

## **Update on EPA's Fund Soundness Guidance**

### **ASTSWMO Mid-Year Meeting**

**April 23-24, 2008**

#### **Purpose of Guidance:**

To provide EPA Regional Offices **procedures** and **criteria** for reviewing the soundness of funds used as financial responsibility (FR) mechanisms for remedial action or third-party liability due to a release from a leaking underground storage tank.

#### **Applicability:**

Guidance would apply to all state funds operating as full or partial FR mechanisms for federally regulated underground storage tanks in both states with program approval (SPA states) and non-SPA states. For States that have transitioned from the use of a state fund towards the use of private insurance, Regions would review such state funds in the context of their oversight of state programs.

## Regional Reviews:

- State fund reviews are part of the continuous support and oversight of State funds and State programs by the Regions
- Such reviews alert Regions as to problems and potential problems with State funds as the approved FR mechanisms for underground storage tanks.
- Outlined in the attached diagram is a three phased process through which Regions monitor a fund, engage the state in remedial steps as necessary, and, as a last resort, withdraw the fund as a mechanism for FR.
  - The 2005 Energy Policy Act gave the Agency the authority to independently withdraw approval of a state fund for purposes of FR without withdrawing the entire State program.

## An Annual Review:

- X ■ Regions will be expected to perform a review of the soundness of state funds at least annually.
- This review is recommended to be conducted in **tiers** to balance the need for oversight with the time, data and resources required to conduct the review.
  - An initial review (Tier 1) would look at a handful of the most important indicators to assess the fund's standing. These indicators are intended to examine the fund's fulfillment of Federal FR requirements as well as its environmental performance.
  - This initial review would examine both the present day "snapshot" of fund information and any trends over time that may warrant further attention.
  - As a result of the initial review,
    - If the fund appears sound, then the Region would continue to monitor the fund and the program as it does throughout the year.
    - If there are remaining questions, then OUST recommends that Regions pursue a more detailed review of the state's fund (Tier 2).
- Assumptions regarding this tiered review:
  - Tier 1 is expected to be streamlined enough to require a minimal core set of data; at the same time, Tier 1 must be meaningful to effectively differentiate funds warranting further attention from funds in good health.
  - The Regional reviewer is not expected to have specialized accounting or financial expertise or experience.

## Indicators for the Initial Review (Tier 1):

- OUST has identified a set of four indicators that it believes will be useful to Regions in examining state funds:
  - The effect that the state fund may have on cleaning up sites for which the fund is liable (Effect on Cleanup Progress)
  - The number and liabilities associated with open, but inactive sites (Open Inactive Sites)
  - The comparison of a state fund's income to its estimated liabilities (Income vs. Liabilities)
  - The extent to which a fund's spending is directed towards federally regulated underground storage tanks (Focus on Federally Regulated USTs)
  
- These indicators, when taken together, will construct a **profile** of a state fund.
  - OUST discourages a focus on any one indicator and recommends against applying strict quantitative thresholds above or below which a Region would automatically defer or pursue a more extensive examination.
  
- OUST also recommends that Regions consider any **changes** to the fund that have occurred since the Region's last review. Regions might take particular note of changes regarding:
  - Sources of fund income
  - Diversion of fund income
  - Fund coverage
    - Related to the universe of sources
    - Related to elements of a full coverage fund (first dollar, 3<sup>rd</sup> party, dollar coverages)
  - Cleanup standards
  - Expected cleanup costs
  - Liabilities
  - Other administrative, regulatory, statutory or legislative changes
  
- OUST encourages Regions to consider additional indicators that they find most meaningful in assessing the health of state funds in their jurisdiction. OUST recognizes that each State and each state fund has its own specific characteristics.

**Tier 1 Indicators – Calculations and Data (1 of 3):**

■ **Effect on Cleanup Progress**

- If fund-eligible cleanups are not proceeding or the pace of cleanups is slowing appreciably, a Region may want to examine whether the source of financing such cleanups -- in this context the use and management of state funds -- is hampering progress on a State’s backlog.

<b>Calculations to Support Indicator</b>	<b>Data Elements</b>
<ul style="list-style-type: none"> <li>• Change in the number of fund-eligible cleanups relative to the “fund-eligible backlog”</li> <li>• Number of years to address current confirmed releases (high priority, low priority, total)</li> </ul>	<ul style="list-style-type: none"> <li>• Number of Fund-Eligible Cleanups at Beginning of Year</li> <li>• Number of Fund-Eligible Cleanups at End of Year</li> <li>• Number of New Releases</li> </ul>

■ **Open Inactive Sites**

- A large number of open, inactive and fund-eligible sites calls into question the qualification of a state fund as a functioning FR mechanism. Regions are encouraged to monitor this universe relative to the size of the overall state backlog.

<b>Calculations to Support Indicator</b>	<b>Data Elements</b>
<ul style="list-style-type: none"> <li>• Number and estimated financial liability of open inactive sites awaiting action against available financial resources</li> </ul>	<ul style="list-style-type: none"> <li>• Number of open sites awaiting action (awaiting funds for assessment and/or remedial action)</li> <li>• Cost to initiate characterization at open sites awaiting action</li> <li>• Cost to initiate remediation at open sites awaiting action</li> </ul>

**Tier 1 Indicators – Calculations and Data (2 of 3):**

**■ Income vs. Liabilities**

- Over the long run, a fund’s income should cover its liabilities. This calculation should recognize that cleanups are funded over time and a fund does not need to have money for all present and future liabilities sitting in a bank. The fund should, however, have money to cover existing claims and current year spending for all sites for which it serves as FR.
- OUST has considered the sufficiency of a fund’s income in relationship to
  - Money diverted from the fund
  - Current year spending
  - Estimated current year spending for eligible, open sites yet to submit a claim
  - Unpaid claims
- The most relevant comparison of income and liabilities is a comparison of income and liabilities specifically associated with Federally regulated tanks.
  - Some states use their state funds to cover more than federally regulated tanks underground storage tanks (for example, some funds also cover above ground storage tanks).
  - Some funds may not be able to differentiate financial flows, particularly income, with respect to this regulated universe.
  - Therefore, Regions should be aware that the global comparison across all eligible tanks could be misleading.

<p style="text-align: center;"><b>Calculations to Support Indicator</b></p>	<p style="text-align: center;"><b>Data Elements</b></p>
<ul style="list-style-type: none"> <li>• Difference Between Current Year Income and Liabilities</li> </ul>	<ul style="list-style-type: none"> <li>• Fund income and income diverted</li> <li>• Current year spending</li> <li>• Number of fund-eligible sites not having submitted a claim and estimated current year spending</li> <li>• Number and liabilities associated with unpaid claims</li> </ul>

■ **Focus on Federally Regulated USTs**

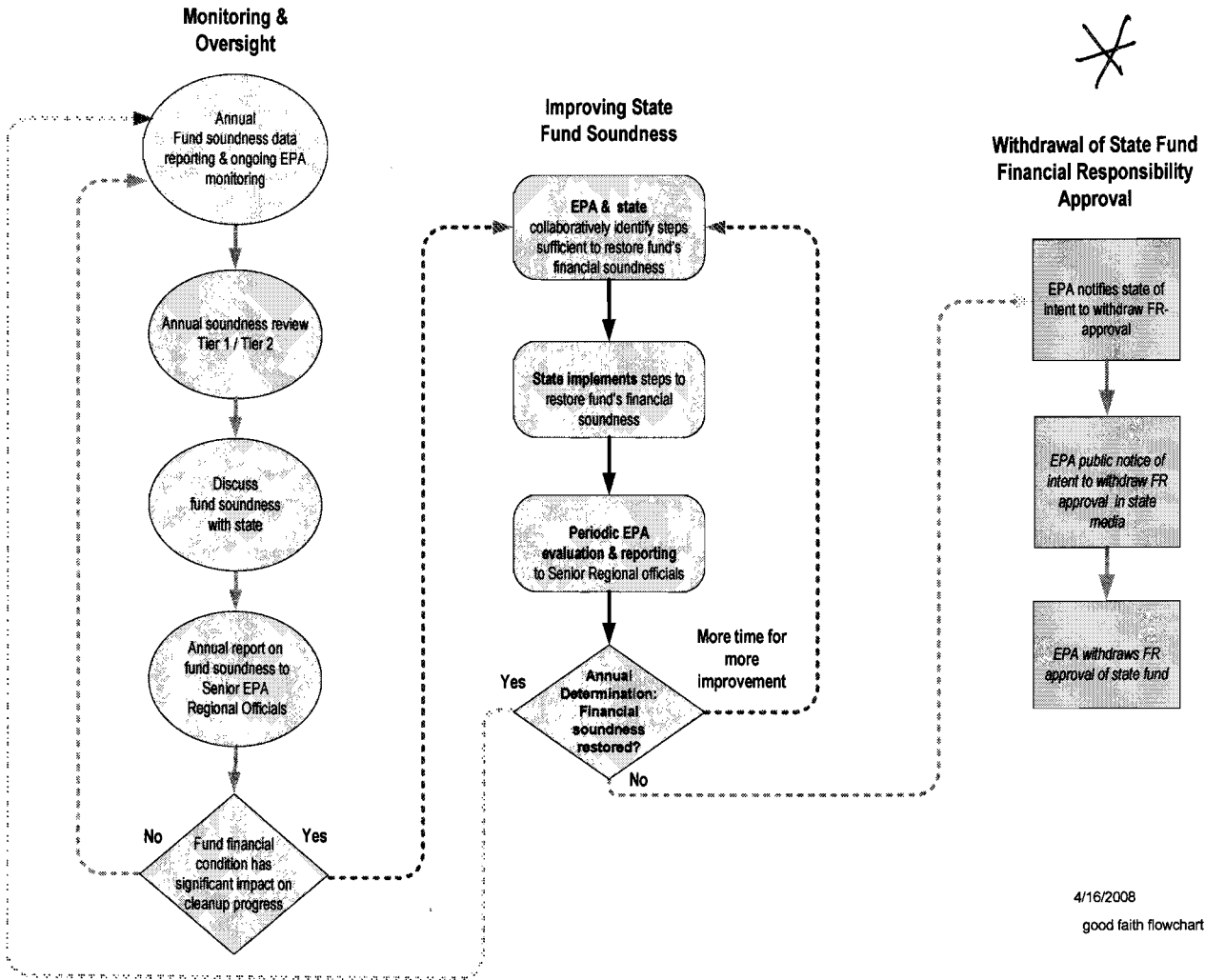
- To address circumstances in which a fund covers a wider universe than Federally regulated underground storage tanks, OUST recommends a focus on these Federally regulated tanks. OUST cautions that competing needs from non-regulated sources could jeopardize a fund's ability to pay for regulated releases. Changes in such coverage may be most important.

<b>Calculations to Support Indicator</b>	<b>Data Elements</b>
<ul style="list-style-type: none"><li>• Comparison of the number and spending between Federally Regulated USTs and the total number of fund eligible tanks.</li></ul>	<ul style="list-style-type: none"><li>• Number and estimated spending associated with UST's for which the fund satisfies FR.</li><li>• Number and estimated spending for all tanks for which the fund is liable.</li></ul>

## **Indicators for More Detailed Review (Tier 2):**

- A Region would pursue a more detailed review of a state fund, if the initial set of indicators raised questions regarding the soundness of the fund. Such questions do not necessarily imply a problem with the fund; only that there is more information needed for the reviewer to get an adequate picture of the fund's current state.
  
- OUST has found it useful in reviewing state funds to consider additional indicators across three main lines of inquiry:
  - Environmental Performance – Indicators that describe the progress the state fund is making in cleaning up LUST sites and improving the environment.
  - Financial – Indicators that describe the actual or potential flow of dollars in and out of the fund.
  - Management – Indicators that describe actions or policies that the state uses to govern or manage the state's fund. Management indicators can be pre-claim or post-claim actions.
  
- OUST offers the following additional indicators for more detailed consideration of a state fund:
  - Environmental Performance Indicators:
    - Unaddressed High Risk Sites
    - Time to Complete Cleanups
  
  - Financial Indicators:
    - Stability of Fund Income
    - Amount of Debt Service Incurred by Fund
    - Level of Administrative Costs Associated with the Fund
  
  - Management Indicators:
    - Level of Activity Associated with Enforcement
    - Efficient Processing of Claims

# Overseeing Financial Soundness of State Assurance Funds: EPA & State Collaboration



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good faith flowchart 12f.vsd