

notify the public of UST releases under an EPA-authorized UST program.

To establish specific provisions in the MOA to define appropriate public notification, EPA and PADEP relied on provisions of 40 CFR 280.67(a). Therefore, the MOA provides the following commitments: "In addition to placing notices of confirmed releases requiring corrective action on its internet site, DEP agrees to use additional mechanisms to notify the affected public of those releases, which may have the potential to cause a more immediate or serious risk to public health and the environment. Furthermore, DEP agrees to use additional methods of public notification and outreach as a particular situation may warrant. Pursuant to 40 CFR 280.67 (Public Participation), such notices may include, but are not limited to, public notice in local newspapers, block advertisements, public service announcements, publication in the Pennsylvania Bulletin, letters to individual households, and/or personal contacts by field staff." Having drawn the provisions for the MOA directly from EPA's regulations, EPA is satisfied that PADEP's authorities and procedures for public notification of UST releases, as prescribed in the MOA, meet the requirements for state program approval found at 40 CFR 281.35(f).

On a separate but related point, one commenter referenced RCRA section 9004(a) stating that RCRA enumerates "\* \* \* criteria that a State Program must meet in order to receive delegation of authority." EPA points out that, beyond the federal regulations discussed extensively above, section 9004 of RCRA does not include any independent requirements for States to include public notification in their UST Programs in order to be approved by EPA.

The commenter who supported using the internet to inform the public did note, however, that, the internet "\* \* \*" is no substitute for direct notice by DEP to the affected public." EPA points out, however that neither RCRA nor its implementing regulations requires "direct notice to the affected public." These regulations state that notice to the public must be designed "\* \* \*" to reach those members of the public directly affected by the release and the planned corrective action" but not necessarily by a direct (or personal) notice as was suggested by the commenter.

One commenter expressed a concern over a failed attempt to access PADEP's information about a particular fuel distribution facility via the internet and questioned the effectiveness of PADEP's

internet notification process. EPA is aware that PADEP had experienced some technical difficulties with its Web site and Internet access while efforts were underway to upgrade its system. Such temporary difficulties with gaining access to electronic data systems during maintenance activities are not uncommon. In May and August 2003, EPA Region III accessed PADEP's Web site and determined site accessibility, as well as the scope and content of site information about UST releases, to be complete and acceptable for public notification purposes.

The final comment regarding inadequate public notification of UST releases asserted that federal regulations require "the affected public be notified of all confirmed releases." EPA disagrees, since EPA's state program approval regulations do not require state programs to have provisions to notify the public of *all* confirmed releases, only those requiring a plan for soil and ground water remediation. See 40 CFR 281.35(f) which states that "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*" \* \* \* (emphasis added).

**Summary:** With respect to public comments alleging deficiencies in Pennsylvania's program regarding public notification of UST releases, EPA has determined that Pennsylvania's UST program, as described in its State Program Approval Application, provides for adequate notification procedures to inform the public about confirmed UST releases requiring a plan for remediation. PADEP's reliance on the internet to post information on UST releases has been determined by EPA to be an acceptable means of informing the public.

## 2. Comments Regarding Public Participation in UST Cleanup Activities

The second set of concerns voiced by all three commenters related to the public's inability to be informed about, and to participate in, corrective measure activities. With regard to concerns about "public notification" of planned corrective measure activities, EPA refers to its previous discussion which addresses this issue. The MOA commits PADEP to maintain on its internet site the status of all corrective measures planned or taken, and PADEP agrees to make information available to the public, upon request, about the nature of identified releases and corrective measures planned or taken.

With regard to public participation in the corrective action process, EPA notes that its regulations focus on public

notification, yet rely on state administrative procedures to provide the public the opportunity to participate in the decision-making process associated with cleaning up UST releases. The preamble to EPA's September 23, 1988 UST regulations (53 FR 37233) states, "EPA does not intend to prescribe the nature and extent of the public involvement procedures to be followed by the state. Rather, EPA's intention is that a forum be provided that is in keeping with the state's administrative procedures for the interested public to express its views on the proposed corrective actions for *serious* (emphasis added) UST releases." The preamble goes on to say that this objective is intended to be met by ensuring states provide for open access to information on UST releases and planned corrective actions. Pennsylvania's UST program meets this obligation by providing for the public availability of this information. The MOA is PADEP's assurance that such information will be available via the internet for notification purposes, and more detailed information on site activities will be made available upon public request. PADEP has also agreed in the MOA to expand its method of public notification and involvement activities, as particular situations may warrant, specifically in those instances where releases may have the potential to cause an immediate or "serious risk" to public health and the environment. EPA believes there is adequate opportunity for the public to be notified of UST releases and to participate in UST cleanup activities.

**Summary:** EPA has evaluated Pennsylvania's UST authorities and PADEP's commitment in the MOA to provide for public notification of UST releases and public access to related information. Based on EPA's State Program Approval regulations and relevant preamble language which rely on a state's own administrative procedures for the interested public to express its views on proposed corrective actions, EPA has determined that Pennsylvania's UST program meets EPA's state program approval requirements for public notification and public involvement regarding UST releases and their cleanups.

## 3. Comments Regarding Public Involvement in UST Enforcement Cases

The third area on which EPA received comments related to public participation in Pennsylvania's enforcement process. One commenter questioned whether the Commonwealth's program meets the state program approval requirements of