

and heavy-duty vehicles and engines. The public comment period was to end on August 7, 2001. The purpose of this document is to provide an additional 20 days to the comment period, which will end on August 27, 2001. This extension of the comment period is provided to provide the public with 30 days following the public hearing, which is scheduled for July 25, 2001, to comment on this NPRM.

**DATES:** EPA will accept public comments until August 27, 2001.

**ADDRESSES:** Comments must be submitted to Holly Pugliese, Certification and Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105.

Materials relevant to this rulemaking are contained in EPA Air Docket No. A-2000-49. The docket is located at The Air Docket, 401 M. Street, SW., Washington, DC 20460, and may be viewed in room M1500 between 8 a.m. and 5:30 p.m., Monday through Friday. The telephone number is (202) 260-7548 and the facsimile number is (202) 260-4400. A reasonable fee may be charged by EPA for copying docket material.

**FOR FURTHER INFORMATION CONTACT:** Holly Pugliese, Certification and Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105. Telephone 734-214-4288; Fax 734-214-4053; e-mail [pugliese.holly@epa.gov](mailto:pugliese.holly@epa.gov).

Dated: July 31, 2001.

**Robert D. Brenner,**

*Acting Assistant Administrator, Office of Air and Radiation.*

[FR Doc. 01-19567 Filed 8-3-01; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 281

[FRL-7023-6]

#### Minnesota; Tentative Approval of State Underground Storage Tank Program

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

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

**SUMMARY:** The State of Minnesota has applied for 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 Minnesota application and has made the tentative decision that Minnesota's underground storage tank program satisfies all of the requirements necessary to qualify for approval. The Minnesota 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 28, 2001, 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 27, 2001. EPA will determine by September 5, 2001, whether there is significant interest to hold the public hearing. The State of Minnesota will participate in the public hearing held by EPA on this subject. Written comments on the Minnesota approval application, as well as requests to present oral testimony, must be received by the close of business on September 28, 2001.

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

Minnesota Pollution Control Agency, Regular Facilities Section, Metro District, 520 Lafayette Road North, St. Paul, Minnesota 55155, Telephone: (651) 296-7790, 8 am through 4 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, Telephone: (703) 603-9230, 9:00 am through 4:00 pm, Eastern Daylight Savings Time; and

U.S. EPA Region 5 Library, 77 West Jackson Blvd., Chicago, Illinois 60604, Telephone: (312) 353-2022, 10 am through 4 pm, Central Daylight Savings Time.

Written comments should be sent to Mr. Andrew Tschampa, Chief of Underground Storage Tank Section, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604, Telephone: (312) 886-6136.

Unless insufficient public interest is expressed, EPA will hold a public hearing on the State of Minnesota's application for program approval on September 28, 2001, at 9:00 am, Central Daylight Savings Time, at the Minnesota Pollution Control Agency (MPCA), MPCA Board Room, Lower Level, 520 Lafayette Road North, St. Paul, Minnesota. 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 September 5, 2001:

Mr. Andrew Tschampa, Chief, Underground Storage Tank Section, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604, Telephone: (312) 886-6136, or

Mr. Bob Dullinger, Supervisor, Tanks Program, Regular Facilities Section, Metro District, Minnesota Pollution Control Agency, 520 Lafayette Road North, St. Paul, Minnesota 55155, Telephone: (651) 297-8608.

**FOR FURTHER INFORMATION CONTACT:** Mr. Andrew Tschampa, Chief, Underground Storage Tank Section, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, Telephone: (312) 886-6136.

#### 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). 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.

##### II. Minnesota

The Minnesota Pollution Control Agency (MPCA) is the implementing agency for underground storage tank activities (UST) activities in the State.

On July 13, 1991, Minnesota adopted UST program regulations for petroleum and hazardous substance underground storage tanks. Prior to the adoption of

the regulations, Minnesota solicited public comments on the draft UST program regulations.

The MPCA submitted their application for State Program Approval (SPA) of Minnesota's UST program to U.S. EPA by letter dated May 11, 2000. The EPA reviewed the application for completeness and determined before the application could be considered complete a number of items had to be addressed. All the outstanding items were addressed. EPA notified the MPCA in a February 26, 2001, letter that the Minnesota application was complete. In addition, EPA has reviewed the MPCA application and has tentatively determined that the State's UST program meets all of the requirements necessary to qualify for final approval.

EPA will hold a public hearing on its tentative decision on September 28, 2001, unless insufficient public interest is expressed. The public may also submit written comments on EPA's tentative determination until September 28, 2001. Copies of the Minnesota 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 Minnesota. EPA expects to make a final decision on whether or not to approve Minnesota's program within 60 days of the close of the public comment period, 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.

Included in the State's Application is an Attorney General's statement. The Attorney General's statement provides an outline of the State's statutory and regulatory authority and details concerning areas where the State program is broader in scope or more stringent than the federal program.

In addition to the areas noted in the Attorney General's statement, several aspects of the State's program should be noted.

#### *1. Corrective Action Requirements and Program Implementation*

The MPCA requirements for corrective action are found in State statutes, rules, and MPCA procedures and guidance documents. The term "waters of the state" found in Minnesota Statute Section 115.061(a) provides the legal foundation for the

State's corrective action requirements and program. MPCA broadly interprets the "waters of the state" definition to include waters, including but not limited to, ponds, waterways, aquifers, and drainage systems. The MPCA requires that all spills, except petroleum spills of five gallons or less, be reported to the agency. Minnesota Statute 115.061(a) also requires that responsible persons must recover as rapidly and as thoroughly as possible the spilled material and take other actions to minimize or abate pollution.

The MPCA implements its corrective action program through broad statutory language, as summarized in the Attorney General's statement, in conjunction with commissioner's orders, and program guidance, and other documentation. In addition, the MPCA developed fact sheets and forms to provide technical guidance for all phases of petroleum release reporting, investigation, and cleanup. Through the enforcement of commissioner's orders, incorporating technical guidance documents by reference, the MPCA has the authority to require responsible persons to carry out effective corrective actions to address UST releases.

#### *2. Financial Responsibility Requirements*

The MPCA's requirements for financial responsibility are found in State statutes and rules that ensure the availability of sufficient resources to clean up a petroleum release. Minnesota Statute Section 115C.03 requires a responsible person to take corrective action for underground storage tank releases. Minnesota Statute 115C.07 establishes the Petroleum Tank Release Compensation Board (the "Petro Board") and Section 115C.08 establishes the Petrofund to provide for reimbursement of expenditures for cleanup of petroleum releases. If the responsible person fails to complete corrective action as required, the MPCA is authorized to complete all appropriate corrective actions, using funds from the Petrofund, and to seek to recovery of those costs from the responsible person. Therefore, EPA believes the Petrofund program meets the financial responsibility objective under 40 CFR 281.37.

It should be noted in Minnesota, tank facilities, including pipeline terminals, with more than 1 million gallons of total petroleum storage capacity at the tank facility are excluded from the Petrofund reimbursement program. Most product stored at these sites is in aboveground storage tanks. The MPCA has determined that currently only six of these sites also have UST systems. The

EPA directly contacted each of the six facilities to determine if these facilities meet the federal financial responsibility requirements found at 40 CFR part 280, subpart H. EPA determined that each facility was in compliance with those requirements.

The Minnesota Petrofund is an essential component in the State's program in meeting the financial responsibility State program approval objective. Therefore, any future changes to the Petrofund could impact State program approval. Minnesota Statute Section 115C.13 contains a Repealer provision which includes and affects Section 115C.08, the Petroleum Tank Fund. Specifically, the Petrofund is scheduled to be repealed on June 30, 2005. If the Petrofund expires in 2005, the State of Minnesota will need to adopt other requirements to meet the Federal financial responsibility objective to retain State Program Approval.

#### *3. Indian Lands/Country Clarification*

Minnesota is not authorized to carry out the Federal underground storage tank program in Indian country within the State, as defined in 18 U.S.C. 1151. This includes:

1. All lands within the exterior boundaries of federally recognized Indian reservations within or abutting the State of Minnesota;
2. Any land held in trust by the U.S. for an Indian tribe, and
3. Any other land, whether on or off a federally recognized Indian reservation that qualifies as Indian country pursuant to 18 U.S.C. 1151.

Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA, Subtitle I program on these lands.

#### *4. Heating Oil Tanks Clarification*

In Minnesota, 1100 gallon or greater USTs that contain heating oil for consumptive purposes must comply with the State tank notification requirements. In the Federal UST regulations, all USTs storing heating oil for consumptive use on the premises are exempt from regulation. Therefore, we consider Minnesota's program to be broader in scope in this area because the State requires tank notifications for these types of USTs.

### **III. 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. Minnesota'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.

*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 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. Minnesota 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 Minnesota'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, 12(d) (15 U.S.C. 272 note) 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 is not considering 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), 6926, 6974(b).

Dated: July 13, 2001.

**Gary Gulezian,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 01-19561 Filed 8-3-01; 8:45 am]

**BILLING CODE 6560-50-P**

### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 300**

[FRL-7023-4]

#### **National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed notice of intent to delete the Kem-Pest Laboratories Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA), Region 7 is issuing a notice of intent to deletion of the Kem-Pest Laboratories Superfund Site, located in Cape Girardeau County, Missouri, from the National Priorities List (NPL) and is only requesting adverse public comment(s) on the direct final notice. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan. The EPA and the state of Missouri, through the Missouri Department of Natural Resources, has determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund. In the "Rules and Regulations" section of today's **Federal Register**, we are publishing a direct final notice of deletion of the Kem-Pest Laboratories Superfund Site without

prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final deletion. If we receive no adverse comments(s) on the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

**DATES:** Comments concerning this Site must be received by September 5, 2001.

**ADDRESSES:** Written comments should be addressed to Hattie Thomas, Community Involvement Coordinator, U.S. EPA, Region 7, Office of External Programs, 901 N. 5th Street, Kansas City, Kansas 66101, or at (913) 551-7003 or toll free at 1-800-223-0425.

**FOR FURTHER INFORMATION CONTACT:** Victor A. Lyke, Remedial Project Manager (RPM) at U.S. EPA, Region 7, Superfund Division, 901 N. 5th Street, Kansas City, Kansas, 66101 or (913) 551-7256 or toll free at 1-800-223-0425.

**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register**.

**Information Repositories:** Repositories have been established to provide detailed information concerning this decision at the following addresses: U.S. EPA, Region 7 Superfund Records Center, 901 N. 5th Street, Kansas City, Kansas 66101 and Cape Girardeau Public Library 711 N. Clark Street, Cape Girardeau, Missouri 63701.

#### **List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C.1321(c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.