

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.*

[FR Doc. 95-5526 Filed 3-6-95; 8:45 am]

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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

7, 726 Minnesota Ave., Kansas City, Kansas, 66101. Comments received by EPA may be inspected at the above address from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays.

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

**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 published a Federal Register document announcing its decision to grant approval to Iowa elsewhere in this issue of the Federal Register. Approval will be effective on May 8, 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 Iowa underground storage tank program. This codification reflects the state program in effect at the time EPA granted Iowa 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 Iowa 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 Iowa program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in Iowa, the status of federally approved requirements of the Iowa program will be readily discernible. Only those provisions of the Iowa 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 Iowa's underground storage tank program, EPA has added § 282.65 to title 40 of the CFR. Section 282.65 incorporates by

reference for enforcement purposes the State's statutes and regulations. Section 282.65 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 Iowa enforcement authorities will not be incorporated by reference. Section 282.65 lists those approved Iowa 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 282.65 of the codification simply lists for reference and clarity the Iowa 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 Iowa 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 7, 1995.

Delores Platt,

*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 § 282.65 to read as follows:

**§ 282.65 Iowa State-administered program.**

(a) The State of Iowa 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 Iowa Department of Natural Resources, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this Chapter. EPA approved the Iowa program on March 7, 1995 and it was effective on May 8, 1995.

(b) Iowa 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, Iowa 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 Iowa 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) Iowa has final approval for the following elements submitted to EPA in Iowa's program application for final approval and approved by EPA on March 7, 1995. Copies may be obtained from the Underground Storage Tank Program, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand, Des Moines, Iowa, 50319.

(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) Iowa Statutory Requirements Applicable to the Underground Storage Tank Program, 1994

(B) Iowa Regulatory Requirements Applicable to the Underground Storage Tank Program, 1994

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

(A) The statutory provisions include: Code of Iowa, Chapter 455B, Sections 103(4), 109, 111, 112, 475, 476, 477 and 478.

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

(A) Code of Iowa, Chapter 455B, Sections 113, 114 and 115 insofar as they apply to certified laboratories; 479 insofar as it applies to account dispersion; Chapter 455G, Sections 1-20 insofar as they apply to the comprehensive petroleum underground storage tank fund.

(B) Iowa Administrative Code, Rule 567, Chapter 134.1-5 insofar as they apply to the registration of groundwater professionals; 135.3(4) insofar as it applies to farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(2) *Statement of legal authority.* (i) "Attorney General's Statement for Final Approval", signed by the Attorney General of Iowa on December 22, 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.*

(ii) Letter from the Attorney General of Iowa to EPA, dated December 22, 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.*

(3) *Demonstration of procedures for adequate enforcement.* The "Demonstration of Procedures for Adequate Enforcement" submitted as part of the original application in March of 1994, 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 March 1994, 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 7 and the Iowa Department of Natural Resources, signed by the EPA Regional Administrator on June 22, 1994, 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 "Iowa" and its listing.

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

\* \* \* \* \*

Iowa

(a) The statutory provisions include Code of Iowa, 1993; Chapter 455B, Jurisdiction of Department:

- Section 101—Definitions
- Section 103—Director's duties, except for 455B.103(4)
- Section 105—Powers and duties of the commission, except for 105(5), 105(11)a(3) and 105(11)b
- Section 471—Definitions
- Section 472—Declaration of policy
- Section 473—Report of existing and new tanks—fee
- Section 473A—Petroleum underground storage tank registration amnesty program
- Section 474—Duties of Commission—rules
- Section 479—Storage tank management fee, except for the 2nd and 3rd sentences

(b) The regulatory provisions include Iowa Administrative Code, 1993, Rule 567, Environmental Protection Commission:

- Chapter 131.1—Definitions
- Chapter 131.2—Report of Hazardous Conditions
- Chapter 133.1—Scope
- Chapter 133.2—Definitions
- Chapter 133.3—Documentation of contamination and source
- Chapter 133.4—Response to contamination
- Chapter 133.5—Report to commission
- Chapter 135.1—Authority, purpose and applicability
- Chapter 135.2—Definitions
- Chapter 135.3—UST systems—design, construction, installation, and notification, except for 135.3(4)a, 3(4)b and 3(4)c
- Chapter 135.4—General operating requirements
- Chapter 135.5—Release detection
- Chapter 135.6—Release reporting, investigation, and confirmation
- Chapter 135.7—Release response and corrective action for UST systems containing petroleum or hazardous substances
- Chapter 135.8—Site cleanup report
- Chapter 135.9—Out-of-service UST systems and closure
- Chapter 135.10—Laboratory analytical methods for petroleum contamination of soil and groundwater
- Chapter 135.11—Evaluation of ability to pay
- Chapter 136.1—Applicability
- Chapter 136.2—Compliance dates
- Chapter 136.3—Definition of terms
- Chapter 136.4—Amount and scope of required financial responsibility
- Chapter 136.5—Allowable mechanisms and combinations of mechanisms
- Chapter 136.6—Financial test of self-insurance
- Chapter 136.7—Guarantee
- Chapter 136.8—Insurance and risk retention group coverage
- Chapter 136.9—Surety bond
- Chapter 136.10—Letter of credit
- Chapter 136.11—Trust fund
- Chapter 136.12—Standby trust fund
- Chapter 136.13—Local government bond rating test
- Chapter 136.14—Local government financial test
- Chapter 136.15—Local government guarantee
- Chapter 136.16—Local government fund
- Chapter 136.17—Substitution of financial assurance mechanisms by owner or operator
- Chapter 136.18—Cancellation or nonrenewal by a provider of financial assurance
- Chapter 136.19—Reporting by owner or operator
- Chapter 136.20—Record keeping
- Chapter 136.21—Drawing on financial assurance mechanisms
- Chapter 136.22—Release from the requirements
- Chapter 136.23—Bankruptcy or other incapacity of owner or operator or provider of financial assurance

Chapter 136.24—Replenishment of  
guarantees, letters of credit, or surety  
bonds.

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