operators not engaged in petroleum production, refining, and marketing and who handle a throughput of 10,000 gallons of petroleum per month or less have $500,000 per occurrence for corrective action and third-party claims in a timely manner to protect human health and the environment;	Section 319.114, RSMo. 10 CSR 20-11.093(1)(B) 10 CSR 20-11.093(4)
(3) owners and operators of 1 to 100 petroleum USTs must have an annual aggregate of $1 million; and	Section 319.114, RSMo. 10 CSR 20-11.093(2)(A) 10 CSR 20-11.093(5) 10 CSR 20-11.093(6)
(4) owners and operators of 101 or more petroleum USTs must have an annual aggregate of $2 million.	Section 319.114, RSMo. 10 CSR 20-11.093(2)(B) 10 CSR 20-11.093(5) 10 CSR 20-11.093(6)
(b) Phase-in requirements. Financial responsibility requirements for petroleum UST systems must, at a minimum, be scheduled to be applied at all UST systems on an orderly schedule that completes a phase-in of the financial responsibility requirements within the time allowed in the Federal regulations under 40 CFR §280.91.	Section 319.114, RSMo. 10 CSR 20-11.091

Financial Responsibility for USTs Containing Petroleum (continued)

Objective §281.37

	Statutory/Regulatory Citations
(c) States may allow the use of a wide variety of financial assurance mechanisms to meet this requirement. Each financial mechanism must meet the following criteria: be valid and enforceable; be issued by a provider that is qualified or licensed in the State; not permit cancellation without allowing the State to draw funds; ensure that funds will only and directly be used for corrective action and third-party liability costs; and require that the provider notify the owner or operator of any circumstance that would impair or suspend coverage.	Section 319.114, Revised Statutes of Missouri (RSMo.) 10 CSR 20-11.094 through 10 CSR 20-11.104
(d) States must require owners and operators to maintain records and demonstrate compliance with the State financial responsibility requirements, and these records must be made readily available when requested by the implementing agency.	Section 319.114, RSMo. 10 CSR 20-11.106 10 CSR 20-11.107

Notes on Fulfilling the Objective:

(a) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding the amounts and scope of financial responsibility for all owners and operators of UST systems. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

(b) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding the phase-in of financial responsibility requirements for various categories of petroleum UST owners except that the dates for compliance are, in some cases, later than stated in the federal rules. However, the Missouri compliance dates have now all passed, and the Missouri regulations therefore fulfill the federal financial assurance requirements. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

(c) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding the types of instruments that may be used to demonstrate compliance with financial responsibility requirements. Additionally, 10 CSR 20-11.094 provides owners and operators using the Petroleum Storage Tank Insurance Fund mechanism or insurance mechanism a method to demonstrate self-assurance to meet the deductible requirements for those mechanisms. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

(d) The Missouri Department of Natural Resources has adopted rules directly based on the text of the federal regulations regarding the maintenance of records demonstrating compliance with financial responsibility requirements. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

Lender Liability

(§281.39)

2/21/07 417-869-4831 Faxed to Jim C. YB.

	Statutory/Regulatory Citations
(a) A State program's security interest exemption must:	
(1) Mirror the security interest exemption provided for in 40 CFR part 280, subpart I; or	Section 319.117, Revised Statutes of Missouri (RSMo.)
(2) Achieve the same effect as provided by the following key criteria:	Section 319.117, RSMo.
(i) A holder, meaning a person who maintains indicia of ownership primarily to protect a security interest in a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located, who does not participate in the management of the UST or UST system as defined under 40 CFR 280.210 of this chapter, and who does not engage in petroleum production, refining, and marketing as defined under 40 CFR 280.200(b) is not:	
(A) An "owner" of a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located for purposes of compliance with the requirements of 40 CFR part 280; or	
(B) An "operator" of a petroleum UST or UST system for purposes of compliance with the requirements of 40 CFR part 280, provided the holder is not in control of or does not have responsibility for the daily operation of the UST or the UST system.	

Notes on Fulfilling the Objective:

(a) Section 319.100(9), RSMo. defines "owner" to "not include anyone who, without participating in management of an aboveground tank or underground storage tank or both types of tanks, and otherwise not primarily engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect a security interest in or lien on the tank or the property where the tank is located." This language is consistent with the federal requirements pertaining to lender liability for state program approval.

(b) Section 427.041, RSMo. contains language that preempts other laws pertaining to lender liability. However, harmonization of its provisions through analysis of legislative history shows that it does not preempt the lender liability provisions of Section 319.100(9).

The Missouri Attorney General certifies that the Missouri statute fulfills the objectives of the federal requirements for lender liability for Underground Storage Tanks.

Legal Authorities for Compliance Monitoring

(§281.40)

The State must have the following Specific compliance monitoring authorities:	Statutory/Regulatory Citations
(a) Any authorized representative of the State engaged in compliance inspections, monitoring, and testing must have authority to obtain by request any information from an owner or operator with respect to the UST system(s) that is necessary to determine compliance with the regulations.	Section 319.117, Revised Statutes of Missouri (RSMo.)
(b) Any authorized representative of the State must have authority to require an owner or operator to conduct monitoring or testing.	Section 319.117, RSMo.
(c) Authorized representatives must have the authority to enter any site or premises subject to UST system regulations or in which records relevant to the operation of the UST system(s) are kept, and to copy these records, obtain samples of regulated substances, and inspect or conduct the monitoring or testing of UST system(s).	Section 319.117, RSMo.

Notes on Fulfilling the Objective:

(a) Section 319.117.1, RSMo. requires that

> "...any owner or operator of an underground storage tank shall, upon the request of any duly authorized officer, employee or representative of the department, furnish information relating to such tanks, including tank equipment and contents, conduct monitoring or testing, and permit the designated officer at all reasonable times to have access to, and to copy, all records relating to such tanks."

The Missouri Attorney General certifies that the Missouri statute fulfills the objectives of the federal requirements for legal authority for compliance monitoring.

(b) Section 319.117.1(3), RSMo. authorizes Department employees to require owners and operators of USTs to

> "conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water, or groundwater."

The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

(c) Section 319.117.1(1), RSMo. authorizes Department employees to

> "enter at reasonable times any establishment or place where an underground storage tank is located or where records pertaining to underground storage tanks are located;"

The Missouri statute also authorizes Department employees to copy all records relating to the tanks. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

Legal Authorities for Enforcement Response

(§281.41) on next page

The State must have the following specific Enforcement response authorities for State Program approval:	Statutory/Regulatory Citations
(a) Any State agency administering a program must have the authority to implement the following remedies for violations of State program requirements:	
(1) To restrain immediately and effectively any person by order or by suit in State court from engaging in any unauthorized activity that is endangering or causing damage to public health or the environment;	Section 319.125, Revised Statutes of Missouri (RSMo.)
(2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement;	Section 319.127, RSMo.
(3) To assess or sue to recover in court civil penalties as follows:	
(i) Civil penalties for failure to notify or for submitting false information pursuant to tank notification requirements must be capable of being assessed up to $5,000 or more per violation.	Section 319.127, Section 319.139, RSMo. 10 CSR 20-13.080
(ii) Civil penalties for failure to comply with any State requirements or standards for existing or new tank systems must be capable of being assessed for each instance of violation, up to $5,000 or more for each tank for each day of violation. If the violation is continuous, civil penalties shall be capable of being assessed up to $5,000 or more for each day of violation.	Section 319.127, Section 319.139, RSMo. 10 CSR 20-13.080

Notes on Fulfilling the Objective:

(a) Section 319.125.3, RSMo. authorizes the MDNR to order an owner/operator to institute clean-up operations pursuant to §§ 260.500 to 260.550, RSMo. should the MDNR believe a release from an UST system poses an immediate threat to public health or safety or to the environment. In addition, if an owner or operator violates any of §§319.100 to 319.139, RSMo., the State may file suit seeking injunctive relief. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

(b) Section 319.103, RSMo. provides that owners of tanks shall register the tanks and specify the age, size, type, location and uses of the tank. Owners who falsely specify the age, size, type, location and uses of the tank have not complied with the section, and Missouri is capable of assessing civil penalties against those violators. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements.

(c) Although Section 319.127(4), RSMo. requires the Department to include written criteria with any notice of violation, this provision does not limit Missouri's enforcement authorities to only those violations specified in the written criteria. The Department is not prescriptive when it issues notices of violation. Rather, the written criteria provided is a general description of the item that needs to be corrected. If the item is not corrected or if additional related problems are discovered, the State has the ability to issue further NOVs or enforcement orders as the need arises. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements

(d) Section 319.127.1, RSMo. provides that it is unlawful for an owner or operator to violate Sections 319.100 to 319.137, RSMo. Further, section 319.127.1, RSMo. authorizes the MDNR to commence a civil action in a court of competent jurisdiction in which the violation occurred "for appropriate relief, including a temporary or permanent injunction." Pursuant to section 319.139, RSMo. the MDNR may elect to administratively assess penalties for violations, or pursuant to section 319.139.5, RSMo. in lieu thereof, to request that the Attorney General or prosecutor file "an appropriate legal action seeking a civil penalty" in the appropriate circuit court. Potential violations under sections 319.100 to 319.137, RSMo. include tank registration, performance standards for new and upgraded tanks, standards of performance and reporting for leak detection, release reporting, tank closure, financial responsibility, and recordkeeping and inspections. Owners who do not comply with these sections are in violation, and Missouri is capable of assessing civil penalties against those violators. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements. The Missouri Attorney General, therefore, certifies that the Missouri regulations fulfill the objectives of these federal technical requirements

(e) The Missouri statutes authorize the State to assess up to $10,000 per violation per day, which exceeds the requirements set forth in the federal objective, thereby rendering the Missouri statutes and regulations more stringent. The Missouri Attorney General certifies that state authorities not only allow for assessment of penalties per violation, per day, but also per tank, in accordance with the federal SPA requirements.

(f) In addition to assessing penalties in civil court, pursuant to section 319.139.1, RSMo. the MDNR also may issue administrative orders assessing penalties for violations of the requirements under sections 319.100 to 319.137, RSMo. The procedures applicable to these administrative penalties are discussed in the "Demonstration of Adequate Enforcement Procedures" section of this SPA application.

(g) Although state law is less broad than the federal with respect to penalties because of the definition of "minor violation" in 319.100 and the exemption from administrative penalties in 319.139, it should be noted that administrative penalties are optional, not mandatory, and that the Department has full authority to pursue civil penalties without the exemption for "minor violation" in section 319.127. Therefore, there no gap between the state and federal penalty provisions, because the state may pursue civil penalties for $10,000 per day per violation under section 319. 127, and there is no reference to "minor violation" being exempted in that section. The Missouri Attorney General certifies that state authorities allow for assessment of penalties per violation, per day in accordance with the parallel federal SPA requirements.

Public Participation in Enforcement Proceedings

(§281.42)

Any State administering a program must Provide for public participation in The State enforcement process by providing Any one of the following three options:	Statutory/Regulatory Citations
(a) Authority that allows intervention analogous to Federal Rule 24(a)(2), and assurance by the appropriate State enforcement agency that it will not oppose intervention under the State analogue to Rule 24(a)(2) on the ground that the applicant's interest is adequately represented by the State.	Section 507.90, Revised Statutes of Missouri (RSMo.) Rule 52.12, Missouri Rules of Civil Procedure
(b) Authority that allows intervention as of right in any civil action to obtain the remedies specified in 281.41 by any citizen having an interest that is or may be adversely affected; or	
(c) Assurance by the appropriate State agency that:	
(1) It will provide notice and opportunity for public comment on all proposed settlements of civil enforcement actions (except where immediate action is necessary to adequately protect human health and the environment);	
(2) It will investigate and provide responses to citizen complaints about violations; and	
(3) It will not oppose citizen intervention when permissive intervention is allowed by statute, rule, or regulation.	

Notes on Fulfilling the Objective:

Missouri Rule of Civil Procedure 52.12 is analogous to Federal Rule 24(a)(2). The MDNR and the Attorney General's office will not oppose citizen intervention under Rule 52.12 on the ground that the applicant's interest is adequately represented by the State of Missouri.

ATTORNEY GENERALS CERTIFICATION AND STATEMENT

The Missouri UST statutes and regulations satisfy all Federal State Program Approval objectives at 40 CFR Part 281 regarding program scope and stringency.

I hereby certify pursuant to my authority as Attorney General and in accordance with Section 9004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and the Superfund Amendments and Reauthorization Act of 1986, and 40 CFR Part 281 that in my opinion the laws of the State of Missouri provide adequate authority to (1) carry out the "no less stringent" technical requirements submitted by the Missouri Department of Natural Resources, (2) adequately enforce compliance with such program, and (3) regulate, at a minimum, the same underground storage tanks (UST) universe as the federal program.

I hereby certify, to the best of my knowledge, that the application submitted by the Missouri Department of Natural Resources is legally and factually accurate. The specific authorities provided are contained in statutes or regulations lawfully adopted and effective at this time.

Jeremiah W. (Jay) Nixon
Attorney General
State of Missouri

Joseph P. Bindbeutel
Assistant Attorney General