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**VIA ELECTRONIC DELIVERY:** OUSTInspections@EPA.gov

OUST Inspection Draft Guidelines  
c/o Tim R. Smith  
U.S. EPA  
2733 South Crystal Drive  
Potomac Yard, North Building  
Room N-4354  
Arlington, VA 22202  
(phone 703-603-7158)

**Re: SIGMA and NACS Comments Regarding Draft Grant Guidelines to States for Implementing the Inspection Provisions of the Energy Policy Act of 2005**

Dear Mr. Smith:

On behalf of our firm's clients, the Society of Independent Gasoline Marketers of America ("SIGMA") and the National Association of Convenience Stores ("NACS"), we respectfully submit the following comments in response to the Environmental Protection Agency's ("EPA's") draft grant guidelines for implementing the inspection provisions of the Energy Policy Act of 2005 ("EPAct").

SIGMA is a trade association of more than 240 independent motor fuel marketers operating in all 50 states. Last year, SIGMA members sold more than 58 billion gallons of motor fuel, representing more than 30 percent of all motor fuels sold in the United States. SIGMA members supply more than 35,000 retail outlets across the nation and employ more than 350,000 workers nationwide.

NACS is an international trade association comprised of more than 2,200 retail member companies. The convenience store industry as a whole is comprised of more than 140,000 stores which sold 143.5 billion gallons of motor fuel in 2005 and employ 1.5 million workers across the nation.

As owners and operators of underground storage tanks, SIGMA and NACS members have a direct interest in EPA's draft guidelines

## **I. When Must Underground Storage Tanks Be Inspected?**

SIGMA and NACS urge EPA to clarify the type of inspections referenced in this guideline. Section 9005(c)(1) of the Solid Waste Disposal Act as amended by the EPCRA, uses the specific term “on-site inspection” and also the more general term “inspection.” As explained in the June 8, 2006, letter from Cliff Rothenstein to EPA Regional UST Division Directors and State UST Program Managers, there is a significant difference between “inspections” and “on-site inspections.” When enacting section 9005(c)(1), Congress explicitly differentiated between “inspections” and “on-site inspections” in recognition that the States and EPA were engaged in a variety of valid compliance monitoring activities (not necessarily on-site inspections) prior to enactment of the EPCRA. Section 9005(c)(1) as amended, specifically requires on-site inspections to all tanks not inspected since December 22, 1998, prior to August 8, 2007. However, this section of the guidelines intermingles the two terms, alluding to “on-site” inspections for each underground storage tank (“UST”) not inspected since December 22, 1998, and also to “inspections” of each underground storage tank by August 8, 2010 and at least once every three years thereafter. Given the recognized difference between the two terms, this guideline is confusing. In light of the mandates to conduct “on-site” inspections contained in section 9005(c)(1) as amended, EPA should clarify which type of inspections must be undertaken by August 8, 2010, and at least once every three years thereafter.

## **II. Who May Perform the On-Site Inspection?**

SIGMA and NACS adamantly oppose any requirement that owners or operators pay for private on-site inspections. Requiring owners and operators to pay for private inspections is no longer necessary following the approximately \$200 million authorized for the UST program under H.R. 6111.<sup>1</sup> For that reason alone, EPA should use leaking underground storage tank (“LUST”) fund money to fund private on-site inspections.

Obligating owners and operators to pay for private inspections also unfairly taxes owners and operators who have been contributing to the LUST fund since its inception in 1986. To now require owners and operators to pay for private on-site inspections—an option States will likely rely on heavily—is unfair and unduly burdensome. States, in conjunction with EPA, are responsible for ensuring overall UST compliance. To the extent a State chooses to rely on a private inspection program to comply, it is the State’s responsibility to fully fund such a program, including all private on-site inspections.

To meet EPCRA’s UST program requirements, SIGMA and NACS strongly urge EPA to request from Congress a substantial increase in additional LUST fund appropriations for fiscal

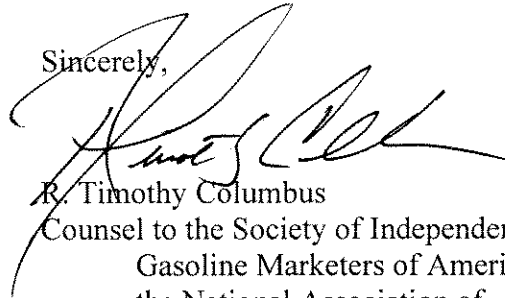
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<sup>1</sup> The technical correction to the tax code which authorized expenditures from the LUST fund towards activities designated in the EPCRA, was contained in H.R. 6131, but was ultimately incorporated into H.R. 6111 on December 8, 2006, as part of the Tax Relief and Health Care Act.

year 2007. As you are well aware, the LUST fund receives approximately \$190 million per year from motor fuels taxes and had amassed a balance of approximately \$2.6 billion as of September 30, 2006. This amount generates roughly \$85 million per year from interest on the balance. Yet, annually, EPA typically receives less than the interest earned—approximately \$70 million. This level of funding has not been sufficient to fully implement Federal UST programs and clearly won't be enough to implement the significant reforms to the Federal UST program contained in the EPAct, including the new inspection regime. The roughly \$200 million authorized by H.R. 6111 presents EPA with a renewed opportunity to secure the funds needed to accomplish the important goals set out by Congress in the EPAct. Given that the EPAct UST programs become effective August 8, 2007, EPA should make obtaining additional LUST money a priority.

SIGMA and NACS appreciate the opportunity to comment on the Agency's set of proposed guidance. We look forward to working with you to ensure that the guidance implements the provisions of EPAct and provides sound public policy.

Sincerely,



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Gasoline Marketers of America and  
the National Association of  
Convenience Stores