

**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