

EPA's final action does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act, upon the State. No additional costs to State, local, or tribal governments, or to the private sector, result from this action, which suspends the indicated requirements. Thus, EPA has determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 21, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Nitrogen oxides, Ozone, Volatile organic compounds, Intergovernmental relations, Reporting and record keeping requirements.

Dated: June 9, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart S—Kentucky

2. Section 52.930 is amended by adding new paragraph (c) to read as follows:

§ 52.930 Control strategy: Ozone.

* * * * *

(c) Determination—EPA is determining that, as of August 7, 1995, the Cincinnati-Hamilton and Huntington-Ashland ozone nonattainment areas have attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to the areas for so long as the

areas do not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Cincinnati-Hamilton or Huntington-Ashland ozone nonattainment areas, these determinations shall no longer apply.

Subpart II—North Carolina

2. Section 52.1782 is added to read as follows:

§ 52.1782 Control strategy: Ozone.

(a) Determination—EPA is determining that, as of August 7, 1995, the Charlotte-Gastonia ozone nonattainment area has attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to the area for so long as the area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Charlotte-Gastonia ozone nonattainment area, these determinations shall no longer apply.

(b) [Reserved]

Subpart RR—Tennessee

2. Section 52.2235 is added to read as follows:

§ 52.2235 Control strategy: Ozone.

* * * * *

(a) Determination—EPA is determining that, as of August 7, 1995, the Nashville ozone nonattainment area has attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to the area for so long as the area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Nashville ozone nonattainment area, these determinations shall no longer apply.

(b) [Reserved]

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BILLING CODE 6560-50-P

40 CFR Part 282

[FRL-5205-7]

Underground Storage Tank Program: Approved State Program for North 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 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 North Dakota's underground storage tank program and incorporates by reference appropriate provisions of state statutes and regulations.

DATES: This regulation is effective on August 21, 1995, unless EPA publishes a prior **Federal Register** document withdrawing this immediate final rule. All comments on the codification of North Dakota's underground storage tank program must be received by the close of business on July 24, 1995. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register**, as of August 21, 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 may be inspected in the U.S. EPA Region 8 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, Underground Storage Tank Program, U.S. EPA Region VIII, 999-18th Street, Suite 500, Denver, CO 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 (EPA) 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 North Dakota (56 FR 51333, October 11, 1991). Approval was effective on December 10, 1991.

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 North Dakota underground storage tank program. This codification reflects the state program in effect at the time EPA granted North 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 North 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 North Dakota program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in North Dakota, the status of federally approved requirements of the North Dakota program will be readily discernible. Only those provisions of the North 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 North Dakota's underground storage tank program, EPA has added section 282.84 to title 40 of the CFR. Section 282.84 incorporates by reference for enforcement purposes the State's statutes and regulations. Section 282.84 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 North Dakota enforcement authorities will not be incorporated by reference. Section 282.84 lists those approved North 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 282.84 of codification simply lists for reference and clarity the North 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 (56 FR 51333, October 11, 1991) to approve the North 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: May 2, 1995.

Jack McGraw,

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 § 282.84 to read as follows:

§ 282.84 North Dakota State-Administered Program.

(a) The State of North 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 North Dakota Department of Health and Consolidated Laboratories, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this Chapter. EPA approved the North Dakota program on October 11, 1991 and it was effective on December 10, 1991.

(b) North 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, North 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 North 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) North Dakota has final approval for the following elements submitted to EPA in North Dakota's program application for final approval and approved by EPA on October 11, 1991. Copies may be obtained from the Underground Storage Tank Program, North Dakota Department of Health Consolidated Laboratories, 1200 Missouri Avenue, Bismarck, ND 58502-5520.

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

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

(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: North Dakota Century Code (NDCC), Chapter 23-20.3, Sections 23-20.3-06, 23-20.3-07 and 23-20.3-09.

(B) The regulatory provisions include: North Dakota Administrative Code, Chapter 33-24-08, Sections 33-24-08-56, 33-24-08-57 and 33-24-08-98.

(2) *Statement of Legal Authority.* (i) "Attorney General's Statement for Final Approval", signed by the Attorney General of North Dakota on February 28, 1991, 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 North Dakota to EPA, February 28, 1991, 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 April 1991, 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 April 1991, 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 North Dakota Department of Health and Consolidated Laboratories, signed by the EPA Regional Administrator on September 10, 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. Appendix A to Part 282 is amended by adding in alphabetical order "North Dakota" and its listing.

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

* * * * *

North Dakota

(a) The statutory provisions include: North Dakota Century Code (NDCC), Chapter 23-20.3, Hazardous Waste Management Act:

- Section 23-20.3-01 Declaration of Purpose.
- Section 23-20.3-02 Definitions.
- Section 23-20.3-03 Powers and Duties of the Department.
- Section 23-20.3-04 Hazardous Waste Regulations.
- Section 23-20.3-04.1 Underground Storage Tank Regulations.
- Section 23-20.3-05 Permits.
- Section 23-20.3-05.1 Fees—Deposit in Operating Fund.
- Section 23-20.3-05.2 Commercial Facility Permits and Ordinances.
- Section 23-20.3-08 Imminent Hazard.
- Section 23-20.3-10 Applicability.

(b) The regulatory provisions include: North Dakota Administrative Code (NDAC), Chapter 33-24-08, Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks, Amended April 1992:

- Section 33-24-08-01 Applicability.
- Section 33-24-08-02 Interim Prohibition for Deferred Underground Storage Tank Systems.
- Section 33-24-08-03 Definitions (Technical Standards and Corrective Action).
- Section 33-24-08-10 Performance Standards for New Underground Storage Tank Systems.
- Section 33-24-08-11 Upgrading of Existing Underground Storage Tank Systems.
- Section 33-24-08-12 Notification Requirements.
- Section 33-24-08-20 Spill and Overfill Control.
- Section 33-24-08-21 Operation and Maintenance of Corrosion Protection.
- Section 33-24-08-22 Compatibility.
- Section 33-24-08-23 Repairs Allowed.
- Section 33-24-08-24 Reporting and Recordkeeping.
- Section 33-24-08-30 General Release Detection Requirements for All Underground Storage Tank Systems.
- Section 33-24-08-31 Release Detection Requirements for Petroleum Underground Storage Tank Systems.
- Section 33-24-08-32 Release Detection Requirements for Hazardous Substance Underground Storage Tank Systems.
- Section 33-24-08-33 Methods of Release Detection for Tanks.
- Section 33-24-08-34 Methods of Release Detection for Piping.

- Section 33-24-08-35 Release Detection Recordkeeping.
- Section 33-24-08-40 Reporting of Suspected Releases.
- Section 33-24-08-41 Investigation Due to Offsite Impacts.
- Section 33-24-08-42 Release Investigation and Confirmation Steps.
- Section 33-24-08-43 Reporting and Cleanup of Spills and Overfills.
- Section 33-24-08-50 General Release Response and Corrective Action for Underground Storage Tank Systems Containing Petroleum or Hazardous Substances.
- Section 33-24-08-51 Initial Response.
- Section 33-24-08-52 Initial Abatement Measures and Site Check.
- Section 33-24-08-53 Initial Site Characterization.
- Section 33-24-08-54 Free Product Removal.
- Section 33-24-08-55 Investigations for Soil and Ground Water Cleanup.
- Section 33-24-08-60 Temporary Closure.
- Section 33-24-08-61 Permanent Closure and Changes in Service.
- Section 33-24-08-62 Assessing the Site at Closure or Change in Service.
- Section 33-24-08-63 Applicability to Previously Closed Underground Storage Tank Systems.
- Section 33-24-08-64 Closure Records.
- Section 33-24-08-80 Applicability (financial responsibility).
- Section 33-24-08-81 Financial Responsibility Compliance Dates.
- Section 33-24-08-82 Definitions (financial responsibility).
- Section 33-24-08-83 Amount and Scope of Required Financial Responsibility.
- Section 33-24-08-84 Allowable Mechanisms and Combinations of Mechanisms.
- Section 33-24-08-85 Financial Test of Self-Insurance.
- Section 33-24-08-86 Guarantee.
- Section 33-24-08-87 Insurance and Risk Retention Group Coverage.
- Section 33-24-08-88 Surety Bond.
- Section 33-24-08-89 Letter of Credit.
- Section 33-24-08-92 Trust Fund.
- Section 33-24-08-93 Standby Trust Fund.
- Section 33-24-08-94 Substitution of Financial Assurance mechanisms by Owner or Operator.
- Section 33-24-08-95 Cancellation or Nonrenewal by Provider of Financial Assurance.
- Section 33-24-08-96 Reporting by Owner or Operator.
- Section 33-24-08-97 Recordkeeping.
- Section 33-24-08-99 Release from Requirements.
- Section 33-24-08-100 Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance.
- Section 33-24-08-101 Replenishment of Guarantees, Letters of Credit, or Surety Bonds.