



**6560-50-P**

**ENVIRONMENTAL SERVICES AGENCY**

**40 CFR Part 282**

**[EPA-R01-UST-2019-0421; FRL-10001-60-Region 1]**

**New Hampshire: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference**

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

**ACTION:** Direct final rule.

**SUMMARY:** Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Services Agency (EPA) is taking direct final action to approve revisions to the State of New Hampshire's Underground Storage Tank (UST) program submitted by the New Hampshire Department of Environmental Services (NH DES). This action also codifies EPA's approval of New Hampshire's State program and incorporates by reference those provisions of the State regulations that we have determined meet the requirements for approval. The provisions 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.

**DATES:** This rule is effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, unless EPA receives adverse comment by **[Insert date 30 days from date of publication in the Federal Register]**. If EPA receives adverse comments, it will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of **[INSERT**

**DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER],** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

**ADDRESSES:** Submit your comments by one of the following methods:

1. Federal *eRulemaking Portal*: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
2. *E-mail*: hanamoto.susan@epa.gov.
3. *Mail*: Susan Hanamoto, RCRA Waste Management, UST, and Pesticides Section; Land, Chemicals, and Redevelopment Division; EPA Region 1, 5 Post Office Square, Suite 100, (Mail Code 07-1), Boston, MA 02109-3912.
4. *Hand Delivery or Courier*: Deliver your comments to Susan Hanamoto, RCRA Waste Management, UST, and Pesticides Section; Land, Chemicals, and Redevelopment Division; EPA Region 1, 5 Post Office Square, Suite 100, (Mail Code 07-1), Boston, MA 02109-3912. Such deliveries are only accepted during the Regional Office's normal hours of operation.

*Instructions:* Direct your comments to Docket ID No. EPA-R01-UST-2019 -0421. EPA's policy is that all comments received will be included in the public docket without change and may be available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov>, or e-mail. The Federal Web site, <http://www.regulations.gov>, is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment

directly to the EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and also with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information might not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, might be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy.

*IBR and supporting material:* You can view and copy the documents that form the basis for this codification and associated publicly available materials from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following location: EPA Region 1 Library, 5 Post Office Square, 1st floor, Boston, MA 02109-3912; by appointment only; tel: (617) 918-1990. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

**FOR FURTHER INFORMATION CONTACT:** Susan Hanamoto, (617) 918-1219,  
[hanamoto.susan@epa.gov](mailto:hanamoto.susan@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Approval of Revisions to New Hampshire's Underground Storage Tank Program**

*A. Why are revisions to state programs necessary?*

States that have received final approval from the EPA under RCRA section 9004(b) of RCRA, 42 U.S.C. 6991c(b), must maintain an underground storage tank program that is equivalent to, consistent with, and no less stringent than the Federal UST program. Either EPA or the approved state may initiate program revision. When EPA makes revisions to the regulations that govern the UST program, states must revise their programs to comply with the updated regulations and submit these revisions to the EPA for approval. Program revision may be necessary when the controlling Federal or state statutory or regulatory authority is modified or when responsibility for the state program is shifted to a new agency or agencies.

*B. What decisions has the EPA made in this rule?*

On June 24, 2019, in accordance with 40 CFR 281.51(a), New Hampshire submitted a complete program revision application seeking the EPA approval for its UST program revisions (State Application). New Hampshire's revisions correspond to the EPA final rule published on July 15, 2015 (80 FR 41566), which revised the 1988 UST regulations and the 1988 state program approval (SPA) regulations (2015 Federal Revisions). As required by 40 CFR 281.20, the State Application contains the following: a transmittal letter requesting approval, a description of the program and operating procedures, a demonstration of the State's procedures to ensure adequate enforcement, a Memorandum of Agreement outlining the roles and responsibilities of the EPA and the implementing agency, a statement of certification from the Attorney General, and copies of all relevant state statutes and regulations. We have reviewed the State Application and determined that the revisions to New Hampshire's UST program are equivalent to, consistent with, and no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281, and that the New Hampshire program provides for adequate

enforcement of compliance (40 CFR 281.11(b)). Therefore, the EPA grants New Hampshire final approval to operate its UST program with the changes described in the program revision application, and as outlined below in section I.G of this document.

*C. What is the effect of this approval decision?*

This action does not impose additional requirements on the regulated community because the regulations being approved by this rule are already effective in New Hampshire, and they are not changed by this action. This action merely approves the existing State regulations as meeting the Federal requirements and renders them federally enforceable.

*D. Why is EPA using a direct final rule?*

EPA is publishing this direct final rule concurrent with a proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. EPA is providing an opportunity for public comment now.

*E. What happens if the EPA receives comments that oppose this action?*

Along with this direct final, the EPA is publishing a separate document in the “Proposed Rules” Section of this issue of the Federal Register that serves as the proposal to approve the State’s UST program revisions, providing opportunity for public comment. If EPA receives comments that oppose this approval, EPA will withdraw the direct final rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the approval of the State program changes after considering all comments received during the comment period. EPA will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this approval, you must do so at this time.

*F. For what has New Hampshire previously been approved?*

On June 19, 1991, the EPA finalized a rule approving the UST program, effective July 19, 1991, to operate in lieu of the Federal program. On November 2, 1993, effective January 3, 1994, the EPA codified the approved New Hampshire program, incorporating by reference the State statutes and regulatory provisions that are subject to EPA’s inspection and enforcement authorities under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions.

*G. What changes are we approving with this action?*

On June 24, 2019, in accordance with 40 CFR 281.51(a), New Hampshire submitted a complete application for final approval of its UST program revisions adopted on October 10, 2018. The EPA now makes an immediate final decision, subject to receipt of written comments that oppose this action, that New Hampshire’s UST program revisions satisfy all of the requirements necessary to qualify for final approval. Therefore, EPA grants New Hampshire final approval for the following program changes:

<b>Required Federal Element</b>	<b>Implementing State Authority</b>
40 CFR 281.30, New UST Systems and Notification	Env-Or 401.03(k), 404.01 – 404.03, 404.10, 405.01 – 405.06, 405.07(d), 405.08, 405.09, 407, 408.05(d)
40 CFR 281.31, Upgrading Existing UST Systems	Not applicable
40 CFR 281.32, General Operating Requirements	RSA 146-C:19, II(c); Env-Or 404.09(a) and (b); 405.01(h) and (i), 405.10, 405.11; 406.03, 406.08(g)(1) and (2), 406.09 - 406.19; 408.01(c)
40 CFR 281.33, Release Detection	Env-Or 405.08, 405.09; 406.02, 406.13
40 CFR 281.34, Release Reporting, Investigation, and Confirmation	Env-Or 406.04; 604.06; 605.03 and 605.10; 606.01
40 CFR 281.35, Release Response and Corrective Action	Env-Or 605.03, 605.04, 605.07, 605.08; 606.01, 606.08, 606.10; 607.02(b)

40 CFR 281.36, Out-of-service Systems and Closure	Env-Or 408.04, 408.05(e), 408.06 – 408.10
40 CFR 281.37, Financial Responsibility for USTs Containing Petroleum	Env-Or 404.04(h); 404.12(a), (c), (d), and (j)
40 CFR 281.40, Legal Authorities for Compliance Monitoring	RSA 146-C:5
40 CFR 281.41, Legal Authorities for Enforcement Response	RSA 146-C:9-a, RSA 146-C:10, RSA 21-O:9, RSA 541

The State also demonstrates that its program provides adequate enforcement of compliance as described in 40 CFR 281.11(b) and part 281, subpart D. The NH DES has broad statutory authority with respect to USTs to regulate installation, operation, maintenance, closure, and UST releases, and to the issuance of orders. These statutory authorities are found in: New Hampshire Revised Statutes Annotated, Title I, The State and its Government, Chapter 21-O Department of Environmental Services; New Hampshire Revised Statutes Annotated, Title X, Public Health, Chapter 146-C Underground Storage Facilities; New Hampshire Revised Statutes Annotated Title L, Water Management and Protection, Chapter 485-C Groundwater Protection Act; New Hampshire Revised Statutes Annotated Title LV, Proceedings in Special Cases, Chapter 541 Rehearings and Appeals in Certain Cases.

*H. Where are the revised rules different from the Federal rules?*

*Broader in Scope Provisions*

The following statutory and regulatory provisions are considered broader in scope than the Federal program, and are therefore not enforceable as a matter of Federal law:

For any UST system installed prior to April 22, 1997 or that otherwise does not have existing spill containment at Stage I system connections, the owner shall install spill containment meeting the requirements of Env-Or 405.05(f) at Stage I system connections no later than October 13, 2021.

Each dispensing area shall have a concrete pad with positive limiting barrier that contains a volume of at least five gallons and extends beyond the reach of all dispensing nozzles.

Tank pads installed after October 10, 2018 shall be constructed of reinforced Portland cement concrete and have liquid-tight sealed joints at all expansion, contraction, cold, and crack control joints within three feet of spill containment. The tank pads shall be sealed and maintained with a fuel-product compatible joint sealant installed per manufacturer's instruction.

Any day tank that is connected by piping to an underground storage tank that is subject to the rules shall be marked with the type of product stored, the registered tank number corresponding to the UST that automatically supplies product to the day tank, and the appropriate emergency response system symbol(s) that meet(s) the requirements of section 21.7.2.1 of NFPA 30 to identify the hazards posed by the product stored.

All Stage I system connection spill containment equipment shall be tested for tightness no later than October 13, 2021 and triennially thereafter.

Prior to commencing construction or installation of a new facility or making one or more substantial modifications at an existing facility, including any changes to a cathodic protection system, an owner shall submit plans and specifications stamped by an engineer licensed to practice in New Hampshire. Within 90 days of receipt of a complete plan and specification submittal, the department shall send the owner written notice of construction approval or disapproval. Failure to send a notice within 90 days shall be deemed to be approval of the plans. A UST or UST system component shall be installed only by a certified tank installer.

UST systems shall not be installed within the sanitary protective area of a public water system well and in any area where flooding over the top of the tank is reasonably likely or the

ground surface is below the 100-year flood elevation, unless the plans include specific requirements designed to ensure that the tank will not float and its contents will not escape during a flood.

New UST systems installed on or after February 2, 2005 shall be installed no closer to public and non-public water supply wells than the minimum distances specified in Table 407-1.

With the exception of marinas and fueling systems over water, no UST system at any new site shall be located closer than 75 feet from surface waters of the state.

Storm water runoff from UST facilities shall not be directly discharged to surface water or below the ground surface unless a permit is obtained under applicable state or federal law. Storm water shall not be directed to flow over any tank or dispensing pad.

The owner of any UST system that has been red-tagged in accordance with RSA 146-C:15 shall bring the system into compliance with all applicable requirements or permanently close the system within one year of the date the red tag was placed.

An owner who wishes to obtain a waiver from any rule in Env-Or 400 shall request a waiver as specified in Env-Or 409.02.

A responsible party shall apply for and obtain a groundwater management permit for any site where the discharge of a regulated contaminant at that site has caused and continues to cause the groundwater quality criteria of Env-Or 603.01 to be violated.

#### *More Stringent Provisions*

The following statutory and regulatory provisions are considered more stringent than the Federal program and are therefore enforceable as a matter of Federal law:

Airport hydrant fuel distribution systems and UST systems with field-constructed tanks shall meet release detection requirements for tanks and piping systems. Piping associated with airport hydrant distribution systems and field constructed UST systems shall have secondary containment.

For any UST system installed on or after September 1, 2013, all spill containment equipment shall be installed within a liquid-tight sump or be of double walled construction.

## **II. Codification**

### *A. What is codification?*

Codification is the process of placing a state's statutes and regulations that comprise the state's approved UST program into the CFR. Section 9004(b) of RCRA, as amended, allows the EPA to approve State UST programs to operate in lieu of the Federal program. The EPA codifies its authorization of state programs in 40 CFR part 282 and incorporates by reference state statutes and regulations that the EPA will enforce under sections 9005 and 9006 of RCRA and any other applicable state provisions. The incorporation by reference of state authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the approved state program and state requirements that can be federally enforced. This effort provides clear notice to the public of the scope of the approved program in each state.

### *B. What is the history of codification of New Hampshire's UST program?*

EPA incorporated by reference the New Hampshire DES approved UST program effective January 3, 1994 (58 FR 58624; November 2, 1993). In this document, EPA is revising 40 CFR 282.79 to include the approved revisions.

### *C. What codification decisions have we made in this rule?*

***Incorporation by reference:*** In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the New Hampshire statutes and regulations described in the amendments to 40 CFR part 282 set forth below. The EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 1 office (see the **ADDRESSES** Section of this preamble for more information).

The purpose of this **Federal Register** document is to codify New Hampshire's approved UST program. The codification reflects the State program that would be in effect at the time EPA's approved revisions to the New Hampshire UST program addressed in this direct final rule become final. The document incorporates by reference New Hampshire's UST statutes and regulations and clarifies which of these provisions are included in the approved and federally enforceable program. By codifying the approved New Hampshire program and by amending the CFR, the public will more easily be able to discern the status of the federally-approved requirements of the New Hampshire program.

EPA is incorporating by reference the New Hampshire approved UST program in 40 CFR 282.79. Section 282.79(d)(1)(i)(A) incorporates by reference for enforcement purposes the State's statutes and regulations.

Section 282.79 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 UST program under Subtitle I of RCRA. These documents are not incorporated by reference.

*D. What is the effect of New Hampshire's codification on enforcement?*

The EPA 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 and to issue orders in approved states. With respect to these actions, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the state authorized analogues to these provisions. Therefore, the EPA is not incorporating by reference such particular, approved New Hampshire procedural and enforcement authorities. Section 282.79(d)(1)(ii) of 40 CFR lists those approved New Hampshire authorities that would fall into this category.

*E. What State provisions are not part of the codification?*

The public also needs to be aware that some provisions of the State's UST program are not part of the federally approved State program. Such provisions are not part of the RCRA Subtitle I program because they are "broader in scope" than Subtitle I of RCRA. Title 40 CFR 281.12(a)(3)(ii) states that where an approved state program has provisions that are broader in scope than the Federal program, those provisions are not a part of the federally approved program. As a result, State provisions which are broader in scope than the Federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.79(d)(1)(iii) lists for reference and clarity the New Hampshire statutory and regulatory provisions which are broader in scope than the Federal program and which are not, therefore, part of the approved program being codified in this document. Provisions that are broader in scope cannot be enforced by EPA; the State, however, will continue to implement and enforce such provisions under State law.

### **III. Statutory and Executive Order Reviews**

This action only applies to New Hampshire's UST Program requirements pursuant to

RCRA section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable Executive Orders (EOs) and statutory provisions as follows:

*A. Executive Order 12866 Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review*

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action approves and codifies State requirements for the purpose of RCRA section 9004 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB.

*B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as this final approval of New Hampshire's revised underground storage tank program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

*C. Unfunded Mandates Reform Act and Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Because this action approves and codifies pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same

reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

*D. Executive Order 13132: Federalism*

This action will not 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves and codifies State requirements as part of the State RCRA underground storage tank program without altering the relationship or the distribution of power and responsibilities established by RCRA.

*E. Executive Order 13045: Services of Children From Environmental Health and Safety Risks*

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks.

*F. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a “significant regulatory action” as defined under Executive Order 12866.

*G. National Technology Transfer and Advancement Act*

Under RCRA section 9004(b), EPA grants a State’s application for approval as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State approval application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of Section 12(d) of the National Technology

Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

*H. Executive Order 12988: Civil Justice Reform*

As required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

*I. Executive Order 12630: Governmental actions and interference with constitutionally protected property rights*

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order.

*J. Paperwork Reduction Act*

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). “Burden” is defined at 5 CFR 1320.3(b).

*K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or

environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule approves pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

#### *L. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801–808, 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. EPA will submit a report containing this document 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 in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). However, this action will be effective [*insert date 60 days after the date of publication in the Federal Register*] because it is a direct final rule.

**Authority:** This rule is issued under the authority of sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

#### **List of Subjects in 40 CFR Part 282**

Environmental Services, Administrative practice and procedure, Confidential business information, Hazardous substances, Incorporation by reference, Insurance, Intergovernmental

relations, Penalties, Petroleum, Reporting and recordkeeping requirements, Surety bonds, Water supply.

Dated: October 7, 2019.

**Dennis Deziel,**  
Regional Administrator,  
EPA Region 1.

For the reasons set forth in the preamble, EPA is amending 40 CFR part 282 as follows:

**PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS**

1. The authority citation for part 282 continues to read as follows:

**Authority:** 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

2. Revise § 282.79 to read as follows:

**§ 282.79 New Hampshire State-Administered Program.**

(a) The State of New Hampshire is approved to administer and enforce an underground storage tank program in lieu of the Federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the New Hampshire Department Environmental Services (NH DES), was approved by EPA pursuant to 42 U.S.C. 6991c and 40 CFR part 281. EPA approved the New Hampshire program on June 19, 1991, which was effective on July 19, 1991.

(b) New Hampshire has primary responsibility for administering and enforcing its federally approved underground storage tank program. However, EPA retains the authority to

exercise its inspection and enforcement authorities under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, as well as under any other applicable statutory and regulatory provisions.

(c) To retain program approval, New Hampshire must revise its approved program to adopt new changes to the Federal Subtitle I program which makes it more stringent, in accordance with Section 9004 of RCRA, 42 U.S.C. 6991c and 40 CFR part 281, subpart E. If New Hampshire obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notification of any change will be published in the Federal Register.

(d) New Hampshire has final approval for the following elements of its program application originally submitted to EPA and approved effective July 19, 1991, and the program revision application approved by EPA, effective on **[insert date 60 days after the date of publication in the Federal Register]**.

(1) *State statutes and regulations—(i) Incorporation by reference.* The material cited in this paragraph (d)(1)(i), and listed in appendix A to this part, is incorporated by reference as part of the underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* (See § 282.2 for incorporation by reference approval and inspection information.) You may obtain copies of the New Hampshire regulations and statutes that are incorporated by reference in this paragraph (d)(1)(i) from Oil Compliance Section Supervisor, New Hampshire DES, PO Box 29, Concord, NH 03302-0029; Phone number: 603-271-6058; Hours: Monday-Friday, 8:00 am to 4:00 pm; link to statutes and regulations: NH RSA 21-O:  
<http://www.gencourt.state.nh.us/rsa/html/l/21-O-mrg.htm>; NH RSA 91-A:  
<http://www.gencourt.state.nh.us/rsa/html/vi/91-a/91-a-mrg.htm>; NH RSA 146-C:

<http://www.gencourt.state.nh.us/rsa/html/X/146-C/146-C-mrg.htm>; NH RSA 485-C:

<http://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-L-485-C.htm>; NHDES Env-Or 400:

<https://www.des.nh.gov/organization/commissioner/legal/rules/documents/env-or400.pdf>;

NHDES Env-Or 600:

<https://www.des.nh.gov/organization/commissioner/legal/rules/documents/env-or600.pdf>.

(A) “New Hampshire Statutory and Regulatory Requirements Applicable to the Underground Storage Tank Program, October 2018.”

(B) [Reserved]

(ii) *Legal basis.* EPA evaluated the following statutes and regulations which are part of the approved program, but they are not being incorporated by reference for enforcement purposes, and do not replace Federal authorities:

(A) The statutory provisions include:

(1) *New Hampshire Revised Statutes Annotated, Title I, The State and its Government, Chapter 21-O, Department of Environmental Services, Section 21-O:9. Waste Management Council; Section 21-O:14 Administrative Appeals.*

(2) *New Hampshire Revised Statutes Annotated, Title X, Public Health, Chapter 146-C Underground Storage Facilities, Section C:5 Records Required, Inspections; Section C:9-a Orders, Injunctions; Section C:10 Penalty; Section C:10-a Administrative Fines; Section C:11 Liability for Cleanup Costs, Municipal Regulations; Section C:13 Penalty, Persons Strictly Liable; Section C:14 Delivery Prohibition; Section C:15 Non-Compliant Storage Tanks or Facilities, Red-Tagging Procedure; Section C:16 Appeals.*

(3) *New Hampshire Revised Statutes Annotated, Title L, Water Management and Protection, Chapter 485-C Groundwater Protection Act, Section C:15 Investigation and*

Inspections; Section C:16 Cease and Desist Orders; Section C:17 Appeals; Section C:18 Administrative Fines; Section C:19 Penalties and Other Relief.

(4) *New Hampshire Revised Statutes Annotated, Title LV, Proceedings in Special Cases, Chapter 541 Rehearings and Appeals in Certain Cases.*

(B) The regulatory provisions include:

(1) *New Hampshire Code of Administrative Rules, Chapter Env-Or 400 Underground Storage Tank Facilities: 404.05(b)(3) Signature Required; 404.11 Suspension or Revocation of Permit to Operate.*

(2) [Reserved]

(iii) *Provisions not incorporated by reference.* The following specifically identified statutory and regulatory provisions applicable to the New Hampshire's UST program are broader in scope than the Federal program, are not part of the approved program, and are not incorporated by reference herein for enforcement purposes:

(A) *New Hampshire Code of Administrative Rules, Chapter Env-Or 400 Underground Storage Tank Facilities: 405.05(f) and (g) Spill Containment; 405.07(a)(2) Dispensing Areas; 405.12(a) Day Tank Markings Required; 406.12(c) Spill Containment Integrity Testing; 407.01(a) Application for Approval of UST Systems; 407.06(b - e), (g) and (h) UST System Design Requirements; 408.05(f) Permanent Closure Required; Part Env-Or 409 Waivers.*

(B) [Reserved]

(2) *Statement of legal authority.* The Attorney General's Statements, signed by the Attorney General of New Hampshire on November 1, 1990, and June 3, 2019, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The “Demonstration of Procedures for Adequate Enforcement” submitted as part of the original application on January 8, 1991, and as part of the program revision application for approval on June 24, 2019 though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted as part of the original application on January 8, 1991, and as part of the program revision application on June 24, 2019, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 1 and the New Hampshire Department of Environmental Services, signed by the EPA Regional Administrator on February 12, 2019 though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Appendix A to part 282 is amended by revising the entry for New Hampshire to read as follows:

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

\* \* \* \* \*

New Hampshire

(a) The statutory provisions include:

1. New Hampshire Revised Statutes Annotated, Title I, The State and its Government, Chapter 21-O *Department of Environmental Services*

Section O:1. Establishment, General Functions; Section O:8 Division of Waste Management.

2. New Hampshire Revised Statutes Annotated, Title VI, Public Officers and Employees, Chapter 91-A *Access to Government Records and Meetings*

Section 91-A:1 Preamble, Section 91-A:1-a Definitions, Section 91-A:4 Minutes and Records Available for Public Inspection.

3. New Hampshire Revised Statutes Annotated, Title X Public Health, Chapter 146-C *Underground Storage Facilities*

Section 146-C:1 Definitions; Section 146-C:2 Discharges Prohibited; Section 146-C:3 Registration of Underground Storage Facilities; Section 146-C:4 Underground Storage Facility Permit Required; Section 146-C:6 Transfer of Ownership; Section 146-C:6-a Exemption; Section 146-C:7 New Facilities; Section 146-C:8 Prohibition Against Reusing Tanks; Section 146-C:17 Operator Training Required; Section 146-C:18 Operator Training Program Requirements; Section 146-C:19 Additional Operator Requirements; Section 146-C:20 Revocation of Operator Training Program Approval; Section 146-C:21 Repeating Operator Training.

4. New Hampshire Revised Statutes Annotated, Title L Water Management and Protection, Chapter 485-C *Groundwater Protection Act*

Section 485-C:1 Statement of Purpose, Section 485-C:2 Definitions, Section 485-C:3 Duties of the Department, Section 485-C:5 Classes of Groundwater, Section 485-C:6 Ambient Groundwater Quality Standards, Section 485-C:6-a Groundwater Management Zones, Section

485-C:6-b Recordation of Groundwater Management Zone Permits, Section 485-C:7 Potential Contamination Sources, Section 485-C:8 Inventory and Management, Section 485-C:9 Procedures for Classification and Reclassification, Section 485-C:10 Degraded Groundwater, Section 485-C:11 Best Management Practices, Section 485-C:12 Prohibited Uses, Section 485-C:13 Groundwater Release Detection Permit, Section 485-C:14 Notice to Municipality, Section 485-C:14-b Notification of Groundwater Contamination Required.

(b) The regulatory provisions include:

1. *New Hampshire Code of Administrative Rules, Chapter Env-Or 400 Underground Storage Tank Facilities*: (effective October 10, 2018)

Part Env-Or 401 Purpose, Applicability, Federal Regulations; Section 401.01 Purpose; Section 401.02 Applicability; Section 401.03 Exclusions, except 401.03(b); Section 401.04 Date of Incorporated Federal Regulations;

Part Env-Or 402 Definitions;

Part Env-Or 403 Reference Standards; Section 403.01 Availability and Applicability of Reference Standards; Section 403.02 American Petroleum Institute, Section 403.03 ASME International, Section 403.04 Fiberglass Tank and Pipe Institute, Section 403.05 NACE International, Section 403.06 National Fire Protection Association, Section 403.07 Petroleum Equipment Institute.

Part Env-Or 404 Registration; Permit to Operate; Required Notifications and Records; Financial Responsibility; Section 404.01 Registration; Section 404.02 Change from Use Not Previously Covered to Covered Use; Section 404.03 Change in Product; Section 404.04 Additional Information Required for Registration; Section 404.05 Signature Required, except 404.05(b)(3); Section 404.06 Permit to Operate Required; Section 404.07 Obtaining a Permit to

Operate; Section 404.08 Display, Applicability, and Validity of Permit to Operate; Section 404.09 Records to be Maintained; Section 404.10 Transfer of Facility Ownership; Section 404.12 Financial Responsibility, except 404.12(d)(4) and (m); Section 404.13 Owner Liability.

Part Env-Or 405 Equipment Standards; Section 405.01 Tank Standards for UST Systems; Section 405.02 Piping Standards for UST Systems; Section 405.03 Secondary Containment for Tanks; Section 405.04 Secondary Containment and Sumps for Piping Systems; Section 405.05 Spill Containment, except 405.05(f) and (g);, and 405.12(a); Section 405.06 Overfill Protection; Section 405.07 Dispensing Areas, except for 405.07(a – c), (g), and (h) ; Section 405.08 Leak Monitoring Systems for Tanks; Section 405.09 Leak Monitoring Systems for Piping Systems; Section 405.10 Cathodic Protection Systems; Section 405.11 Changes to Cathodic Protection Systems.

Part Env-Or 406 Operation, Maintenance, and Testing; Section 406.01 On-Going Maintenance Required; Section 406.02 Operation and Maintenance of Leak Monitoring Systems; Section 406.03 Delivery or Transfer of Regulated Substances; Section 406.04 Unusual Operating Conditions; Section 406.05 Requirements for Tightness Testers and Test Methods; Section 406.06 Leak Rate Detection Criteria; Section 406.07 Requirements for Test Reports; Section 406.08 Test Failures; Section 406.09 Automatic Line Leak Detector Testing; Section 406.10 Cathodic Protection System Testing; Section 406.11 Overfill Prevention Device Testing; Section 406.12 Spill Containment Integrity Testing, except 406.12(c); Section 406.13 Leak Monitoring Equipment Testing; Section 406.14 Containment Sump Integrity Testing; Section 406.15 Hydrostatic Testing Test for Sumps and Spill Containment; Section 406.16 Pneumatic Tightness Test for Piping; Section 406.17 Primary Containment System Testing; Section 406.18 Monthly, Bi-Monthly, and Annual Visual Inspections; Section 406.19 Reports of Visual Inspections.

Part Env-Or 407 Installation Requirements, Section 407.06(a) UST System Design Requirements.

Part Env-Or 408 Repair, Closure, Removal; Section 408.01 Repair of Tanks: Pre-Repair Considerations and Requirements; Section 408.02 Repair of Tanks: Post-Repair Requirements; Section 408.03 Repair and Replacement of Underground Piping, Containment Sumps, and Spill Containment; Section 408.04 Temporary Closure; Section 408.05 Permanent Closure Required, except 408.05(f); Section 408.06 Permanent Closure: Notification and Supervision Required; Section 408.07 Procedures for Permanent Closure; Section 408.08 Permanent Closure: Site Assessment; Section 408.09 Permanent Closure: Inspection Required; Section 408.10 Permanent Closure: Closure Report, Recordkeeping; Section 408.11 Limitations on Re-Use of Tanks.

APPENDIX A: State Statutes and Federal Statutes/Regulation Implemented, APPENDIX B: Incorporation by Reference Information, APPENDIX C: Statutory Definitions, APPENDIX D: Excerpts from RSA 146-C, APPENDIX E: 40 CFR Provisions Referenced.

2. *New Hampshire Code of Administrative Rules, Chapter Env-Or 600 Contaminated Site Management: (effective June 1, 2015)*

Part Env-Or 601 Purpose and Applicability, Section 601.01 Purpose, Section 601.02 Applicability.

Part Env-Or 602 Definitions.

Part-Env-Or 603 Groundwater Quality Criteria, Section 603.01 Groundwater Quality Criteria, Section 603.02 Exemptions to Groundwater Quality Criteria, Section 603.03 Ambient Groundwater Quality Standards (AGQS).

Part Env-Or 604 Notification, Section 604.01 Purpose, Section 604.02 Notification of Groundwater Quality Violation, Section 604.03 Exemptions to Notification of Groundwater

Quality Violation, Section 604.05 NAPL Notification, Section 604.06 Discharges of Oil Requiring Immediate Notification, Section 604.07 Potential Discharges of Oil Requiring Notification Within 60 Days, Section 604.08 Oil Notification Requirements.

Part Env-Or 605 Preliminary Response Actions, Section 606.01 Purpose, Section 605.03 Emergency Response Actions for Oil Discharges, Section 605.04 Initial Response Actions, Section 605.05 Emergency and Initial Response Action Approval, Section 605.06 Emergency and Initial Response Action Reporting Requirements, Section 605.07 Initial Site Characterization Required, Section 605.08 Initial Site Characterization, Section 605.09 Initial Site Characterization Report, Section 605.10 Investigation Due to Discovery of Discharges from Unknown Sources.

Part Env-Or 606 Comprehensive Response Actions, Section 606.01 Site Investigation Required; Section 606.02 Site Investigation Request, Exemptions; Section 606.03 Site Investigation Report ; Section 606.04 Site Background Information; Section 606.05 Summary of Subsurface Explorations and Sampling; Section 606.06 Site Geology and Hydrology; Section 606.07 Conceptual Model; Section 606.08 Remedial Alternatives, Summary, and Recommendations; Section 606.09 Appendices; Section 606.10 Remedial Action Plan; Section 606.11 Remedial Action Plan Exemptions; Section 606.12 Remedial Action Plan Report; Section 606.13 Remedial Action Plan Approval; Section 606.14 Corrective Action Prior to Remedial Action Plan Approval; Section 606.15 Remedial Action Implementation; Section 606.16 Design Plans and Construction Specifications; Section 606.17 Remedial Action Implementation Report; Section 606.18 Periodic Status Report; Section 606.19 Soil Remediation Criteria; Section 606.20 Financial Assurance; Section 606.21 Financial Assurance Mechanisms.

Part Env-Or 609 Certificates of Completion or No Further Action, Section 609.01  
Certificate of Completion, Section 609.02 Certificate of No Further Action.

Part Env-Or 610 Monitoring and Reporting, Section 610.01 Applicability, Section 610.02  
Sampling and Analysis, Section 610.03 Reporting, Section 610.04 Groundwater Monitoring  
Wells.

Part Env-Or 611 Contaminated Soil, Section 611.01 Requirements for Managing  
Contaminated Soil, Section 611.02 Definitions, Section 611.03 Non-hazardous Oil-  
Contaminated Soil (NOCS) Certification, Section 611.04 Contaminated Soil Sampling, Section  
611.05 Contaminated Soil Storage, Section 611.06 Contaminated Soil Disposal and Reuse.

Appendix A: State States and Federal Statutes/Regulations Implemented; Appendix B:  
Incorporation by Reference Information; Appendix C: Statutory Definitions.

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