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## PART 281 – APPROVAL OF STATE UNDERGROUND STORAGE TANK PROGRAMS

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Authority: §§ 2002, 9004, 9005, 9006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6912, 6991(c), (d), (e)).

**SUBPART A - PURPOSE, GENERAL REQUIREMENTS AND SCOPE**

**§ 281.10 - Purpose**

(a) This ~~subpart-part~~ specifies the requirements that state programs must meet for approval by the Administrator under ~~§~~ §-9004 of ~~RCRA~~the Solid Waste Disposal Act, and the procedures EPA will follow in approving, revising and withdrawing approval of state programs.

(b) State submissions for program approval must be in accordance with the procedures set out in this part.

(c) A state may apply for approval under this ~~subpart-part~~ at any time after the promulgation of release detection, prevention, and ~~correction~~corrective action regulations under ~~§~~ §-9003 of ~~RCRA~~the Solid Waste Disposal Act.

(d) Any state program approved by the Administrator under this part shall at all times be conducted in accordance with the requirements of this part.

**§ 281.11 - General Requirements**

(a) State Program Elements. The following substantive elements of a state program must be addressed in a state application for approval:

(1) Requirements for all existing and new underground storage tanks:

(i) New UST systems (design, construction, installation, and notification);

(ii) Upgrading of existing UST systems;

(iii) General operating requirements;

(iv) Release detection;

(v) Release reporting, investigation, and confirmation;

(vi) Out-of-service USTs and closure;

(vii) Release response and corrective action; ~~and~~

(viii) Financial responsibility for UST systems containing petroleum; ~~and~~

(ix) Operator training.

(2) Provisions for adequate enforcement of compliance with the above program elements.

(b) Final Approval. The state must demonstrate that its requirements under each state program element for existing and new UST systems are no less stringent than the corresponding federal requirements as set forth in subpart C of this part, ~~except as provided in paragraph (c) below~~. The state must also demonstrate that it has a program that provides adequate enforcement of compliance with these requirements.

~~(c) Interim Approval.~~

~~(1) The Administrator may approve state programs with requirements less stringent than the federal requirements for a period of 1 to 3 years from [insert date of promulgation of regulations under Part 280]. Such interim approval may be granted only if state regulatory and/or legislative change is required in order for the state program to be no less stringent than the federal requirements and standards under Part 280 for one or more of the following program elements: release detection at existing UST systems; release reporting and investigation; and out-of-service or closed UST systems.~~

~~(2) A state program may receive interim approval if it~~

~~(i) Has requirements for three elements:~~

~~(A) Release Detection;~~

~~(B) Release Reporting, Investigation, and Confirmation; and~~

~~(C) Out-of-Service UST Systems and Closure; and~~

~~(ii) Has requirements that are no less stringent than the corresponding federal requirements for five elements:~~

~~(A) New UST System Design, Construction, Installation and Notification;~~

~~(B) Upgrading Existing UST Systems;~~

~~(C) General Operating Requirements;~~

~~(D) Release Response and Corrective Action; and~~

~~(E) Financial Responsibility for UST systems containing petroleum; and~~

~~(iii) Provides for adequate enforcement of compliance with these requirements.~~

~~(3) A state with a program that has received interim approval must receive final approval of an amended program containing program elements that are no less stringent than the corresponding federal program elements under Subpart C in accordance with the following schedule:~~

~~(i) If only state regulatory action is required, the state must submit an amended program to EPA for approval before [insert date 1 year from date of promulgation].~~

~~(ii) If only state legislative action is required, the state must submit an amended program to EPA for approval before [insert date 2 years from date of promulgation].~~

~~(iii) If both state legislative and regulatory action are required, the state must submit an amended program to EPA for approval before [insert date 3 years from date of promulgation].~~

~~(cd) States with programs approved under this part are authorized to administer the state program in lieu of the federal program and will have primary enforcement responsibility with respect to the requirements of the approved program. EPA retains authority to take enforcement action in approved states as necessary and will notify the designated lead state agency of any such intended action.~~

## § 281.12 - Scope and Definitions

(a) Scope

(1) The Administrator may approve either partial or complete state programs. A "partial" state program regulates either solely UST systems containing petroleum or solely UST systems containing hazardous substances. If a "partial" state program is approved, EPA will administer the remaining part of the program. A "complete" state program regulates both petroleum and hazardous substance tanks.

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(2) EPA will administer the UST program ~~on-in~~ Indian landscountry, except where Congress has clearly expressed an intention to grant a state authority to regulate petroleum and hazardous substance USTs ~~on-in~~ Indian landscountry. In either case, this decision will not impair a state's ability to obtain program approval for petroleum and/or hazardous substances ~~on-in~~ non-Indian landscountry in accordance with this part.

(3) Nothing in this subpart precludes a state from:

(i) Adopting or enforcing requirements that are more stringent or more extensive than those required under this part; or

(ii) Operating a program with a greater scope of coverage than that required under this part. Where an approved state program has a greater scope of coverage than required by federal law, the additional coverage is not part of the federally-approved program.

(b) Definitions

(1) The definitions in part 280 apply to ~~all subparts of this~~ entire part.

~~(2) For the purpose of this Part, the term "interim approval" means the approval received by a state program that meets the requirements in § 281.11(e)(1) and (2) for the time period defined in § 281.11(e)(3).~~

~~(3)~~ For the purposes of this part the term "final approval" means the approval received by a state program that meets the requirements in § 281.11(b).

## SUBPART B - COMPONENTS OF A PROGRAM APPLICATION

### § 281.20 - Program Application

Any state that seeks to administer a program under this part must submit an application containing the following parts:

- (a) A transmittal letter from the Governor of the state requesting program approval;
- (b) A description in accordance with § 281.21 of the state program and operating procedures;
- (c) A demonstration of the state's procedures to ensure adequate enforcement;
- (d) A schedule for obtaining needed authorities under interim approval, where applicable;
- (e) A Memorandum of Agreement outlining roles and responsibilities of EPA and the implementing agency;
- (f) An Attorney General's statement in accordance with § 281.25 certifying to applicable state authorities; and
- (g) Copies of all applicable state statutes and regulations.

~~{~~Note to § 281.20: EPA has designed an optional application form that is available for use by state applicants.~~}~~

### § 281.21 - Description of State Program

A state seeking to administer a program under this part must submit a description of the program it proposes to administer under state law in lieu of the federal program. The description of a state's existing or planned program must include:

- (a) The scope of the state program:
  - (1) whether the state program regulates UST systems containing petroleum or hazardous substances, or both;
  - (2) whether the state is applying for interim or final approval;

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(3) whether the state program is more stringent or broader in scope than the federal program, and in what ways; and

(4) whether the state has any existing authority over Indian lands or has existing agreements with Indian tribes relevant to the regulation of underground storage tanks.

(b) The organization and structure of the state and local agencies with responsibility for administering the program. The jurisdiction and responsibilities of all state and local implementing agencies must be delineated, appropriate procedures for coordination set forth, and one state agency designated as a "lead agency" to facilitate communications between EPA and the state.

(c) Staff resources to carry out and enforce the required state program elements, both existing and planned, including the number of employees, agency where employees are located, general duties of the employees, and current limits or restrictions on hiring or utilization of staff.

(d) An existing state funding mechanism to meet the estimated costs of administering and enforcing the required state program elements, and any restrictions or limitations upon this funding.

### § 281.22 - Procedures for Adequate Enforcement

A state must submit a description of its compliance monitoring and enforcement procedures, including related state administrative or judicial review procedures.

### ~~§ 281.23 - Schedule for Interim Approval~~

~~For a state program that must modify its statutory or regulatory requirements for release detection, release reporting and investigation, and out-of-service or closed UST systems in order to be no less stringent than the federal requirements, the plan must include a schedule for making such changes and for submitting an amendment to the state application in accordance with § 281.51.~~

### § 281.243 - Memorandum of Agreement

EPA and the approved state will negotiate a Memorandum of Agreement (MOA) containing proposed areas of coordination and shared responsibilities between the state and EPA and separate EPA and state roles and responsibilities in areas including, but not limited to: implementation of partial state programs; enforcement; compliance monitoring; EPA oversight; and sharing and reporting of information. At the time of approval, the MOA must be signed by the Regional Administrator and the appropriate official of the state lead agency.

### § 281.254 - Attorney General's Statement

(a) A state must submit a written demonstration from the Attorney General that the laws and regulations of the state provide adequate authority to carry out the program described under § 281.21 and to meet other requirements of this part. This statement may be signed by independent legal counsel for the state rather than the Attorney General, provided that such counsel has full authority to independently represent the state Agency in court on all matters pertaining to the state program. This statement must include citations to the specific statutes,

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administrative regulations, and where appropriate, judicial decisions that demonstrate adequate authority to regulate and enforce requirements for UST systems. State statutes and regulations cited by the state Attorney General must be fully effective when the program is approved.

(b) If a state currently has authority over underground storage tank activities on Indian Landscountry, the statement must contain an appropriate analysis of the state's authority.

~~[Note: The reporting requirements under this part have been approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 2050-0067.]~~

## SUBPART C – CRITERIA FOR NO LESS STRINGENT

### § 281.30 - New UST System Design, Construction, Installation, and Notification

In order to be considered no less stringent than the corresponding federal requirements for new UST system design, construction, installation, and notification, the state must have requirements that ensure all new underground storage tanks, and the attached piping in contact with the ground and used to convey the regulated substance stored in the tank, conform to the following:

(a) Be designed, constructed, and installed in a manner that will prevent releases for their operating life due to manufacturing defects, structural failure, or corrosion. Unless the state requires manufacturer and installer financial responsibility and installer certification in accordance with § 9003(i)(2) of the Solid Waste Disposal Act, then the state must meet the following:

(1) Tanks and piping replaced or installed after the state's submission of its state program approval or revision application must use interstitial monitoring within secondary containment in accordance with § 9003(i)(1) of the Solid Waste Disposal Act.

(2) Motor fuel dispenser systems installed and connected to an UST system after the state's submission of its state program approval or revision application must be equipped with under-dispenser containment in accordance with § 9003(i)(1) of the Solid Waste Disposal Act.

~~[Note to paragraph (a): Codes of practice developed by nationally-recognized organizations and national independent testing laboratories may be used to demonstrate that the state program requirements are no less stringent in this area.]~~

(b) Be provided with equipment to prevent spills and tank overfills when new tanks are installed or existing tanks are upgraded, unless the tank does not receive more than 25 gallons at one time. Flow restrictors used in vent lines are not allowable forms of overfill prevention when overfill prevention is installed or replaced after the state applies for state program approval or revision.

(c) All UST system owners and operators must notify the implementing state agency of the existence of any new UST system and adequately notify the implementing state agency within a reasonable timeframe when assuming ownership of an UST system using a form designated by the state agency.

### § 281.31 - Upgrading ~~Existing~~ UST Systems

In order to be considered no less stringent than the corresponding federal upgrading requirements, the state must have requirements that ensure ~~existing~~ UST systems installed prior to the state applying for state program approval or revision will meet the requirements of § 281.30-replaced or; are upgraded to prevent releases for their operating life due to corrosion, and spills, and overfills; or are permanently closed before [insert date 10 years after the effective date of the federal regulations]-to prevent releases for their operating life due to corrosion, and spills or overfills with the following exceptions:

(a) Upgrade Requirements for Previously Deferred UST Systems. Previously deferred wastewater treatment tank systems, airport hydrant fuel distribution systems, and UST systems with field-constructed tanks where installation commenced before the state's submission of its state program approval or revision application must, within three years of the effective date of this §, as amended, or prior to the state's submission of its state program approval or revision application, whichever date is later, meet the requirements of § 281.30 or be permanently closed.

(b) Upgrade Requirements for Other UST Systems. States may allow UST systems to be upgraded if the state determines that the upgrade is appropriate to prevent releases for the operating life of the UST system due to corrosion and spill or overfills.

### § 281.32 - General Operating Requirements

In order to be considered no less stringent than the corresponding federal general operating requirements, the state must have requirements that ensure all new and existing UST systems conform to the following:

(a) Prevent spills and overfills by ensuring that the space in the tank is sufficient to receive the volume to be transferred and that the transfer operation is monitored constantly;

(b) Where equipped with cathodic protection, be operated and maintained by a person with sufficient training and experience in preventing corrosion, and in a manner that ensures that no releases occur during the operating life of the UST system;

~~{Note to paragraph (b): Codes of practice developed by nationally-recognized organizations and national independent testing laboratories may be used to demonstrate the state program requirements are no less stringent.}~~

(c) Be made of or lined with materials that are compatible with the substance stored;

(d) At the time of upgrade or repair, be structurally sound and upgraded or repaired in a manner that will prevent releases due to structural failure or corrosion during their operating lives;

(e) Have spill and overflow prevention equipment periodically tested in a manner and frequency that ensures its functionality for the operating life of the equipment and have the integrity of secondary containment periodically tested in a manner and frequency that prevents releases during the operating life of the UST system, except on equipment not required to be tested by 40 CFR part 280.

(f) Have operation and maintenance walkthrough inspections periodically conducted in a manner and frequency that ensures proper operation and maintenance for the operating life of the UST system.

(g) Have records of monitoring, testing, repairs, and operation and maintenance walkthrough inspections and closure maintained that are sufficient to demonstrate recent facility compliance status, except that records demonstrating compliance with

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~~repair and upgrading requirements must be maintained for the remaining operating life of the facility.~~ These records must be made readily available when requested by the implementing agency.

### § 281.33 - Release Detection

In order to be considered no less stringent than the corresponding federal requirements for release detection, the state must have requirements that at a minimum ensure all UST systems are provided with release detection that conforms to the following:

(a) General Methods. Release detection requirements for owners and operators must consist of a method, or combination of methods, that is:

(1) Capable of detecting a release of the regulated substance from any portion of the UST system that routinely contains regulated substances -- as effectively as any of the methods allowed under the federal technical standards -- for as long as the UST system is in operation. In comparing methods, the implementing agency shall consider the size of release that the method can detect and the speed and reliability with which the release can be detected.

(2) Designed, installed, calibrated, operated and maintained so that releases will be detected in accordance with the capabilities of the method;

(3) Operated and maintained, and electronic and mechanical components are tested periodically, in a manner and frequency that ensures proper operation to detect releases for the operating life of the release detection equipment.

(b) Phase-in of requirements. Release detection requirements must, at a minimum, ~~be scheduled to~~ be applied at all UST systems, except for UST systems previously deferred under § 280.10(a)(1), prior to the state's submission of its state program approval or revision application. Release detection requirements must, at a minimum, be scheduled to be applied to previously deferred UST systems as follows:

(1) Immediately when a new previously deferred UST system ~~UST system~~ is installed; and

(2) For any wastewater treatment tank system, airport hydrant fuel distribution system, or UST system with field constructed tanks installed prior to the state's submission of its state program approval or revision application, On an orderly schedule that completes a phase-in of release detection at all existing UST systems (or their closure) before [insert date within 5 years after the effective date of the federal regulations] within three years of the effective date of this §, as amended, or prior to the state's submission of its state program approval or revision application, whichever date is later, except that release detection for the piping attached to any existing UST that conveys a regulated substance under greater than atmospheric pressure must be phased in before [insert date 2 years after the effective date of the federal regulations].

(3) For any UST system that stores fuel solely for the use of emergency power generators that was installed prior to the state's submission of its state program approval or revision application, within one year of the effective date of this §, as amended, or prior to the state's submission of its state program approval or revision application, whichever date is later.

(c) Requirements for Petroleum Tanks. All petroleum tanks must meet the following requirements:

(1) All petroleum tanks must be sampled, tested, or checked for releases at least monthly, except that:

~~(1) New or upgraded~~ tanks (that is, tanks and piping protected from releases due to corrosion and equipped with both spill and overfill prevention devices) installed prior to the state's submission of its State Program Approval or revision application may temporarily use monthly inventory control (or its equivalent) in combination with tightness testing (or its equivalent) conducted every ~~five~~ 5 years for the first 10 years after the tank is installed ~~or upgraded, or until [insert date 10 years after the effective date of the federal regulations], whichever is later;~~ and

~~(2) Existing tanks unprotected from releases due to corrosion or without spill and overfill prevention devices may use monthly inventory control (or its equivalent) in combination with annual tightness testing (or its equivalent) until [insert date 10 years after the effective date of the federal regulations].~~ (2) New or replaced petroleum tanks must use interstitial monitoring within secondary containment in accordance with § 9003(i)(1) of the Solid Waste Disposal Act except when the state requires manufacturer and installer financial responsibility and installer certification in accordance with § 9003(i)(2) of the Solid Waste Disposal Act.

(d) Requirements for Petroleum Piping. All underground piping attached to the tank that routinely conveys petroleum must conform to the following:

(1) If the petroleum is conveyed under greater than atmospheric pressure:

(i) The piping must be equipped with release detection that detects a release within an hour by restricting or shutting off flow or sounding an alarm; and

(ii) The piping must have monthly monitoring applied or annual tightness tests conducted.

(2) If suction lines are used: (i) tightness tests must be conducted at least once every 3 years, unless a monthly method of detection is applied to this piping; or (ii) the piping is designed to allow the contents of the pipe to drain back into the storage tank if the suction is released and is also designed to allow an inspector to immediately determine the integrity of the piping system.

(3) New or replaced petroleum piping must use interstitial monitoring within secondary containment in accordance with § 9003(i)(1) of the Solid Waste Disposal Act except when the state requires evidence of financial responsibility and certification in accordance with § 9003(i)(2) of the Solid Waste Disposal Act.

(e) Requirements for Hazardous Substance UST Systems. ~~All UST systems storing hazardous substances must meet the following:~~

~~(1) All existing hazardous substance UST systems must comply with all the requirements for petroleum UST systems in §§ 281.33(c) and (d) above, and after [insert date 10 years from the effective date of the federal regulations] they must comply with the following sub§ (e)(2).~~

~~(2) All new hazardous substance UST systems must use interstitial monitoring within secondary containment of the tanks and the attached underground piping that conveys the regulated substance stored in the tank.~~ For hazardous substance UST systems installed prior to the state's submission of its state program approval or revision application, owners and operators can use another form of release detection if unless the owner and operator can demonstrate to the state (or the state otherwise determines) that another method will detect a release of the regulated substance as effectively as other methods allowed under the state program for petroleum UST systems and that effective corrective action technology is available for the hazardous substance being stored that can be used to protect human health and the environment.

## § 281.34 - Release Reporting, Investigation and Confirmation

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In order to be considered no less stringent than the corresponding federal requirements for release reporting, investigation, and confirmation, the state must have requirements that ensure all owners and operators conform with the following:

(a) Promptly investigate all suspected releases, including:

(1) when unusual operating conditions, release detection signals and environmental conditions at the site suggest a release of regulated substances may have occurred or the interstitial space may have been compromised; and

(2) when required by the implementing agency to determine the source of a release having an impact in the surrounding area; and

(b) promptly report all confirmed underground releases and any spills and overfills that are not contained and cleaned up.

(c) ensure that all owners and operators contain and clean up unreported spills and overfills in a manner that will protect human health and the environment.

### **§ 281.35 - Release Response and Corrective Action**

In order to be considered no less stringent than the corresponding federal requirements for release response and corrective action, the state must have requirements that ensure:

(a) All releases from UST systems are promptly assessed and further releases are stopped;

(b) Actions are taken to identify, contain and mitigate any immediate health and safety threats that are posed by a release (such activities include investigation and initiation of free product removal, if present);

(c) All releases from UST systems are investigated to determine if there are impacts on soil and ground water, and any nearby surface waters. The extent of soil and ground-water contamination must be delineated when a potential threat to human health and the environment exists.

(d) All releases from UST systems are cleaned up through soil and ground water remediation and any other steps, as necessary to protect human health and the environment;

(e) Adequate information is made available to the state to demonstrate that corrective actions are taken in accordance with the requirements of (a) - (d) above. This information must be submitted in a timely manner that demonstrates its technical adequacy to protect human health and the environment; and

(f) In accordance with § 280.67, the state must notify the affected public of all confirmed releases requiring a plan for soil and ground water remediation, and upon request provide or make available information to inform the interested public of the nature of the release and the corrective measures planned or taken.

### **§ 281.36 - Out-of-Service UST Systems and Closure**

In order to be considered no less stringent than the corresponding federal requirements for temporarily closed UST systems and permanent closure, the state must have requirements that ensure UST systems conform with the following:

(a) Removal from Service. All new and existing UST systems temporarily closed must:

(1) continue to comply with general operating requirements, release reporting and investigation, and release response and corrective action;

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(2) continue to comply with release detection requirements if regulated substances are stored in the tank;

(3) be closed off to outside access; and

(4) be permanently closed if the UST system has not been protected from corrosion and has not been used in one year, unless the state approves an extension after the owner and operator conducts a site assessment.

(b) Permanent Closure of UST Systems. All tanks and piping must be cleaned and permanently closed in a manner that eliminates the potential for safety hazards and any future releases. The owner or operator must notify the state of permanent UST system closures. The site must also be assessed to determine if there are any present or were past releases, and if so, release response and corrective action requirements must be complied with.

(c) All UST systems taken out of service before the effective date of the federal regulations must permanently close in accordance with (b) when directed by the implementing agency.

### § 281.37 Financial Responsibility for UST Systems Containing Petroleum

(a) In order to be considered no less stringent than the federal requirements for financial responsibility for UST systems containing petroleum, the state requirements for financial responsibility for petroleum UST systems must ensure that: (1) owners and operators have \$1 million per occurrence for corrective action and third-party claims in a timely manner to protect human health and the environment; (2) owners and operators not engaged in petroleum production, refining, and marketing and who handle a throughput of 10,000 gallons of petroleum per month or less have \$500,000 per occurrence for corrective action and third-party claims in a timely manner to protect human health and the environment; (3) owners and operators of 1 to 100 petroleum USTs must have an annual aggregate of \$1 million; and (4) owners and operators of 101 or more petroleum USTs must have an annual aggregate of \$2 million.

~~(b) Phase-in of requirements. Financial responsibility requirements for petroleum UST systems must, at a minimum, be scheduled to be applied at all UST systems on an orderly schedule that completes a phase-in of the financial responsibility requirements within 18 months after the effective date of the federal regulations.~~

~~(be)~~ States may allow the use of a wide variety of financial assurance mechanisms to meet this requirement. Each financial mechanism must meet the following criteria in order to be no less stringent than the federal requirements. The mechanism must: be valid and enforceable; be issued by a provider that is qualified or licensed in the state; not permit cancellation without allowing the state to draw funds; ensure that funds will only and directly be used for corrective action and third party liability costs; and require that the provider notify the owner or operator of any circumstances that would impair or suspend coverage.

~~(cd)~~ States must require owners and operators to maintain records that demonstrate compliance with the state financial responsibility requirements, and these records must be made readily available when requested by the implementing agency.

~~{53 FR 43382, Oct. 26, 1988; 53 FR 51274, Dec. 21, 1988; 54 FR 38788, Sept. 20, 1989, as amended at 55 FR 46025, Oct. 31, 1990}~~

~~§ 281.38 – Financial Responsibility for USTs Containing Hazardous Substances  
(Reserved)~~

~~281.398 – Lender Liability~~

(a) A state program that contains a security interest exemption will be considered to be no less stringent than, and as broad in scope as, the federal program provided that the state's exemption:

- (1) Mirrors the security interest exemption provided for in 40 CFR part 280, subpart I; or
- (2) Achieves the same effect as provided by the following key criteria:

(i) A holder, meaning a person who maintains indicia of ownership primarily to protect a security interest in a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located, who does not participate in the management of the UST or UST system as defined under § 280.10 of this chapter, and who does not engage in petroleum production, refining, and marketing as defined under § 280.200(b) of this chapter is not:

(A) An "owner" of a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located for purposes of compliance with the requirements of 40 CFR part 280; or

(B) An "operator" of a petroleum UST or UST system for purposes of compliance with the requirements of 40 CFR part 280, provided the holder is not in control of or does not have responsibility for the daily operation of the UST or UST system.

- (ii) [Reserved]
- (b) [Reserved]

281.39 – Operator Training

In order to be considered no less stringent than the corresponding federal requirements for operator training, the state must have an operator training program that meets the minimum requirements of § 9010 of the Solid Waste Disposal Act.

**SUBPART D – ADEQUATE ENFORCEMENT OF COMPLIANCE**

**§ 281.40 - Requirements for Enforcement Authority**

(a) Any state agency administering a program must have the authority to implement the following remedies for violations of state program requirements:

(1) To restrain immediately and effectively any person by order or by suit in state court from engaging in any unauthorized activity that is endangering or causing damage to public health or the environment;

(2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement;

(3) To assess or sue to recover in court civil penalties as follows:

(i) Civil penalties for failure to notify or for submitting false information pursuant to tank notification requirements must be capable of being assessed up to \$5,000 or more per violation.

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(ii) Civil penalties for failure to comply with any state requirements or standards for existing or new tank systems must be capable of being assessed for each instance of violation, up to \$5,000 or more for each tank for each day of violation. If the violation is continuous, civil penalties shall be capable of being assessed up to \$5,000 or more for each day of violation.

(4) To prohibit the delivery, deposit, or acceptance of a regulated substance into an underground storage tank identified by the state to be ineligible for such delivery, deposit, or acceptance in accordance with § 9012 of the Solid Waste Disposal Act.

(b) The burden of proof and degree of knowledge or intent required under state law for establishing violations under paragraph (a)(3) of this §, must be no greater than the burden of proof or degree of knowledge or intent that EPA must provide when it brings an action under Subtitle I of the ~~Resource Conservation and Recovery Act~~Solid Waste Disposal Act.

(c) A civil penalty assessed, sought, or agreed upon by the state enforcement agency(ies) under paragraph (a)(3) of this § must be appropriate to the violation.

### **§ 281.41 - Requirements for Enforcement Authority**

(a) Any state agency administering a program must have the authority to implement the following remedies for violations of state program requirements:

(1) To restrain immediately and effectively any person by order or by suit in state court from engaging in any unauthorized activity that is endangering or causing damage to public health or the environment;

(2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement;

(3) To assess or sue to recover in court civil penalties as follows:

(i) Civil penalties for failure to notify or for submitting false information pursuant to tank notification requirements must be capable of being assessed up to \$5,000 or more per violation.

(ii) Civil penalties for failure to comply with any state requirements or standards for existing or new tank systems must be capable of being assessed for each instance of violation, up to \$5,000 or more for each tank for each day of violation. If the violation is continuous, civil penalties shall be capable of being assessed up to \$5,000 or more for each day of violation.

(b) The burden of proof and degree of knowledge or intent required under state law for establishing violations under paragraph (a)(3) of this §, must be no greater than the burden of proof or degree of knowledge or intent that EPA must provide when it brings an action under Subtitle I of the ~~Resource Conservation and Recovery Act~~Solid Waste Disposal Act.

(c) A civil penalty assessed, sought, or agreed upon by the state enforcement agency(ies) under paragraph (a)(3) of this § must be appropriate to the violation.

### **§ 281.42 - Requirements for Public Participation**

Any state administering a program must provide for public participation in the state enforcement process by providing any one of the following three options:

(a) Authority that allows intervention analogous to Federal Rule 24(a)(2), and assurance by the appropriate state enforcement agency that it will not oppose intervention under the state analogue to Rule 24(a)(2) on the ground that the applicant's interest is adequately represented by the State.

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(b) Authority that allows intervention as of right in any civil action to obtain the remedies specified in 281.41 by any citizen having an interest that is or may be adversely affected; or

(c) Assurance by the appropriate state agency that:

(1) It will provide notice and opportunity for public comment on all proposed settlements of civil enforcement actions (except where immediate action is necessary to adequately protect human health and the environment);

(2) It will investigate and provide responses to citizen complaints about violations; and

(3) It will not oppose citizen intervention when permissive intervention is allowed by statute, rule, or regulation.

### § 281.43 - Sharing of Information

(a) States with approved programs must furnish EPA, upon request, any information in state files obtained or used in the administration of the state program. This information includes:

(1) Any information submitted to the state under a claim of confidentiality. The state must submit that claim to EPA when providing such information. Any information obtained from a state and subject to a claim of confidentiality will be treated in accordance with federal regulations in 40 CFR part 2; and

(2) Any information that is submitted to the state without a claim of confidentiality. EPA may make this information available to the public without further notice.

(b) EPA must furnish to states with approved programs, upon request, any information in EPA files that the state needs to administer its approved state program. Such information includes:

(1) Any information that is submitted to EPA without a claim of confidentiality; and

(2) Any information submitted to EPA under a claim of confidentiality, subject to the conditions in 40 CFR part 2.

## SUBPART E - APPROVAL PROCEDURES

### § 281.50 - Approval Procedures for State Programs

(a) The following procedures are required for all applications, regardless of whether the application is for a partial or complete program, as defined in § 281.12, ~~or for interim~~ or final approval in accordance with § 281.11.

(b) Before submitting an application to EPA for approval of a state program, the state must provide an opportunity for public notice and comment in the development of its underground storage tank program.

(c) When EPA receives a state program application, EPA will examine the application and notify the state whether its application is complete, in accordance with the application components required in § 281.20. The 180-day statutory review period begins only after EPA has determined that a complete application has been received.

(d) The state and EPA may by mutual agreement extend the review period.

(e) After receipt of a complete program application, the Administrator will tentatively determine approval or disapproval of the state program. EPA shall issue public notice of the tentative determination in the **Federal Register**; in enough of the largest newspapers in the state to attract statewide attention; and to persons on the state agency mailing list and any other persons who the agency has reason to believe are interested. Notice of the tentative determination must also:

- (1) Afford the public 30 days after the notice to comment on the state's application and the Administrator's tentative determination; and
- (2) Include a general statement of the areas of concern, if the Administrator indicates the state program may not be approved; and
- (3) Note the availability for inspection by the public of the state program application; and
- (4) Indicate that a public hearing will be held by EPA no earlier than 30 days after notice of the tentative determination unless insufficient public interest is expressed, at which time the Regional Administrator may cancel the public hearing.

(f) Within 180 days of receipt of a complete state program application, the Administrator must make a final determination whether to approve the state program after review of all public comments. EPA will give notice of its determination in the **Federal Register** and codify the approved state program. The notice must include a statement of the reasons for this determination and a response to significant comments received.

**§ 281.51—Amendment Required at End of Interim Period**

~~(a) State programs that meet the requirements of § 281.11(c)(1) and (2) may be approved for 1 to 3 years from [insert date of promulgation of regulations under Part 280]. States that receive such interim approval must adopt requirements that are no less stringent than the corresponding federal requirements and standards within the timeframes specified under § 281.11(c)(3).~~

~~(b) By the end of the specified time period, a state with interim approval must submit to EPA an amendment to its application that includes all modified and new requirements for any of the elements containing less stringent requirements. Such amended applications must also include a modified program description, an Attorney General's statement and a Memorandum of Agreement that incorporate the amended program requirements, and copies of all applicable state statutes and regulations.~~

~~(c) Upon receipt of the application amendment, the Administrator shall follow the same review and approval procedures as required in § 281.50.~~

~~(d) If a state fails to submit an amendment within the specified timeframe, the interim approval of the state program expires upon the applicable date established under § 281.11(c), and the Subtitle I program automatically reverts to EPA.~~

~~(e) If a state submits an amendment to the program application within the timeframe specified under 281.11(c)(3) and the amendment is disapproved after the end of the time period, the interim approval of the state program expires immediately upon disapproval and the Subtitle I program automatically reverts to EPA.~~

~~(f) If interim approval of the state program expires, EPA must notify the regulated community and the public of the re-establishment of the federal program through a notice in the **Federal Register**.~~

§ 281.512 - Revision of Approved State Programs

(a) Either EPA or the approved state may initiate program revision. Program revision may be necessary when the controlling federal or state statutory or regulatory authority is changed or when responsibility for the state program is shifted to a new agency or agencies. The state must inform EPA of any proposed modifications to its basic statutory or regulatory authority or change in division of responsibility among state agencies. EPA will determine in each case whether a revision of the approved program is required. Approved state programs must submit a revised application within three years of any changes to this part that requires a program revision.

(b) Whenever the Administrator has reason to believe that circumstances have changed with respect to an approved state program or the federal program, the Administrator may request, and the state must provide, a revised application as prescribed by EPA.

(c) The Administrator will approve or disapprove program revisions based on the requirements of this part and of Subtitle I pursuant to the procedures under this §, or under § 281.50 if EPA has reason to believe the proposed revision will receive significant negative comment from the public.

(1) The Administrator must issue public notice of planned approval or disapproval of a state program revision in the **Federal Register**; in enough of the largest newspapers in the state to attract statewide attention; and by mailing to persons on the state agency mailing list and to any other persons who the agency has reason to believe are interested. The public notice must summarize the state program revision, indicate whether EPA intends to approve or disapprove the revision, and provide for an opportunity to comment for a period of 30 days.

(2) The Administrator's decision on the proposed revision becomes effective 60 days after the date of publication in the **Federal Register** in accordance with paragraph (c)(1) of this §, unless significant negative comment opposing the proposed revision is received during the comment period. If significant negative comment is received, EPA must notify the state and within 60 days after the date of publication, publish in the **Federal Register** either:

(i) A withdrawal of the immediate final decision, which will then be treated as a tentative decision in accordance with the applicable procedures of § 281.50(e) and (f); or

(ii) A notice that contains a response to significant negative comments and affirms either that the immediate final decision takes effect or reverses the decision.

(d) Revised state programs that receive approval must be codified in the **Federal Register**.

**SUBPART F - WITHDRAWAL OF APPROVAL OF STATE PROGRAMS**

§ 281.60 - Criteria for Withdrawal of Approval of State Programs

The Administrator may withdraw program approval when the Agency determines that a state no longer has adequate regulatory or statutory authority or is not administering and enforcing an approved program in accordance with this part. The state must have adequate capability to administer and enforce the state program. In evaluating whether such capability exists, the Agency will consider whether the state is implementing an adequate enforcement program by evaluating the quality of compliance monitoring and enforcement actions.

~~(b) Such withdrawal of approval will occur only after the state fails to take appropriate action within a reasonable time, not to exceed 120 days after notice from the Administrator that the state is not administering and enforcing its program in accordance with the requirements of this Part.~~

### § 281.61 - Procedures for Withdrawal of Approval of State Programs

(a) The following procedures apply when a state with an approved program voluntarily transfers to EPA those program responsibilities required by federal law.

(1) The state must give EPA notice of the proposed transfer, and submit, at least 90 days before the transfer, a plan for the orderly transfer of all relevant program information necessary for EPA to administer the program.

(2) Within 30 days of receiving the state's transfer plan, EPA must evaluate the plan and identify any additional information needed by the federal government for program administration.

(3) At least 30 days before the transfer is to occur, EPA must publish notice of the transfer in the Federal Register; in enough of the largest newspapers in the state to attract statewide attention; and to persons on appropriate state mailing lists.

(b) The following procedures apply when the Administrator considers withdrawing approval.

(1) When EPA begins proceedings to determine whether to withdraw approval of a state program (either on its own initiative or in response to a petition from an interested person), withdrawal proceedings ~~must~~ will be conducted in accordance with procedures set out in 40 CFR 271.23(b) and (c), except for § 271.23(b)(8)(iii) to the extent that it deviates from requirements under § 281.60.

~~(2) Withdrawal of approval will occur only after If the state fails to take appropriate action within a reasonable time, not to exceed 120 days after notice from the Administrator that the state is not administering and enforcing its program in accordance with the requirements of this part, EPA will withdraw approval of the state's program.~~