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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 281**

[FRL-6976-4]

**North Carolina; Final Approval of State Underground Storage Tank Program****AGENCY:** Environmental Protection Agency.**ACTION:** Notice of final determination on the State of North Carolina's application for final approval.

**SUMMARY:** The State of North Carolina has applied for approval of its underground storage tank program for petroleum and hazardous substances under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed North Carolina's application and has reached a final determination that North Carolina's underground storage tank program for petroleum and hazardous substances satisfies all of the requirements necessary to qualify for approval. Thus, EPA is granting final approval to the State of North Carolina to operate its underground storage tank program for petroleum and hazardous substances.

**EFFECTIVE DATE:** Final approval for the State of North Carolina's underground storage tanks program shall be effective August 14, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mr. John K. Mason, Chief, Underground Storage Tank Section, U.S. EPA, Region 4, Sam Nunn Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303, phone number: (404) 562-9441.

**SUPPLEMENTARY INFORMATION:****A. Background**

Section 9004 of the Resource Conservation and Recovery Act (RCRA) authorizes the Environmental Protection Agency (EPA) to approve state underground storage tank programs to operate in the state in lieu of the Federal underground storage tank (UST) program. To qualify for final authorization, a state's program must: (1) Be "no less stringent" than the Federal program for the seven elements set forth at RCRA Section 9004(a)(1) through (7); and (2) provide for adequate enforcement of compliance with UST standards of RCRA Section 9004(a). Note that RCRA sections 9005 (on information-gathering) and 9006 (on

Federal enforcement) by their terms apply even in states with programs approved by EPA under RCRA section 9004. Thus, the Agency retains its authority under RCRA sections 9005 and 9006, 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 analogues to these provisions.

On January 16, 1998, the State of North Carolina submitted an official application to obtain final program approval to administer the underground storage tank program for petroleum and hazardous substances. On August 10, 1999, EPA published a tentative decision announcing its intent to grant North Carolina final approval. Further background on the tentative decision to grant approval appears at 64 FR 43336, August 10, 1999.

Along with the tentative determination, EPA announced the availability of the application for public comment and the date of a public hearing on the application. EPA requested advance notice for testimony and reserved the right to cancel the public hearing for lack of public interest. Since there was no public request, the public hearing was cancelled. No public comments were received regarding EPA's approval of North Carolina's underground storage tank program.

The State of North Carolina is not approved to operate the underground storage tank program on Indian lands within the State's borders.

**B. Decision**

I conclude that the State of North Carolina's application for final program approval meets all of the statutory and regulatory requirements established by Subtitle I of RCRA. Accordingly, North Carolina is granted final approval to operate its underground storage tank program for petroleum and hazardous substances. The State of North Carolina now has the responsibility for managing all regulated underground storage tank facilities within its border and carrying out all aspects of the underground storage tank program except with regard to Indian lands where EPA will have regulatory authority. North Carolina also has primary enforcement responsibility, although EPA retains the right to conduct enforcement actions under section 9006 of RCRA.

**C. Administrative Requirements***Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" 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. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local or tribal governments or the private sector. The UMRA generally excludes from the definition of "Federal intergovernmental mandate" duties that arise from participation in a voluntary Federal program. North Carolina's participation in EPA's state program approval process under RCRA Subtitle I is voluntary. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

In addition, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

Although small governments may own and/or operate underground storage tanks, they are already subject to the regulatory requirements under the existing State requirements that EPA is now approving and, thus, are not subject to any additional significant or unique requirements by virtue of this action. Thus, the requirements of section 203 of the UMRA also do not apply to today's rule.

*Regulatory Flexibility Act (RFA) (as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as: (1) A small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that own and/or operate underground storage tanks are already subject to the State underground storage tank requirements which EPA is now approving. This action merely approves for the purpose of RCRA section 9004 those existing State requirements.

*Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit 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 United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

*Compliance With Executive Order 12866*

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

*Compliance With Executive Order 13045 (Children's Health)*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) The Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it approves a state program.

*Compliance With Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on

the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule is not subject to Executive Order 13175 because it does not significantly or uniquely affect the communities of Indian tribal governments. This rule merely incorporates by reference the North Carolina underground storage tank program requirements that EPA has already approved. North Carolina is not approved to implement the RCRA underground storage tank program in Indian country. This action has no effect on the underground storage tank program that EPA implements in the Indian country within the State. Thus, Executive Order 13175 does not apply to this rule.

*Compliance With Executive Order 13132 (Federalism)*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This action does not have federalism implications. It will not have a substantial direct effect on states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it

affects only one state. This action simply provides EPA approval of North Carolina's voluntary proposal for its State underground storage tank program to operate in lieu of the Federal underground storage tank program in that State. Thus, the requirements of section 6 of the Executive Order do not apply.

*National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*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 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 substances, Intergovernmental relations, Reporting and recordkeeping requirements.

**Authority:** This document is issued under the authority of Section 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6974(b), 6991c.

Dated: April 26, 2001.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 282**

[FRL-6976-5]

**Underground Storage Tank Program: Approved State Program for North Carolina**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Immediate final rule.

**SUMMARY:** The Resource Conservation and Recovery Act (RCRA) of 1976, as amended, authorizes the Environmental Protection Agency (EPA) to grant approval to states to operate their underground storage tank programs in lieu of the Federal program. 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 North Carolina's underground storage tank program and incorporates by reference appropriate provisions of the State's statutes and regulations.

**DATES:** This regulation is effective August 14, 2001, unless EPA publishes a prior **Federal Register** document withdrawing this immediate final rule. All comments on the codification of North Carolina's underground storage tank program must be received by the close of business July 16, 2001. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of August 14, 2001, in accordance with 5 U.S.C. 552(a).

**ADDRESSES:** Comments may be mailed to Mr. John K. Mason, Chief, Underground Storage Tank Section, U.S. EPA Region 4, Sam Nunn Federal Center, 61 Forsyth Street SW., 15th Floor Tower, Atlanta, Georgia 30303. Comments received by EPA may be inspected in the Underground Storage Tank Section, located at EPA Region 4 Library from 8 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, U.S. EPA Region 4, Sam Nunn Federal Center, 61 Forsyth Street S.W., Atlanta, Georgia 30303, phone number: (404) 562-9441.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 9004 of the Resource Conservation and Recovery Act (RCRA)

of 1976, as amended, 42 U.S.C. 6991c, allows the 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 is publishing elsewhere in this issue a **Federal Register** document announcing its decision to grant approval to North Carolina. Approval is effective on August 14, 2001.

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 North Carolina's underground storage tank program. This codification reflects the state program in effect at the time EPA granted North Carolina 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 Carolina 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 Carolina program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in North Carolina, the status of Federally approved requirements of the North Carolina program will be readily discernible.

To codify EPA's approval of North Carolina's underground storage tank program, EPA has added section 282.83 to title 40 of the CFR. Section 282.83 incorporates by reference for enforcement purposes the State's statutes and regulations. Section 282.83 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