

**40 CFR Part 282**

[FRL-5677-6]

**Underground Storage Tank Program: Approved State Program for Alabama****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Immediate final rule.

**SUMMARY:** The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the 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 approval of Alabama's underground storage tank program and incorporates by reference appropriate provisions of state statutes and regulations.

**DATES:** This regulation is effective March 25, 1997, unless EPA publishes a prior **Federal Register** document withdrawing this immediate final rule. All comments on the codification of Alabama's underground storage tank program must be received by the close of business on February 24, 1997. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of March 25, 1997, in accordance with 5 U.S.C. 552(a).

**ADDRESSES:** Comments may be mailed to the Underground Storage Tank Section, Water Management Division, U.S. EPA, Region 4, Atlanta Federal Center, 100 Alabama Street, S.W., Atlanta, Georgia 30303. Comments received by EPA may be inspected in the public docket, located in the Underground Storage Tank Section, Water Management Division, from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. John K. Mason, Chief, Underground Storage Tank Section, Water Management Division, U.S. EPA, Region 4, Atlanta Federal Center, 100 Alabama Street, S.W., Atlanta, Georgia 30303. Phone: (404) 562-9441.

**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 is publishing a **Federal Register** document announcing its decision to grant approval to Alabama concurrently with this document. Approval will be effective March 25, 1997.

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 Alabama underground storage tank program. This codification reflects the state program in effect at the time EPA grants Alabama 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 Alabama 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 Alabama program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in Alabama, the status of federally approved requirements of the Alabama program will be readily discernible. Only those provisions of the Alabama 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 Alabama's underground storage tank program, EPA has added section 282.50 to title 40 of the Code of Federal Regulation. Section 282.50 incorporates by reference for enforcement purposes the state's statutes and regulations. Section 282.50 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 Alabama enforcement authorities will not be incorporated by reference. Section 282.50 lists those approved Alabama 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 section 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 282.50 of the codification simply lists for reference and clarity the Alabama 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.

**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.

**Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for federal agencies to assess the effects of certain regulatory actions on state, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with federal mandates, as defined by the UMRA, that may result in expenditures to state, local and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. The section 202 and 205 requirements do not apply to today's action because it is not a "federal mandate" and because it does not impose annual costs of \$100 million or more.

Today's rule contains no federal mandates for state, local, and tribal governments or the private section for

two reasons. First, today's action does not impose new or additional enforceable duties on any state, local, or tribal governments or the private sector because it merely makes federally enforceable existing requirements with which regulated entities must already comply under state law. Second, the Act also generally excludes from the definition of a "federal mandate" duties that arise from participation in a voluntary federal program. The requirements being codified today are the result of the State of Alabama's voluntary participation in accordance with RCRA Subtitle I.

Even if today's rule did contain a federal mandate, this rule will not result in annual expenditures of \$100 million or more for state, local, and/or tribal governments in the aggregate, or the private sector because today's action merely codifies an existing state program that EPA is authorizing concurrently. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, section 203 of UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirement that might significantly or uniquely affect small governments. The Agency recognizes that although small governments may own and/or operate USTs, this codification incorporates into the Code of Federal Regulations the State of Alabama's requirements which are being authorized concurrently by EPA under 40 CFR Part 281 and, thus small governments are not subject to any additional significant or unique requirements by virtue of this codification.

#### **Certification Under the Regulatory Flexibility Act**

This rule codifies the decision already made to approve the Alabama 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.

#### **Submission to Congress and the General Accounting Office**

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule

and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### **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: January 8, 1997.

**A. Stanley Meiburg,**  
*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 § 282.50 to read as follows:

##### **§ 282.50 Alabama State-Administered Program.**

(a) The State of Alabama 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 Alabama Department of Environmental Management, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this Chapter. EPA published the notice for final determination on the approved Alabama underground storage tank program concurrently with this notice and it will be effective on March 25, 1997.

(b) Alabama 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, Alabama 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 Alabama 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) Alabama will have final approval for the following elements submitted to EPA in Alabama's program application for final approval and to be published in the **Federal Register** concurrently with this notice, and to be effective on March 25, 1997. Copies of Alabama's underground storage tank program may be obtained from the Ground Water Branch, Alabama Department of Environmental Management, 1751 W.L. Dickinson Drive, Montgomery, Alabama 36130.

(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) Alabama Statutory Requirements Applicable to the Underground Storage Tank Program, 1996.

(B) Alabama Regulatory Requirements Applicable to the Underground Storage Tank Program, 1996.

(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 Alabama 1975, Title 22, Chapter 36, Section 9 and Code of Alabama 1975, Title 22, Chapter 22A, Section 5(19).

(B) The regulatory provisions include: none.

(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 Alabama 1975, Title 22, Chapter 36, Section 5, insofar as it refers to underground storage tank regulation fees.

(B) Code of Alabama 1975, Title 22, Chapter 36, Section 7, insofar as it refers

to rules and regulations to establish and protect wellhead areas from contaminants.

(C) Alabama Department of Environmental Management Administrative Code Section 335-6-15-.05, insofar as it requires notification of underground storage tank systems taken out of operation on or before January 1, 1974.

(D) Alabama Department of Environmental Management Administrative Code Section 335-6-15-.45, insofar as it requires underground storage tank regulation fees.

(E) Alabama Department of Environmental Management Administrative Code R. 335-6-15-.47, insofar as it refers to financial responsibility for hazardous substance underground storage tank systems.

(2) *Statement of legal authority.* (i) "Attorney General's Statement for Final Approval", signed by the Attorney General of Alabama on June 8, 1992, 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 Alabama to EPA, June 8, 1992, 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 final application in July 1994 and revised in March 1995, 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 final application in July 1994 and revised in March 1995, 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 4 and the Alabama Department of Environmental Management, signed by the EPA, Regional Administrator on August 2, 1996, 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 "Alabama" and its listing.

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

\* \* \* \* \*

*Alabama*

(a) The statutory provisions include Code of Alabama 1975, Title 22, Chapter 36, Underground Tank and Wellhead Protection Act:

Section 1

Short title.

Section 2

Definitions.

Section 3

Rules and regulations governing underground storage tanks.

Section 4

Information to be furnished by owner upon request of department; owner to permit access to records and entry and inspection of facilities.

Section 6

Expenditure of funds from leaking underground storage tank trust fund; investigative and corrective powers in regard to administration of funds; liability of owner or operator for costs.

Section 8

Availability to public of records, reports, or information obtained under chapter.

Section 10

Rules and regulations.

(b) The regulatory provisions include Alabama Department of Environmental Management, Administrative Code, Division 6, Water Quality Program, Volume II, revised effective: June 1, 1994, Chapter 335-6-15: Technical Standards, Corrective Action Requirements and Financial Responsibility for Owners and Operators of Underground Storage Tanks.

Section .01

Purpose.

Section .02

Definitions.

Section .03

Applicability.

Section .04

Interim Prohibition for Deferred UST Systems.

Section .05

Notification, except those USTs taken out of operation on or before January 1, 1974.

Section .06

Performance Standards for New UST Systems.

Section .07

Upgrading of Existing UST Systems.

Section .08

Plans and Specifications.

Section .09

Spill and Overfill Control.

Section .10

Operation and Maintenance of Corrosion Protection.

Section .11

Compatibility.

Section .12

Repairs Allowed.

Section .13

Reporting and Recordkeeping.

Section .14

General Release Detection Systems for all UST Systems.

Section .15

Release Detection Requirements for Petroleum UST Systems.

Section .16

Release Detection Requirements for Hazardous Substance UST Systems.

Section .17

Methods of Release Detection for Tanks.

Section .18

Methods of Release Detection for Pipes.

Section .19

Release Detection Recordkeeping.

Section .20

Reporting of Suspected Releases.

Section .21

Investigation Due to Environmental Impact.

Section .22

Release Investigation and Confirmation Steps.

Section .23

Reporting and Clean-up of Spills and Overfills.

Section .24

Initial Release Response.

Section .25

Initial Abatement Measures and Preliminary Investigation.

Section .26

Preliminary Investigation Requirements.

Section .27

Free Product Removal.

Section .28

Secondary Investigation Requirements.

Section .29

Corrective Action Plan.

Section .30

Corrective Action Limits for Soils.

Section .31

Corrective Action Limits for Ground Water.

Section .32

Alternative Corrective Action Limits.

Section .33

Risk Assessment.

Section .34

Public Participation.

Section .35

Analytical Requirements.

Section .36

Temporary Closure.

Section .37

Permanent Closure.

Section .38

Site Closure or Change-in-Service Assessments.

Section .39

Applicability to Previously Closed UST Systems.

Section .40

Closure Records.

Section .41

Alternate or Temporary Drinking Water Source.

Section .42

Availability to Public of Records, Reports or information.

Section .43

Access to Records.

Section .44

Entry and Inspection of Facilities.  
Section .46  
Financial Responsibility for Petroleum  
UST Owners and Operators.  
Section .48  
Severability.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AC50

#### Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Two Insects From the Santa Cruz Mountains of California

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the Mount Hermon June beetle (*Polyphylla barbata*) and Zayante band-winged grasshopper (*Trimerotropis infantilis*). These two insect species are restricted to the Zayante sand hills ecosystem endemic to inland marine sand deposits in the Santa Cruz Mountains of Santa Cruz County, California. The species are in danger of extinction principally because of ongoing and future habitat loss to sand mining and urban development. This rule implements Federal protection and recovery provisions afforded by the Act for each of these animals. The proposal to list the Santa Cruz rain beetle (*Pleocoma conjungens conjungens*) as an endangered species is being withdrawn and will appear in a separate section of this publication.

**EFFECTIVE DATE:** February 24, 1997.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Ventura Field Office, 2493 Portola Road, Suite B, Ventura, California 93003.

**FOR FURTHER INFORMATION CONTACT:** Carl Benz, Assistant Field Supervisor (see **ADDRESSES** section, telephone 805/644-1766).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Mount Hermon June beetle (*Polyphylla barbata*) and Zayante band-

winged grasshopper (*Trimerotropis infantilis*) are endemic to the unique Zayante sand hills ecosystem associated with isolated sandstone deposits in the Santa Cruz Mountains, Santa Cruz County, California.

The Santa Cruz Mountains are a geologically young range composed of igneous and metamorphic rocks overlaid by thick layers of sedimentary material uplifted from the ocean floor and ancient shoreline zone (Caughman and Ginsberg 1987). These Miocene marine terraces, called the Santa Margarita formation (Clark 1981; Marangio 1985), persist as pockets of sandstones and limestones geologically distinct from the volcanic origins of the Santa Cruz Mountains. Soils that formed from these sandstone deposits occur in scattered pockets covering approximately 3,400 hectares (ha) (8,400 acres (ac)), and are called the Zayante soil series (USDA Soil Conservation Service 1980). Zayante soils are endemic to Santa Cruz County and occur in three primary clusters. The largest cluster is in the vicinity of the communities of Ben Lomond, Felton, Mount Hermon, Olympia, and Scotts Valley. A second cluster is located in the Bonny Doon area. The third, and smallest, cluster is found near the community of Corralitos. Zayante soils are deep, coarse-textured, poorly developed, and well drained (USDA Soil Conservation Service 1980).

Predominant vegetation of the Santa Cruz Mountains consists of coast redwood forest (Zinke 1988) and mixed evergreen forest (Sawyer *et al.* 1988). However, the coarse, sandy, Zayante soils create a warmer and drier microclimate that supports a uniquely adapted flora distinctly different from the surrounding forest and chaparral communities (Marangio 1985; Davilla 1990). The Zayante soils in the Ben Lomond-Mount Hermon-Scotts Valley and Bonny Doon regions harbor a complex vegetation mosaic dominated by maritime coast range ponderosa pine forest and northern maritime chaparral (Griffin 1964; Holland 1986). The distributions of northern maritime chaparral and maritime coast range ponderosa pine forest overlap to form a complex and intergrading mosaic of communities variously referred to as "ponderosa sand parkland," "ponderosa pine sandhills," and "silver-leafed manzanita mixed chaparral." These habitats will be collectively referred to as "Zayante sand hills habitat" or the "Zayante sand hills ecosystem." The Corralitos cluster of Zayante soils is distant and does not support similar vegetation. Therefore, that cluster is not

included in the Zayante sand hills ecosystem.

The occurrence of ponderosa pine (*Pinus ponderosa*) in this region represents a disjunct, remnant occurrence of the species in the Santa Cruz Mountains, reflective of the unique edaphic conditions on Zayante soils. Here, maritime coast range ponderosa pine forest occurs as open, park-like stands with low densities of ponderosa pines occasionally interspersed with knobcone pines (*Pinus attenuata*) and, at some sites, the federally endangered Santa Cruz cypress (*Cupressus abramsiana*). The presence of knobcone pines and Santa Cruz cypress, which require periodic fires for reproduction (Vogl *et al.* 1988), suggests that fire may play an important role in the maintenance of the Zayante sand hills habitat mosaic (Griffin 1964; Marangio 1985; Holland 1986).

Northern maritime chaparral on Zayante soils is dominated by the silver-leafed manzanita (*Arctostaphylos silvicola*), a candidate for Federal listing endemic to the region. It may occur as monotypic stands or be mixed with *Ceanothus* sp., *Adenostoma* sp., *Eriodictyon* sp., and other shrub species. Knobcone pine may occasionally be present (Morgan 1983; Marangio 1985; Lee 1994).

The Zayante sand hills ecosystem harbors a diversity of rare and endemic plant species and disjunct populations (Thomas 1961; Griffin 1964; Morgan 1983). In addition to the endemic silver-leafed manzanita and the disjunct population of ponderosa pine, Zayante soils support the federally endangered *Erysimum teretifolium* (Ben Lomond wallflower), *Chorizanthe pungens* var. *hartwegiana* (Ben Lomond spineflower), and *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower). Because of the unique flora found there, the Zayante sand hills are considered to be "biological islands" (Marangio 1985).

A unique habitat within the Zayante sand hills ecosystem is sand parkland characterized by sparsely vegetated, sandstone-dominated ridges and saddles that support a wide array of annual and perennial herbs and grasses. Scattered ponderosa pine trees are often present. Although overall vegetation cover is generally less than 20 percent, sand parkland supports over 90 specifically adapted plant species (Morgan 1983; Davilla 1990).

The ranges of the Mount Hermon June beetle and Zayante band-winged grasshopper are highly restricted within the Santa Cruz Mountains. The Mount Hermon June beetle is limited to the Zayante sand hills ecosystem. It is found in sand parkland and other sandy