ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–7656–7]

Missouri: Tentative Approval of Missouri Underground Storage Tank Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; tentative determination on application of State of Missouri for final approval; public comment period.

SUMMARY: Missouri has applied to EPA for final approval of its underground storage tank (UST) program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). EPA has reviewed the Missouri application and has made a tentative determination that Missouri's UST program satisfies all of the requirements necessary to qualify for final approval. Thus, by this proposed rule, EPA is providing notice that EPA intends to grant final approval to Missouri to operate its UST program in lieu of the Federal program. Missouri's application for approval is available for public review and comment. A public hearing will be held to solicit comments on the application, if significant public interest is expressed.

DATES: Comments must be received on or before June 4, 2004.

ADDRESSES: Send written comments to Linda Garwood, EPA Region 7, ARTD/STOP, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in Part (III) (B) (1) (i) through (iii) of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Linda Garwood at (913) 551–7268, or by e-mail at *garwood.linda@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, requires that EPA develop standards for Underground Storage Tanks (UST) systems as may be necessary to protect human health and the environment, and procedures for approving state programs in lieu of the Federal program. EPA promulgated state program approval procedures at 40 CFR part 281. Program approval may be granted by EPA pursuant to RCRA section 9004(b), if the Agency finds that the state program is ''no less stringent'' than the Federal program for the seven elements set forth at RCRA section 9004(a)(1) through (7); includes the notification requirements of RCRA section 9004(a)(8); and provides for adequate enforcement of compliance with UST standards of RCRA section 9004(a). Note that RCRA sections 9005 (information-gathering) and 9006 (Federal enforcement) by their terms apply even in states with programs approved by EPA under RCRA section 9004. Thus, the Agency retains its authority under RCRA sections 9005 and 9006, 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 analogues to these provisions.

II. Missouri UST Program

The Missouri Department of Natural Resources (MDNR) is the lead implementing agency for the UST program in Missouri. MDNR has broad statutory authority to regulate UST releases under Sections 260.500 through 260.550 of the Revised Statutes of Missouri (RSMo.) and more specific authority to regulate the installation, operation, maintenance, and closure of USTs under sections 319.100 through 319.139, RSMo., the Missouri UST Law. Additional authorities, in particular the appeals process through the Missouri Clean Water Commission, are found at Chapter 644, RSMo., the Missouri Clean Water Law.

The State of Missouri submitted a state program approval application to EPA by letter dated July 28, 2003. EPA evaluated the information provided and determined the application package met all requirements for a complete program application. On December 11, 2003, EPA notified Missouri that the application package was complete.

Included in the state's Application is an Attorney General's statement. The Attorney General's statement provides an outline of the state's statutory and regulatory authority and details concerning areas where the state program is broader in scope or more stringent than the Federal program. Also included was a transmittal letter from the Governor of Missouri requesting program approval, a description of the Missouri UST program, a demonstration of Missouri's procedures to ensure adequate enforcement, a Memorandum of Agreement outlining the roles and responsibilities of EPA and the Missouri Department of Natural Resources, and copies of all applicable state statutes and regulations. EPA has reviewed the application and supplementary materials, and has tentatively determined that the State's UST program meets all of the requirements necessary to qualify for final approval.

Specifically, the Missouri UST program has requirements that are no less stringent than the Federal requirements at 40 CFR 281.30 New UST system design, construction, installation, and notification; 40 CFR 281.31 Upgrading existing UST systems; 40 CFR 281.32 General operating requirements; 40 CFR 281.33 Release detection; 40 CFR 281.34 Release reporting, investigation, and confirmation; 40 CFR 281.35 Release response and corrective action; 40 CFR 281.36 Out-of-service UST systems and closure; 40 CFR 281.37 Financial responsibility for UST systems containing petroleum; and 40 CFR 281.39 Lender Liability.

Additionally, the Missouri UST program has adequate enforcement of compliance, as described at 40 CFR 281.40 Requirements for compliance monitoring program and authority; 40 CFR 281.41 Requirements for enforcement authority; 40 CFR 281.42 Requirements for public participation; and 40 CFR 281.43 Sharing of information.

III. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. A copy of Missouri's application is available for review at EPA Region 7, Library, 901 N. 5th Street, Kansas City, KS 66101. EPA requests that, if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your review. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30, excluding Federal holidays.

2. Copies of the state submittal are also available during normal business hours at the following addresses: The U.S. EPA Docket Clerk, Office of Underground Storage Tanks, c/o RCRA Information Center, 1235 Jefferson Davis Highway, Arlington, Virginia 22202, telephone (703) 603–9230, and at the Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, Missouri 65102, telephone (573) 751–2058.

3. Electronic Access. You may access this **Federal Register** document electronically through the Regulations.gov Web site located at

http://www.regulations.gov where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking by including the text ''Public comment on proposed rulemaking for the Missouri UST Program'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. E-mail. Comments may be sent by electronic mail (e-mail) to *garwood.linda@epa.gov*, please include the text ''Public comment on proposed rulemaking for the Missouri UST Program'' in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. Regulations.gov. Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov*, click on ''To Search for Regulations,'' then select Environmental Protection Agency and use the ''go'' button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Send your comments to Linda Garwood, EPA Region 7, ARTD/STOP, 901 North 5th Street, Kansas City, Kansas 66101. Please include the text ''Public comment on proposed rulemaking for the Missouri UST Program'' in the subject line on the first page of your comment.

3. By Hand Delivery or Courier. Deliver your comments to Linda Garwood, EPA Region 7, ARTD/STOP, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate rulemaking by including the text ''Public comment on proposed rulemaking for the Missouri UST Program'' in the subject line on the first page of your comment. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Notice of Public Hearing

A public hearing will be scheduled if there is sufficient public interest communicated to EPA by June 4, 2004. EPA will determine by June 21, 2004, whether there is significant interest to hold the public hearing. The state of Missouri will participate in such public hearing held by EPA on this subject.

Anyone wishing to learn the status of the public hearing on the state's application may telephone the following

contacts after June 21, 2004: Linda Garwood, EPA Region 7, ARTD/STOP, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551–7268; John Balkenbush, Chief, Tanks Section, Hazardous Waste Program, Air and Land Protection Division, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, Missouri 65102, (573) 526–0971.

Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action proposes to authorize state requirements for the purpose of RCRA section 9004 and would impose no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this proposed action proposes to authorize pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this proposed action does not have tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000). It does not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This proposed action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to authorize state requirements as part of the state underground storage tank program without altering the relationship or the distribution of power and responsibilities established by RCRA. This proposed action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

Under RCRA section 9004, EPA grants approval of a state's program as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state program application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the proposed action in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 281

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

Authority: This document is issued under the authority of Section 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: April 16, 2004.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 04–10214 Filed 5–4–04; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI44

Endangered and Threatened Wildlife and Plants; Notice of a Public Hearing for the Proposed Listing of the Southwest Alaska Distinct Population Segment of the Northern Sea Otter as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; announcement of public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) will hold a public hearing on the proposed listing of the Southwest Alaska Distinct Population Segment of the Northern Sea Otter (*Enhydra lutris kenyoni*) as threatened.

DATES: One public hearing will be held on May 19, 2004, in Kodiak, Alaska, from 7 p.m. to 10 p.m. The public is invited to participate and to provide oral testimony. The public hearing will be preceded by an informational meeting from 5 p.m. to 7 p.m. Teleconference facilities will be available for members of the public who wish to participate by teleconference.

ADDRESSES: The public hearing will be held at the Best Western Hotel, 236 Rezanof Drive, Kodiak, Alaska 99615. To participate by teleconference call toll-free 888/391–1373. The Teleconference Leader is Ms. Sue Detwiler and the Passcode is Sea Otter.

FOR FURTHER INFORMATION CONTACT: Douglas Burn, U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503 (telephone 907/786–3800; facsimile 907/786–3816)

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We solicit comments on our proposal to list the southwest Alaska distinct population segment (DPS) of the northern sea otter (69 FR 6600, February 11, 2004). Of particular interest to us are comments concerning:

(1) Biological, commercial trade, or any other relevant data concerning any threat (or lack thereof) to the DPS;

(2) The location of any additional populations of this DPS;

(3) The specific physical and biological features to consider, and specific areas that meet the definition of critical habitat and that should or should not be considered for critical