

enforceable by EPA, WV OAQ and citizens.

The EPA and WV OAQ have reviewed documentation provided by the Sistersville Plant regarding their failure to conduct the initial performance test within 60 days of initial start-up, or May 31, 1998. It appears from that documentation that the Sistersville Plant made good faith efforts to comply with that requirement of the XL project, the proposed site-specific deferral, and the WV OAQ consent order. In recognition that the Sistersville Plant cannot possibly meet that passed deadline, and the site-specific deferral which proposed that requirement has not yet been promulgated, the EPA proposes to modify the site-specific deferral prior to its promulgation.

The modification would extend by 60 days, the initial performance test deadline that was contained in the proposed site-specific deferral. The EPA proposes an extension period of 60 days in response to the Sistersville Plant's representative's written statement that the test could be accomplished by the end of June, 1998, but that the recent history of operational difficulties at the Sistersville Plant indicates additional time may become necessary. A copy of that electronic mail note, dated May 26, 1998 from Mr. Tony Vandenberg to Ms. Beth Termini and Ms. Michele Aston, has been entered into the docket for this supplemental notice. A recent telephone meeting between EPA and the Sistersville Plant confirmed that further delays to the initial performance test schedule have occurred, due to continued operational problems with the thermal oxidizer and severe inclement weather in the Sistersville, West Virginia area, and that the initial performance test is scheduled for July 14 and 15, 1998.

The EPA proposes that extending the initial performance test deadline by 60 days will not result in significant, if any, decreases in the environmental benefits of this XL project. The Sistersville Plant has reported that the thermal oxidizer began operation on April 1, 1998, and following some initial technical difficulties, has been fully operational in accordance with the conditions of the proposed site-specific deferral, since April 13, 1998. The primary purpose of the initial performance test is to set a site-specific operating temperature that will indicate the thermal oxidizer is achieving the required 98 percent by weight reduction of the organics in the controlled vapor stream, as set forth in the proposed site-specific deferral. The EPA and the proposed site-specific deferral set a default operating temperature of 1600 degrees Fahrenheit

for the period prior to conducting the initial performance test. This requirement is contained in the proposed site-specific deferral at §§ (f)(2)(ii)(A)(1)(J) of paragraphs 264.1080 and 265.1080, and is currently enforceable under the WV OAQ consent order. See 63 FR 11200, March 6, 1998. Because the Sistersville Plant has reportedly operated the thermal oxidizer at 1600 degrees Fahrenheit, EPA estimates that the Sistersville Plant has been achieving the majority, if not all, of the environmental benefits of the thermal oxidizer's operation since it first began its fully operational service on April 13, 1998.

In light of the apparent good faith effort by the Sistersville Plant to meet the May 31, 1998 deadline for the initial performance test, their timely notification to EPA of the missed deadline, and their compliance with the requirements otherwise applicable to the thermal oxidizer (e.g., continuously operating the unit at 1600 degrees Fahrenheit), the EPA proposes to extend the deadline for the initial performance test.

At the EPA's request, the Sistersville Plant has agreed to provide direct written notice of this issue to the XL project stakeholder group, and to notify this group that a **Federal Register** document will be published requesting public comment on this issue. The Sistersville Plant has also agreed that, upon publication of today's document in the **Federal Register**, it will promptly notify the stakeholder group, and publish a notification in the local Sistersville newspaper of the opportunity for public comment related to today's supplemental proposal.

The EPA considers a 14-day comment period to be adequate for this document, due to the very narrow scope of the issue, the narrow applicability of the site-specific deferral being considered, and the extensive notice to interested parties that the Sistersville Plant will provide prior to, and immediately following, publication of this supplemental proposal in the **Federal Register**.

#### **List of Subjects 40 CFR Parts 264 and 265**

Environmental protection, Air pollution control, Hazardous waste, Organics, Surface impoundment, Thermal oxidizer.

Dated: July 7, 1998.

**J. Charles Fox**,  
Associate Administrator, Office of  
Reinvention.

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 281**

[FRL-6123-4]

### **Tennessee; Tentative Approval of State Underground Storage Tank Program**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule; notice of tentative determination on application of State of Tennessee for final approval, public hearing and public comment period.

**SUMMARY:** The State of Tennessee has applied for approval of its underground storage tank program for petroleum substances under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the Tennessee application and has made the tentative decision that Tennessee's underground storage tank program for petroleum substances satisfies all of the requirements necessary to qualify for approval. The Tennessee application for approval is available for public review and comment. A public hearing will be held to solicit comments on the application, unless insufficient public interest is expressed.

**DATES:** A public hearing is scheduled for September 3, 1998, unless insufficient public interest is expressed in holding a hearing. EPA reserves the right to cancel the public hearing if sufficient public interest is not communicated to EPA in writing by August 20, 1998. EPA will determine by August 27, 1998, whether there is significant interest to hold the public hearing. The State of Tennessee will participate in the public hearing held by EPA on this subject. Written comments on the Tennessee approval application, as well as requests to present oral testimony, must be received by the close of business on August 20, 1998.

**ADDRESSES:** Copies of the Tennessee approval application are available at the following addresses for inspection and copying:

Tennessee Department of Environment and Conservation, Division of Underground Storage Tanks, 401 Church Street 4th Floor, L&C Tower, Nashville, Tennessee 37243-1541, Phone: (615) 532-0945, 8:00 am through 4:30 pm, Central Daylight Savings Time

U.S. EPA Docket Clerk, Office of Underground Storage Tanks, c/o RCRA Information Center, 1235

Jefferson Davis Highway, Arlington, Virginia 22202, Phone: (703) 603-9231, 9:00 am through 5:00 pm, Eastern Daylight Savings Time and

U.S. EPA Region 4, Underground Storage Tank Section, Atlanta Federal Center, 15th Floor, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, Phone: (404) 562-9277, 9:00 am through 5:00 pm, Eastern Daylight Savings Time.

Written comments should be sent to Mr. John K. Mason, Chief of Underground Storage Tank Section, U.S. EPA Region 4, 61 Forsyth Street S.W., Atlanta, Georgia 30303, telephone (404) 562-9277.

Unless insufficient public interest is expressed, EPA will hold a public hearing on the State of Tennessee's application for program approval on September 3, 1998, at 7:00 pm, Central Daylight Savings Time, at the Tennessee Department of Environment and Conservation, Conference Room B, 17th Floor, L&C Tower, 401 Church Street, Nashville, Tennessee 37243-1541.

Anyone who wishes to learn whether or not the public hearing on the State's application has been cancelled should telephone the following contacts after August 27, 1998:

Mr. John K. Mason, Chief, Underground Storage Tank Section, U.S. EPA Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, Phone: (404) 562-9277, or

Mr. Lamar Bradley, Acting Director, Division of Underground Storage Tanks, Tennessee Department of Environment and Conservation, 401 Church Street, 4th Floor, L&C Tower, Nashville, Tennessee 37243-1541, Phone: (615) 532-0945.

**FOR FURTHER INFORMATION CONTACT:** Mr. John K. Mason, Chief, Underground Storage Tank Section, U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, Georgia 30303, phone: (404) 562-9277.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 9004 of the Resource Conservation and Recovery Act (RCRA) authorizes 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 may be granted by EPA pursuant to RCRA section 9004(b), if the Agency finds that the State program: is "no less stringent" than the Federal program for the seven elements set forth at RCRA section 9004(a)(1) through (7); includes the notification requirements of RCRA section 9004(a)(8); and provides for

adequate enforcement of compliance with UST standards of RCRA section 9004(a).

**II. Tennessee**

The State of Tennessee submitted their draft state program approval application to EPA by letter dated December 9, 1993. After reviewing the package, EPA submitted comments to the state for review. Tennessee submitted their complete state program approval application for EPA's tentative approval on September 1, 1996.

On December 8, 1989, Tennessee adopted UST program regulations for petroleum underground storage tanks related to procedures for fees and notification. The remainder of Tennessee's UST program regulations for petroleum underground storage tanks became effective on April 15, 1990. Prior to the adoption of the regulations, Tennessee solicited public comment and held a public hearing on the draft UST program regulations. EPA has reviewed the Tennessee application, and has tentatively determined that the State's UST program for petroleum substances meets all of the requirements necessary to qualify for final approval.

EPA will hold a public hearing on its tentative decision on September 3, 1998, unless insufficient public interest is expressed. The public may also submit written comments on EPA's tentative determination until August 20, 1998. Copies of the Tennessee application are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

EPA will consider all public comments on its tentative determination received at the hearing, or received in writing during the public comment period. Issues raised by those comments may be the basis for a decision to deny final approval to Tennessee. EPA expects to make a final decision on whether or not to approve Tennessee's program within 60 days, and will give notice of it in the **Federal Register**. The document will include a summary of the reasons for the final determination and a response to all major comments.

**III. Administrative Requirements**

**A. 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.

**B. Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. 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 or tribal governments or the private sector 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 the requirements of the Tennessee program are already imposed by the State and subject to 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. Tennessee's participation in an approved UST program is voluntary.

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. Costs to State, local and/or tribal governments already exist under the Tennessee program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector.

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 the UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that although small governments may own and/or operate USTs, they are already subject to the regulatory requirements under existing state law which are being approved by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

*C. Certification Under the Regulatory Flexibility Act*

EPA has determined that this approval will not have a significant economic impact on a substantial number of small entities. Such small entities which own and/or operate USTs are already subject to the regulatory requirements under existing State law which are being approved by EPA. EPA's approval does not impose any additional burdens on these small entities. This is because EPA's approval would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision

at 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 rule approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

*D. Submission to Congress and The General Accounting Office*

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3).

*E. Paperwork Reduction Act*

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., Federal agencies

must consider the paperwork burden imposed by an information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

**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 Section 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 1, 1998.

**Michael V. Peyton,**

*Acting Regional Administrator.*

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