

adverse public comments EPA received and announces EPA's final determination to approve Pennsylvania's UST program.

B. What Were the Comments and Responses to EPA's Proposal?

Two parties submitted written comments regarding EPA's tentative approval of Pennsylvania's UST program during the 30-day public comment period. One party requested that EPA conduct a public hearing, but later withdrew that request. A third party submitted comments and requested a public hearing after the close of the comment period. EPA had already taken steps to cancel the tentatively scheduled public hearing and, as a result, no public hearing was held on EPA's tentative determination to approve Pennsylvania's UST Program. All three sets of comments EPA received questioned EPA's tentative decision to approve the Commonwealth of Pennsylvania's UST program asserting that Pennsylvania does not provide for adequate public participation.

Collectively, the three parties submitting comments asserted that Pennsylvania's UST program has deficiencies in three areas: (1) Public notification of releases from USTs, (2) public participation in UST cleanup activities, and (3) public involvement in UST enforcement cases initiated by the Pennsylvania Department of Environmental Protection (PADEP). EPA's responses to each of these comments are set forth below. EPA has determined that none of the concerns raised warrants disapproval of Pennsylvania's UST program.

1. Comments Regarding Public Notification of UST Releases

All three parties asserted that Pennsylvania's UST Program does not meet the federal requirements for state program approval at 40 CFR 281.35(f) regarding public notification of UST releases. This regulation provides as follows: "In accordance with § 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."

The referenced regulation at 40 CFR 280.67(a) states the following: "For each confirmed release that requires a corrective action plan, the implementing agency must provide notice to the public by means designed to reach those members of the public

directly affected by the release and the planned corrective action. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, publication in a state register, letters to individual households, or personal contacts by field staff."

One of the parties noted as follows: "The Commonwealth acknowledges in the General Counsel and Attorney General Verification and Legal Statement included with the application that EPA does not believe notifying the municipality satisfies the objective of §§ 281.35(f) and 280.67 to 'notify the affected public'." Two of the commenters expressed their concern about Pennsylvania using the State Program Approval Memorandum of Agreement (MOA) with EPA to address an inadequate public notification process for UST releases, which they perceive as a "flaw" or "deficiency" in Pennsylvania's UST Program.

During the review of Pennsylvania's UST Program, EPA did discuss public notification procedures for UST releases with PADEP. In its assessment, EPA recognized that, in accordance with § 245.305(e) of Pennsylvania's UST regulations, owners and operators are required to inform the Commonwealth and affected municipalities of confirmed releases. EPA believes this is a suitable first step toward public notification, because once local and state governments are informed, they can subsequently take steps to notify the affected public. During its review, EPA asked PADEP to clarify how such notification to the state would result in notification of the public directly affected by UST releases. EPA recognized that, pursuant to § 245.305(g) of Pennsylvania's rules, PADEP may "implement reasonable procedures to provide the public with appropriate information." For the purpose of state program approval, PADEP has the legal authority to notify the affected public of UST releases. However, EPA recognized that this authority provided PADEP with a certain discretion of the type contemplated when EPA published its original UST regulations at § 280.67 on September 23, 1988 (*see* 53 FR 37180–37181). Specifically, EPA noted in the preamble to its regulations that " * * * mandating public participation for all CAPs (*Corrective Action Plans*) could divert implementing agency resources from other cleanup activities such as oversight of ongoing cleanup operations." The preamble went on to say: "EPA agrees with the party who urged that implementing agencies strike a balance between the involvement of

the public and the sometimes competing need to protect human health and the environment through quick and effective responses to an UST release. To acknowledge these sometimes conflicting objectives, the final rule for public participation establishes a flexible approach that ensures public access to available information on UST cleanups, although the public need not be involved, as a matter of routine, in all CAPs."

During EPA's evaluation of the Commonwealth's UST program, PADEP described to EPA that it intended to exercise its discretion to notify the public about UST releases by posting relevant information on the internet. Although the internet was not in existence at the time EPA published its regulations in 1988, today, EPA believes the internet is a powerful and effective mechanism for providing the public with information. EPA believes that providing public access to information about UST releases on the internet is a means designed to reach those members of the public directly affected by the release and the planned corrective action. The internet has revolutionized how the public can gain access to all kinds of information. The internet can be accessed from home, at work, at school, and at local libraries. Information on the internet can be updated more easily, timely and cost-effectively than printed publications. One party who provided comments on EPA's proposed state program approval decision stated that he: " * * * supports the use of the internet to educate and inform the public about DEP's regulatory programs and the status of confirmed releases and planned cleanups * * * " PADEP and EPA have dedicated significant resources to provide the public with timely and comprehensive information about their numerous programs through the internet. Recognizing the need for PADEP to balance its responsibilities to clean up expeditiously UST releases and inform the public, EPA and PADEP used the MOA to specify and clarify how PADEP will exercise its discretion in striking this balance and to acknowledge formally PADEP's commitment to internet notification of UST releases. EPA does not believe that use of the MOA to describe Pennsylvania's approach to public notification is intended to "fix" a flaw or deficiency in Pennsylvania's UST program, but rather the MOA is an appropriate means to define how PADEP will exercise its responsibilities, within its discretion and authorities, to