

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 281**

[FRL-5167-6]

**South Dakota; Final Approval of State Underground Storage Tank Program****AGENCY:** Environmental Protection Agency.**ACTION:** Notice of final determination on State of South Dakota's application for final approval.

**SUMMARY:** The State of South Dakota has applied for final approval of its underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the South Dakota application and has reached a final determination that South Dakota's underground storage tank program satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to South Dakota to operate its program in lieu of the federal program.

**EFFECTIVE DATE:** Final approval for South Dakota shall be effective at 1:00 pm Eastern Time on May 15, 1995.

**FOR FURTHER INFORMATION CONTACT:** Leslie Zawacki, Underground Storage Tank Program Section, U.S. EPA, Region 8, 8HWM-WM, 999 18th Street, Denver, Colorado 80202, phone: (303) 293-1665.

**SUPPLEMENTARY INFORMATION:****A. Background**

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables EPA to approve state underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. Program approval is granted by EPA if the Agency finds that the State program: (1) Is "no less stringent" than the Federal program in all seven elements, and includes notification requirements of section 9004(a)(8), 42 U.S.C. 6991c(a) (8); and (2) provides for adequate enforcement of compliance with UST standards (section 9004(a), 42 U.S.C. 6991c(a)).

On July 9, 1992, South Dakota submitted an application for "complete" program approval which includes regulation of both petroleum and hazardous substance tanks. The State of South Dakota established authority to implement an underground storage tank program through South Dakota Codified Law 34A-2-98 and 34A-2-99 and the Administrative Rules of South Dakota

that became effective November 30, 1987.

On July 22, 1994, EPA published a tentative decision announcing its intent to grant South Dakota final approval. Further background on the tentative decision to grant approval appears at 59 FR 37455, July 22, 1994. Along with the tentative determination, EPA announced the availability of the application for public comment and provided notice that a public hearing would be provided if significant public interest was shown. EPA received no request for a public hearing, therefore, a hearing was not held.

**B. Public Comment**

The EPA received one comment on the tentative determination of final approval for South Dakota's UST program. The commenter asserted that the South Dakota leak detection requirements for suction piping appeared to be less stringent than the federal requirements. The State requires that suction piping use a monthly monitoring release detection method or be tightness tested at least every three years. The State does not require release detection, if suction piping is designed to allow the contents of the pipe to drain back into the storage tank if the suction is released. EPA believes that the State implements a program which meets the federal objective for release detection for suction piping.

**C. Decision**

After reviewing the public comments on the State application and program since the tentative decision, I conclude that South Dakota's application for final approval meets all of the statutory and regulatory requirements established by Subtitle I of RCRA. Accordingly, South Dakota is granted final approval to operate its underground storage tank program in lieu of the Federal program. This final determination to approve the South Dakota UST program does not extend to "Indian Country," as defined in 18 U.S.C. 1151, including the following "existing or former" Indian reservations in the State of South Dakota: Cheyenne River, Crow Creek, Flandreau, Lake Traverse (Sisseton-Wahpeton), Lower Brule, Pine Ridge, Rosebud, Standing Rock, and Yankton. South Dakota now has the responsibility for managing underground storage tank facilities within its borders and carrying out all aspects of the UST program except for facilities located within "Indian Country," where EPA will retain regulatory authority. South Dakota also has primary enforcement responsibility, although EPA retains the right to conduct inspections under

section 9005 of RCRA 42 U.S.C. 6991d and to take enforcement actions under section 9006 of RCRA 42 U.S.C. 6991e.

**Compliance With Executive Order 12866**

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

**Certification Under the Regulatory Flexibility Act**

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. The approval effectively suspends the applicability of certain Federal regulations in favor of South Dakota's program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

**List of Subjects in 40 CFR Part 281**

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

**Authority:** This notice is issued under the authority of sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6974(b), and 6991(c).

Dated: February 23, 1995.

**Kerrigan Clough,**

*Acting Regional Administrator.*

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**40 CFR Part 282**

[FRL-5167-5]

**Underground Storage Tank Program: Approved State Program for South Dakota****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Immediate final rule.

**SUMMARY:** The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the U.S. Environmental Protection Agency (EPA) to grant approval to states to operate their underground storage tank programs in lieu of the federal program. 40 CFR part 282 codifies EPA's decision to approve state programs and incorporates by reference those provisions of the state statutes and regulations that will be subject to EPA's inspection and enforcement authorities

under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions. This rule codifies in part 282 the prior approval of South Dakota's underground storage tank program and incorporates by reference appropriate provisions of state statutes and regulations.

**DATES:** This regulation is effective May 15, 1995, unless EPA publishes a prior **Federal Register** notice withdrawing this immediate final rule. All comments on the codification of South Dakota's underground storage tank program must be received by the close of business April 17, 1995. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of May 15, 1995, in accordance with 5 U.S.C. 552(a).

**ADDRESSES:** Comments may be mailed to Jo Taylor, 8HWM-WM, Hazardous Waste Management Division, Underground Storage Tank Program, U.S. EPA Region 8, 999-18th Street, Suite 500, Denver, Colorado, 80202-2466. Comments received by EPA may be inspected in the EPA Library, Suite 144, at the above address from 12:00 p.m. to 4:00 p.m., Monday through Friday, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jo Taylor, 8HWM-WM, Underground Storage Tank Program, U.S. EPA Region 8, 999-18th Street, Suite 500, Denver, Colorado, 80202-2466. Phone: (303) 293-1511.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 9004 of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6991c, allows the U.S. Environmental Protection Agency to approve state underground storage tank programs to operate in the state in lieu of the federal underground storage tank program. EPA is publishing, simultaneously a **Federal Register** document announcing its decision to grant approval to South Dakota elsewhere in this issue of the **Federal Register**. Approval will be effective on May 15, 1995.

EPA codifies its approval of State programs in 40 CFR part 282 and incorporates by reference therein the state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions. Today's rulemaking codifies EPA's approval of the South Dakota underground storage tank program. This codification reflects the state program in

effect at the time EPA grants South Dakota approval under section 9004(a), 42 U.S.C. 6991c(a) for its underground storage tank program. Notice and opportunity for comment were provided earlier on the Agency's decision to approve the South Dakota program, and EPA is not now reopening that decision nor requesting comment on it.

This effort provides clear notice to the public of the scope of the approved program in each state. By codifying the approved South Dakota program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in South Dakota, the status of federally approved requirements of the South Dakota program will be readily discernible. Only those provisions of the South Dakota underground storage tank program for which approval has been granted by EPA will be incorporated by reference for enforcement purposes.

To codify EPA's approval of South Dakota's underground storage tank program, EPA has added § 282.91 to title 40 of the CFR. Section 282.91 incorporates by reference for enforcement purposes the State's statutes and regulations. Section 282.91 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the underground storage tank program under subtitle I of RCRA.

The Agency retains the authority under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the state authorized analogs to these provisions. Therefore, the approved South Dakota enforcement authorities will not be incorporated by reference. Section 282.91 lists those approved South Dakota authorities that would fall into this category.

The public also needs to be aware that some provisions of the State's underground storage tank program are not part of the federally approved state program. These non-approved provisions are not part of the RCRA subtitle I program because they are "broader in scope" than subtitle I of RCRA. See 40 CFR 281.12(a)(3)(ii). As a result, state provisions which are "broader in scope" than the federal program are not incorporated by reference for purposes of enforcement in

part 282. Section 282.91 of the codification simply lists for reference and clarity the South Dakota statutory and regulatory provisions which are "broader in scope" than the federal program and which are not, therefore, part of the approved program being codified today. "Broader in scope" provisions cannot be enforced by EPA; the State, however, will continue to enforce such provisions.

#### Certification Under the Regulatory Flexibility Act

This rule codifies the decision already made, published elsewhere in this issue of the **Federal Register**, to approve the South Dakota underground storage tank program and thus has no separate effect. Therefore, this rule does not require a regulatory flexibility analysis. Thus, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

#### Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

#### Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed or final rule. This rule will not impose any information requirements upon the regulated community.

#### List of Subjects in 40 CFR Part 282

Environmental protection, Hazardous substances, Incorporation by reference, Intergovernmental relations, State program approval, Underground storage tanks, Water pollution control.

Dated: February 23, 1995.

**Kerrigan Clough,**

*Acting Regional Administrator.*

For the reasons set forth in the preamble, 40 CFR part 282 is proposed to be amended as follows:

#### PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

1. The authority citation for part 282 continues to read as follows:

**Authority:** 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

**Subpart B—Approved State Programs**

2. Subpart B is amended by adding § 282.91 to read as follows:

**§ 282.91 South Dakota State-Administered Program.**

(a) The State of South Dakota is approved to administer and enforce an underground storage tank program in lieu of the federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the South Dakota Department of Environment and Natural Resources, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. EPA approved the South Dakota program on March 16, 1995 and it was effective on May 15, 1995.

(b) South Dakota has primary responsibility for enforcing its underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, as well as under other statutory and regulatory provisions.

(c) To retain program approval, South Dakota must revise its approved program to adopt new changes to the federal subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If South Dakota obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) South Dakota has final approval for the following elements submitted to EPA in South Dakota's program application for final approval and approved by EPA on [insert date of publication]. Copies may be obtained from the Underground Storage Tank Program, South Dakota Department of Environment and Natural Resources, 523 East Capitol, Pierre, South Dakota 57501.

(1) *State statutes and regulations.* (i) The provisions cited in this paragraph are incorporated by reference as part of the underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(A) South Dakota Statutory Requirements Applicable to the Underground Storage Tank Program, 1995.

(B) South Dakota Regulatory Requirements Applicable to the Underground Storage Tank Program, 1995.

(ii) The following statutes are part of the approved state program, although not incorporated by reference herein for enforcement purposes.

(A) The statutory provisions include: South Dakota Codified Law, Water Pollution Control, Chapter 34A-2, Sections 46 and 48, Sections 72 through 75, Chapters 34A-10 and 34A-12.

(iii) The following statutory provisions are broader in scope than the federal program, and are not incorporated by reference herein for enforcement purposes.

(A) South Dakota statutes Annotated, Chapter 34A-2, Section 100, insofar as it applies to above ground stationary storage tanks, Section 102, insofar as it applies to installation of above ground stationary storage tanks, Section 101, insofar as it applies to corrective action for above ground stationary storage tanks.

(2) *Statement of legal authority.* (i) "Attorney General's Statement for Final Approval", signed by the Attorney General of South Dakota on June 17, 1992, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(ii) Letter from the Attorney General of South Dakota to EPA, June 17, 1992, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The "Demonstration of Procedures for Adequate Enforcement" submitted as part of the complete application in October 1993, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program Description.* The program description and any other material submitted as part of the original application in June 1992, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VIII and the South Dakota Department of Environment and Natural Resources, signed by the EPA Regional Administrator on February 23, 1995, though not incorporated by reference, is referenced as part of the approved underground storage tank program

under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Appendix A to part 282 is amended by adding in alphabetical order "South Dakota" and its listing.

**Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations**

\* \* \* \* \*

*South Dakota*

(a) The statutory provisions include South Dakota Statutes Annotated, Chapter 34A-2, Sections 98 and 99. Underground Storage Tanks:

Section 98 Underground storage tanks—Definitions.

Section 99 Underground storage tanks—Adoption of Rules—Violation.

(b) The regulatory provisions include State of South Dakota Administrative Rules, Chapter 74:03:28, Underground Storage Tanks, Department of Environment and Natural Resources, June 24, 1992:

Section 74:03:28:01 Definitions.

Section 74:03:28:02 Performance standards for new UST systems—General requirements.

Section 74:03:28:03 Upgrading of existing UST systems—General requirements and deadlines.

Section 74:03:28:04 Notification requirements for UST systems.

Section 74:03:28:05 Spill and overflow control.

Section 74:03:28:06 Operation and maintenance of cathodic protection.

Section 74:03:28:07 Compatibility.

Section 74:03:28:08 Repairs allowed—general requirements.

Section 74:03:28:09 Maintenance and availability of records.

Section 74:03:28:10 Release detection for all UST systems—general requirements and deadlines.

Section 74:03:28:11 Release detection requirements for petroleum UST systems.

Section 74:03:28:12 Release detection requirements for pressure piping.

Section 74:03:28:13 Recordkeeping.

Section 74:03:28:14 Release notification plan.

Section 74:03:28:15 Reported of suspected releases.

Section 74:03:28:16 Release investigation and confirmation.

Section 74:03:28:17 Off-site impacts and source investigation.

Section 74:03:28:18 General requirements for corrective action for releases from UST systems.

Section 74:03:28:19 Initial abatement requirements and procedures for releases from UST systems.

Section 74:03:28:20 Free product removal.

Section 74:03:28:21 Additional site investigation for releases from UST systems.

Section 74:03:28:22 Soil and groundwater cleanup for releases from UST systems.

Section 74:03:28:23 Reporting of releases from UST systems.

- Section 74:03:28:28 Reporting of hazardous substance releases from UST systems.
- Section 74:03:28:29 Temporary removal from use.
- Section 74:03:28:30 Temporary closure.
- Section 74:03:28:31 Permanent closure.
- Section 74:03:28:32 Postclosure requirements.
- Section 74:03:29:01 Applicability.
- Section 74:03:29:23 Definitions.
- Section 74:03:29:24 Financial responsibility rules.

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