

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 281**

[FRL-5166-9]

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

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

EFFECTIVE DATE: Final approval for Iowa shall be effective at 1:00 pm eastern time on May 8, 1995.

FOR FURTHER INFORMATION CONTACT: Lee Daniels, Coordinator, Underground Storage Tank Section, EPA Region 7, 726 Minnesota Ave., Kansas City, Kansas, 66101. Phone: (913) 551-7651.

SUPPLEMENTARY INFORMATION:**A. Background**

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables EPA to approve state UST programs to operate in the state in lieu of the Federal UST program. To qualify for final authorization, a state's program must be: (1) "No less stringent" than the Federal program in leak detection, maintaining records, release reporting, corrective action, tank closure, financial responsibility, new tank standards and the notification requirements of Section 9004(a)(8) of RCRA, 42 U.S.C. 6991c(a)(8); and (2) provide for adequate enforcement (Section 9004(a) of RCRA, 42 U.S.C. 6991c(a)).

B. State of Iowa

On March 17, 1994, Iowa submitted an application for "complete" program approval. On April 25, 1994, Iowa submitted H.F. 2118 which amended Iowa Code § 455B.471(6) for inclusion in the application. This bill amended the definition of an "owner" of an underground storage tank and provided the conditions under which a "lender" might be exempted from that definition. Also, on June 7, 1994 Iowa modified its application so that it is not seeking

authorization over Indian lands. Together, these comprise the Iowa application. The Iowa program provides for regulation of both petroleum and hazardous substance tanks. Iowa also regulates farm/residential tanks of 1,100 gallons or less capacity. However, this part of the Iowa program is broader in scope than the Federal program and is not included in this final approval. On August 9, 1994, EPA published a tentative decision announcing its intent to grant Iowa final approval. Further background on the tentative decision to grant approval appears at 59 FR 40507, August 9, 1994.

Along with the tentative determination, EPA announced the availability of the application for public comment. Also, EPA provided notice that a public hearing would be provided only if significant public interest on substantive issues was shown. EPA did receive significant comments on the application and a public hearing was held on December 1, 1994 in Des Moines, Iowa.

C. Public Comments and Hearing

The following summarizes the comments and responds to the significant issues raised by those comments.

Twenty-three written comments were received during the public comment period, which ran from August 9, 1994, when the tentative program approval notice was published, until December 9, 1994. Nine commenters spoke at the public hearing. Commenters included owners of USTs, an association of petroleum marketers, an association of trucking companies and service providers to trucking companies, local government officials and the Iowa Department of Natural Resources (IDNR). The Iowa Comprehensive Petroleum Underground Storage Tank Fund provided a written comment following the public hearing.

The majority of comments concerned four major issues: (1) Whether the IDNR adequately enforces the financial responsibility requirements applicable to UST owners, (2) whether the IDNR adequately enforces the leak detection requirements applicable to UST owners, (3) whether the IDNR wastes resources for site assessments instead of actual cleanups, and (4) whether the IDNR should use risk-based cleanup standards.

Other commenters stated that owners who timely comply with the UST requirements are competitively disadvantaged when the IDNR does not enforce the rules for everyone, or when compliance deadlines are moved. Others criticized the IDNR for specific

cleanup requirements imposed on sites which they owned. The IDNR was criticized for the high costs of site assessments and the costs of complying with the IDNR requirements for long-term monitoring after contaminated soils were removed. One commenter cited an example of contamination that recurred after a cleanup due to fluctuating water tables. Others cited diminished property values and lost economic development due to contamination.

While some of the commenters requested that the EPA deny program approval, the petroleum marketers association echoed the four major comments above but specifically requested approval of the Iowa program. However, the marketers association did request that the EPA continue providing the IDNR technical and administrative assistance to improve enforcement of UST regulations and the adoption of risk-based cleanup standards. The trucking association criticized the IDNR for wasting resources without doing enough cleanups and for not using risk-based cleanup standards, but did not request denial of program approval.

At the public hearing and in a written comment, the IDNR specifically addressed the four major issues identified above. However, not all of those four issues are within the scope of the EPA's review for state program approval. For the EPA the sole concerns are whether the state has the legal authorities, the program capability to meet the objectives of the federal UST requirements and provides adequate enforcement of compliance. Thus, even though the EPA encourages the effective use of state cleanup funds, such funds are not required elements for state program approval and Iowa's administration of its state cleanup fund was not reviewed by the EPA for program approval. Similarly, while the EPA encourages states to use risk-based decision-making in the corrective action process, there is no federal requirement for state program approval for any particular methodology. Nonetheless, in order to fully address the public's concerns the EPA has included in this responsiveness summary the IDNR's response to each of the major issues.

With respect to enforcement of the leak detection and financial responsibility requirements, the IDNR noted that the state's UST requirements follow the federal requirements. The federal UST regulation does not require compliance reporting by the owner to the regulating agency, but only that leak detection and financial responsibility records be kept on-site or reasonably accessible. Therefore, for the IDNR the

only clear mechanism to enforce those requirements is on-site inspections of each facility. The IDNR has established an abbreviated enforcement procedure to deal with those specific violations, so that a large number of enforcement actions can be undertaken in a relatively short period of time. With its available resources, the IDNR performs over 400 on-site inspections each year.

In response to the comments alleging waste of cleanup resources, the IDNR attributed many of the public concerns to difficulties the agency has had in identifying the soil and groundwater contamination, and the resulting failure of nearly every remediation system that was installed. As a result, the IDNR is now requiring more detailed assessments of contaminated sites to determine the risks and necessary actions, and to provide assurance that the remediation will be successful.

Concerning risk assessment, the IDNR commented that since 1992 it has been applying a risk-based assessment to set the appropriate standards to protect human health and the environment, and was one of the first states in the nation to do so. Since then, 43 percent of assessed sites have been required to perform some form of remediation, and 57 percent have been allowed to either do nothing or to monitor only. There has been a continuous effort to improve on and reduce the amount of remediation required.

In response to the above comments, the EPA notes that none of the comments identified any problems with the scope of the Iowa UST program or whether the Iowa regulations are less stringent than the federal requirements. Although some commenters identified problems with the adequacy of enforcement of the leak detection and financial responsibility requirements, the EPA is satisfied that the IDNR is using its available resources to adequately enforce these requirements and will continue taking steps to achieve universal compliance at UST facilities in Iowa.

Additionally, the EPA considers the IDNR's efforts to achieve required cleanups to be adequate for program approval, but acknowledges the technical and financial difficulties in achieving cleanups. The IDNR is making progress in improving remediation efficiency through more detailed site assessments and the use of risk based cleanup standards.

Also, the EPA acknowledges that owners of USTs face sometimes enormous financial challenges in complying with the technical operating requirements and in performing required cleanups of contaminated sites.

However, those requirements would be the same whether or not EPA approves the Iowa UST program. Further, upon approval the Iowa UST program would operate in lieu of the federal program and owners and operators would look only to the Iowa set of requirements to determine their compliance.

Finally, in response to the suggestion that the EPA should provide technical and administrative assistance to the IDNR, the EPA notes that after program approval the EPA will continue to provide the IDNR such assistance. Also, the EPA/State Memorandum of Agreement that is part of the program approval application provides for continued information exchanges between the EPA and the IDNR to monitor and improve site cleanups and enforcement activities.

D. Decision

I conclude that the State of Iowa's application for final approval meets all the statutory and regulatory requirements established by Subtitle I of RCRA. Accordingly, Iowa is granted final approval to operate its UST program. The State of Iowa now has the responsibility for managing all regulated UST facilities within its borders and carrying out all aspects of the UST program except with regard to Indian lands, where EPA will retain and otherwise exercise regulatory authority. Iowa 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. This approval effectively suspends the applicability of certain Federal regulations in favor of Iowa'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 action 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 6991c.

Dated: February 7, 1995.

Delores Platt,

Acting Regional Administrator.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[FRL-5164-5]

Underground Storage Tank Program: Approved State Program for Iowa

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 Iowa's underground storage tank program and incorporates by reference appropriate provisions of state statutes and regulations.

DATES: This regulation is effective May 8, 1995, unless EPA publishes a prior Federal Register document withdrawing this immediate final rule. All comments on the codification of Iowa's underground storage tank program must be received by the close of business April 6, 1995. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of May 8, 1995, in accordance with 5 U.S.C. 552(a).

ADDRESSES: Comments may be mailed to WSTM/RCRA/STPG, Underground Storage Tank Program, U.S. EPA Region