

Environmental Protection Agency**§ 281.11****PART 281—APPROVAL OF STATE UNDERGROUND STORAGE TANK PROGRAMS****Subpart A—Purpose, General Requirements and Scope**

Sec.

- 281.10 Purpose.
- 281.11 General requirements.
- 281.12 Scope and definitions.

Subpart B—Components of a Program Application

- 281.20 Program application.
- 281.21 Description of state program.
- 281.22 Procedures for adequate enforcement.
- 281.23 Schedule for interim approval.
- 281.24 Memorandum of agreement.
- 281.25 Attorney General's statement.

Subpart C—Criteria for No-Less-Stringent

- 281.30 New UST system design, construction, installation, and notification.
- 281.31 Upgrading existing UST systems.
- 281.32 General operating requirements.
- 281.33 Release detection.
- 281.34 Release reporting, investigation, and confirmation.
- 281.35 Release response and corrective action.
- 281.36 Out-of-service UST systems and closure.
- 281.37 Financial responsibility for UST systems containing petroleum.
- 281.38 Financial responsibility for USTs containing hazardous substances. [Reserved]
- 281.39 Lender liability.

Subpart D—Adequate Enforcement of Compliance

- 281.40 Requirements for compliance monitoring program and authority.
- 281.41 Requirements for enforcement authority.
- 281.42 Requirements for public participation.
- 281.43 Sharing of information.

Subpart E—Approval Procedures

- 281.50 Approval procedures for state programs.
- 281.51 Amendment required at end of interim period.
- 281.52 Revision of approved state programs.

Subpart F—Withdrawal of Approval of State Programs

- 281.60 Criteria for withdrawal of approval of state programs.

281.61 Procedures for withdrawal of approval of state programs.

AUTHORITY: 42 U.S.C. 6912, 6991 (c), (d), (e), (g).

SOURCE: 53 FR 37241, Sept. 23, 1988, unless otherwise noted.

Subpart A—Purpose, General Requirements and Scope**§ 281.10 Purpose.**

(a) This subpart specifies the requirements that state programs must meet for approval by the Administrator under section 9004 of RCRA, and the procedures EPA will follow in approving, revising and withdrawing approval of state programs.

(b) State submissions for program approval must be in accordance with the procedures set out in this part.

(c) A state may apply for approval under this subpart at any time after the promulgation of release detection, prevention, and correction regulations under section 9003 of RCRA.

(d) Any state program approved by the Administrator under this part shall at all times be conducted in accordance with the requirements of this part.

§ 281.11 General requirements.

(a) *State program elements.* The following substantive elements of a state program must be addressed in a state application for approval:

(1) Requirements for all existing and new underground storage tanks:

(i) New UST systems (design, construction, installation, and notification);

(ii) Upgrading of existing UST systems;

(iii) General operating requirements;

(iv) Release detection;

(v) Release reporting, investigation, and confirmation;

(vi) Out-of-service USTs and closure;

(vii) Release response and corrective action; and

(viii) Financial responsibility for UST systems containing petroleum.

(2) Provisions for adequate enforcement of compliance with the above program elements.

(b) *Final approval.* The state must demonstrate that its requirements under each state program element for existing and new UST systems are no

§ 281.12

less stringent than the corresponding federal requirements as set forth in subpart C of this part, except as provided in paragraph (c) of this section. The state must also demonstrate that it has a program that provides adequate enforcement of compliance with these requirements.

(c) *Interim approval.* (1) The Administrator may approve state programs with requirements less stringent than the federal requirements for a period of 1 to 3 years from September 23, 1988. Such interim approval may be granted only if state regulatory and/or legislative change is required in order for the state program to be no less stringent than the federal requirements and standards under part 280 for one or more of the following program elements: Release detection at existing UST systems; release reporting and investigation; and out-of-service or closed UST systems.

(2) A state program may receive interim approval if it:

(i) Has requirements for three elements:

- (A) Release Detection;
- (B) Release Reporting, Investigation, and Confirmation; and
- (C) Out-of-Service UST Systems and Closure; and

(ii) Has requirements that are no less stringent than the corresponding federal requirements for five elements:

(A) New UST System Design, Construction, Installation and Notification;

(B) Upgrading Existing UST Systems;

(C) General Operating Requirements;

(D) Release Response and Corrective Action; and

(E) Financial Responsibility for UST systems containing petroleum; and

(iii) Provides for adequate enforcement of compliance with these requirements.

(3) A state with a program that has received interim approval must receive final approval of an amended program containing program elements that are no less stringent than the corresponding federal program elements under subpart C in accordance with the following schedule:

(i) If only state regulatory action is required, the state must submit an

40 CFR Ch. I (7-1-08 Edition)

amended program to EPA for approval before September 23, 1989.

(ii) If only state legislative action is required, the state must submit an amended program to EPA for approval before September 23, 1990.

(iii) If both state legislative and regulatory action are required, the state must submit an amended program to EPA for approval before September 23, 1991.

(d) States with programs approved under this part are authorized to administer the state program in lieu of the federal program and will have primary enforcement responsibility with respect to the requirements of the approved program. EPA retains authority to take enforcement action in approved states as necessary and will notify the designated lead state agency of any such intended action.

§ 281.12 Scope and definitions.

(a) *Scope.* (1) The Administrator may approve either partial or complete state programs. A "partial" state program regulates either solely UST systems containing petroleum or solely UST systems containing hazardous substances. If a "partial" state program is approved, EPA will administer the remaining part of the program. A "complete" state program regulates both petroleum and hazardous substance tanks.

(2) EPA will administer the UST program on Indian lands, except where Congress has clearly expressed an intention to grant a state authority to regulate petroleum and hazardous substance USTs on Indian lands. In either case, this decision will not impair a state's ability to obtain program approval for petroleum and/or hazardous substances on non-Indian lands in accordance with this part.

(3) Nothing in this subpart precludes a state from:

(i) Adopting or enforcing requirements that are more stringent or more extensive than those required under this part; or

(ii) Operating a program with a greater scope of coverage than that required under this part. Where an approved state program has a greater

Environmental Protection Agency

§ 281.23

scope of coverage than required by federal law, the additional coverage is not part of the federally-approved program.

(b) *Definitions.* (1) The definitions in part 280 apply to all subparts of this part.

(2) For the purpose of this part, the term *interim approval* means the approval received by a state program that meets the requirements in § 281.11(c) (1) and (2) for the time period defined in § 281.11(c)(3).

(3) For the purposes of this part the term *final approval* means the approval received by a state program that meets the requirements in § 281.11(b).

Subpart B—Components of a Program Application

§ 281.20 Program application.

Any state that seeks to administer a program under this part must submit an application containing the following parts:

(a) A transmittal letter from the Governor of the state requesting program approval;

(b) A description in accordance with § 281.21 of the state program and operating procedures;

(c) A demonstration of the state's procedures to ensure adequate enforcement;

(d) A schedule for obtaining needed authorities under interim approval, where applicable;

(e) A Memorandum of Agreement outlining roles and responsibilities of EPA and the implementing agency;

(f) An Attorney General's statement in accordance with § 281.25 certifying to applicable state authorities; and

(g) Copies of all applicable state statutes and regulations.

NOTE: EPA has designed an optional application form that is available for use by state applicants.

§ 281.21 Description of state program.

A state seeking to administer a program under this part must submit a description of the program it proposes to administer under state law in lieu of the federal program. The description of a state's existing or planned program must include:

(a) The scope of the state program;

(1) Whether the state program regulates UST systems containing petroleum or hazardous substances, or both;

(2) Whether the state is applying for interim or final approval;

(3) Whether the state program is more stringent or broader in scope than the federal program, and in what ways; and

(4) Whether the state has any existing authority over Indian lands or has existing agreements with Indian tribes relevant to the regulation of underground storage tanks.

(b) The organization and structure of the state and local agencies with responsibility for administering the program. The jurisdiction and responsibilities of all state and local implementing agencies must be delineated, appropriate procedures for coordination set forth, and one state agency designated as a "lead agency" to facilitate communications between EPA and the state.

(c) Staff resources to carry out and enforce the required state program elements, both existing and planned, including the number of employees, agency where employees are located, general duties of the employees, and current limits or restrictions on hiring or utilization of staff.

(d) An existing state funding mechanism to meet the estimated costs of administering and enforcing the required state program elements, and any restrictions or limitations upon this funding.

§ 281.22 Procedures for adequate enforcement.

A state must submit a description of its compliance monitoring and enforcement procedures, including related state administrative or judicial review procedures.

§ 281.23 Schedule for interim approval.

For a state program that must modify its statutory or regulatory requirements for release detection, release reporting and investigation, and out-of-service or closed UST systems in order to be no less stringent than the federal requirements, the plan must include a schedule for making such changes and for submitting an amendment to the