



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 281 and 282

[EPA-R04-UST-2019-0310; FRL-10004-27-Region 4]

Georgia: Final Approval and Incorporation by Reference of State Underground Storage Tank Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting the State of Georgia (Georgia or State) final approval of revisions to its underground storage tank (UST) program pursuant to the Resource Conservation and Recovery Act (RCRA). In addition, the EPA is codifying EPA's approval of Georgia's revised UST program and incorporating by reference those provisions of the State statutes and regulations that the EPA has determined meet the requirements for approval. EPA published a proposed rule on September 16, 2019 and provided for public comment. No comments were received on the EPA's proposed approval of Georgia's UST program revisions. No further opportunity for comment will be provided.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R04-UST-2019-0310. All documents in the docket are listed on the

http://www.regulations.gov web site. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Aaryn Jones, RCRA Programs and Cleanup Branch, Land, Chemicals and Redevelopment Division, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960; Phone number: (404) 562-8969; e-mail address:

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SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to Georgia's UST Program

A. What changes to Georgia's UST program is EPA approving with this action?

On August 8, 2018, in accordance with 40 CFR 281.51(a), Georgia submitted a complete program revision application (State Application) seeking approval of changes to its UST program. EPA now makes a final decision that Georgia's UST program revisions are no less stringent than the corresponding Federal program. Therefore, the EPA grants Georgia final approval to operate its UST program with the changes described in the State Application and as outlined in the proposed rule published in the September 16, 2019 **Federal Register** at 84 FR 48573. Although no comments were received on the EPA's proposed approval of Georgia's UST program revisions, the EPA noticed an error in the date of the Georgia statutory and regulatory materials listed in the proposed regulatory text at 40 CFR 282.60(d)(1)(i). The date of these materials was improperly

listed as August 2018. The EPA has corrected the date in the final regulatory text to August 2019. The State's federally-approved and codified UST program as revised pursuant to this action will remain subject to the EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions.

II. Codification

A. What is codification?

Codification is the process of placing citations and references to a state's statutes and regulations that comprise a state's approved UST program into the Code of Federal Regulations (CFR). The EPA codifies its approval of state programs in 40 CFR part 282 and incorporates by reference state statutes and regulations that the EPA can enforce, after the approval is final, under sections 9005 and 9006 of RCRA, and any other applicable statutory provisions. The incorporation by reference of EPA-approved state programs in the CFR should substantially enhance the public's ability to discern the status of the approved state UST 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 Georgia's UST program?

In 1996, the EPA incorporated by reference and codified Georgia's approved UST program at 40 CFR 282.60 (61 FR 4224, February 5, 1996). Through this action, the EPA

is amending 40 CFR 282.60 to incorporate by reference and codify Georgia's revised UST program.

C. What codification decisions is the EPA making in this rule?

In this rule, the EPA is finalizing regulatory text that incorporates by reference the federally approved Georgia UST program, including the revisions described in the State Application. In accordance with the requirements of 1 CFR 51.5, the EPA is incorporating by reference Georgia's statutes and regulations as described in the amendments to 40 CFR part 282 set forth below. These documents are available through <https://www.regulations.gov> and at the EPA Region 4 office (see the FOR FURTHER INFORMATION CONTACT section of this preamble for more information).

Specifically, in Section 282.60(d)(1)(i), the EPA is incorporating by reference the Georgia-approved UST program. Section 282.60(d)(1)(ii) identifies the State's statutes and regulations that are part of the approved State program, although not incorporated by reference for enforcement purposes. Section 282.60(d)(2) through (d)(5) reference the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are part of the State Application and approved as part of the UST program under subtitle I of RCRA.

D. What is the effect of the EPA's codification of the federally approved Georgia UST program on enforcement?

The EPA retains the authority under sections 9003(h), 9005, and 9006 of subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d, and 6991e, and other applicable statutory and

regulatory provisions, to undertake corrective action, inspections, and enforcement actions, and to issue orders in approved states. If the EPA determines it will take such actions in Georgia, the EPA will rely on federal sanctions, federal inspection authorities, and other federal procedures rather than the State analogs. Therefore, the EPA is not incorporating by reference Georgia's procedural and enforcement authorities, although they are listed in 40 CFR 282.60(d)(1)(ii).

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

Some provisions of the State's UST program are not part of the federally approved State program because they are "broader in scope" than the federal UST program. 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. In addition, provisions that are external to the State UST program approval requirements, but included in the State Application, are also being excluded from incorporation by reference in part 282. For reference and clarity, 40 CFR 282.60(d)(1)(iii) lists the Georgia statutory and regulatory provisions which are "broader in scope" than the federal program and external to state UST program approval requirements. These provisions are, therefore, not part of the approved program that the EPA is codifying. Although these provisions cannot be enforced by the EPA, the State will continue to implement and enforce such provisions under State law.

III. Statutory and Executive Order (EO) Reviews

This final action merely approves and codifies Georgia’s revised UST program requirements pursuant to RCRA section 9004 and does not impose additional requirements other than those imposed by State law. For further information on how this action complies with applicable executive orders and statutory provisions, please see the proposed rule published in the September 16, 2019 **Federal Register** at 84 FR 48573. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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). This final action will be effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

List of Subjects

40 CFR Part 281

Environmental protection, Administrative practice and procedure, Petroleum, Hazardous substances, State program approval, Underground storage tanks, and Reporting and recordkeeping requirements.

40 CFR Part 282

Environmental protection, Administrative practice and procedure, Petroleum, Hazardous substances, Incorporation by reference, State program approval, Underground storage tanks, and Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of Sections 2002(a), 7004(b), 9004, 9005 and 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6974(b), 6991c, 6991d, and 6991e.

Mary S. Walker,
Regional Administrator, Region 4.

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 §282.60 to read as follows:

§282.60 Georgia State-Administered Program.

(a) *History of the approval of Georgia's Program.* The State of Georgia 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 Georgia Department of Natural Resources, Environmental Protection Division, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this Chapter. EPA approved the Georgia program on May 10, 1991 and it was effective on July 9, 1991. A subsequent program revision was approved by EPA and became effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

(b) *Enforcement authority.* Georgia has primary responsibility for administering and enforcing its federally approved underground storage tank program. However, EPA retains the authority to exercise its corrective action, inspection, and enforcement authorities under sections 9003(h), 9005, and 9006 of subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d, and 6991e, as well as under any other applicable statutory and regulatory provisions.

(c) *Retention of program approval.* To retain program approval, Georgia must revise its approved program to adopt new changes to the federal subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Georgia obtains approval for 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 notice of any change will be published in the *Federal Register*.

(d) *Final approval.* Georgia has final approval for the following elements of its underground storage tank program originally submitted to EPA and approved effective July 9, 1991, and the program revisions approved by EPA effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]:

(1) *State statutes and regulations—(i) Incorporation by reference.* The Georgia materials cited in this paragraph, and listed in appendix A to part 282, are incorporated by reference as part of the underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* The Director of the *Federal Register* approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the Georgia statutes that are incorporated by reference in this paragraph from LexisNexis, Attn: Official Code of Georgia Annotated, 701 East Water Street, Charlottesville, VA 22902-5389; Phone number: 1-800-833-9844; Website: http://sos.ga.gov/index.php/elections/georgia_code_-_lexisnexis. You may obtain copies of the Georgia regulations that are incorporated by reference in this paragraph from the Administrative Procedures Division, Office of the Georgia Secretary of State, 5800

Jonesboro Road, Morrow, Georgia 30260; Phone number: (678) 364-3785; Website: <http://rules.sos.ga.gov/gac/391-3-15>. You may inspect all approved material at the EPA Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303; Phone number: (404) 562-9900; or the National Archives and Records Administration (NARA). For information on the availability of the material at NARA, email fedreg.legal@nara.gov or go to www.archives.gov/federal-register/cfr/ibr-locations.html.

(A) “Georgia Statutory Requirements Applicable to the UST Program”, dated August 2019.

(B) “Georgia Regulatory Requirements Applicable to the UST Program”, dated August 2019.

(ii) *Legal basis.* The EPA evaluated the following statutes and regulations which provide the legal basis for the State’s implementation of the underground storage tank program, but they are not being incorporated by reference and do not replace federal authorities:

(A) *Official Code of Georgia Annotated (2017), Title 12.* “Conservation and Natural Resources,” Chapter 13, “Georgia Underground Storage Tank Act”: Sections 12-13-5; 12-13-6; 12-13-8; 12-13-11(a) and (f); 12-13-14 through 12-13-17; and 12-13-19 through 12-3-22.

(B) *Rules and Regulations of the State of Georgia (November 6, 2017), Department 391.* “Rules of the Georgia Department of Natural Resources,” Chapter 3, “Environmental Protection,” Subject 15, “Underground Storage Tank Management”: Sections 391-3-15-.01(2) and 391-3-15-.14.

(iii) *Other Provisions not incorporated by reference.* The following specifically identified sections and rules applicable to the Georgia underground storage tank program that are broader in scope than the federal program or external to the state UST program approval requirements are not part of the approved program, and are not incorporated by reference herein:

(A) *Official Code of Georgia Annotated (2017), Title 12: “Conservation and Natural Resources,”* Chapter 13, “Georgia Underground Storage Tank Act”: Sections 12-13-3(8) and (16); 12-13-7; 12-13-9(d) through (i); 12-13-10; 12-13-11(b) through (e); 12-13-12; 12-13-13(e), and 12-13-18.

(B) *Rules and Regulations of the State of Georgia (November 6, 2017), Department 391: “Rules of the Georgia Department of Natural Resources,”* Chapter 3, “Environmental Protection,” Subject 15, “Underground Storage Tank Management”: Sections 391-3-15-.01(1); 391-3-15-.03(1)(a), (g), (i), and (p) through (r); 391-3-15-.04; 391-3-15-.05(4); 391-3-15-.09(5) and (7); 391-15-3-.12(3); 391-3-15-.13; and 391-3-15-.15.

(2) *Statement of legal authority.* The Attorney General’s Statement, signed by the Attorney General on June 12, 2018, 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) *Demonstration of procedures for adequate enforcement.* The “Demonstration of Procedures for Adequate Enforcement” submitted as part of Georgia’s application on August 8, 2018, 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 submitted as part of Georgia’s application on August 8, 2018, 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.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 4 and the Georgia Environmental Protection Division, signed by EPA Regional Administrator on October 12, 2018, 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 Georgia to read as follows:

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

* * * * *

Georgia

(a) The statutory provisions include: *Official Code of Georgia Annotated (2017)*, *Title 12: “Conservation and Natural Resources,”* Chapter 13, “Georgia Underground Storage Tank Act”:

Section 12-13-1 Short title.

Section 12-13-2 Public policy.

Section 12-13-3 Definitions, except (8) and (16).

Section 12-13-4 Exceptions to chapter.

Section 12-13-9 Establishing financial responsibility; claims against the guarantor; Underground Storage Tank Trust Fund, except (d) through (i).

Section 12-13-13 Notification by owner of underground storage tank, except (e).

(b) The regulatory provisions include: *Rules and Regulations of the State of Georgia (November 6, 2017), Department 391*: “Rules of the Georgia Department of Natural Resources,” Chapter 3, “Environmental Protection,” Subject 15, “Underground Storage Tank Management”:

Section 391-3-15-.01(3) General Provisions

Section 391-3-15-.02 UST Exclusions.

Section 391-3-15-.03 Definitions, except (1)(a), (1)(g), (1)(i), and (1)(p) through (r).

Section 391-3-15-.05 UST Systems: Design, Construction, Installation, and Notification, except (4).

Section 391-3-15-.06 General Operating Requirements.

Section 391-3-15-.07 Release Detection.

Section 391-3-15-.08 Release Reporting, Investigation, and Confirmation.

Section 391-3-15-.09 Release Response and Corrective Action for UST Systems Containing Petroleum, except (5) and (7).

Section 391-3-15-.10 Release Response and Corrective Action for UST Systems Containing Hazardous Substances.

Section 391-3-15-.11 Out-of-Service UST Systems and Closure.

Section 391-3-15-.12 Underground Storage Tanks Containing Petroleum; Financial Responsibility Requirements, except (3).

Section 391-3-15-.16 Operator Training.

Section 391-3-15-.17 Airport Hydrant Systems and Field Constructed Tanks.

(c) Copies of the Georgia statutes that are incorporated by reference are available from LexisNexis, Attn: Official Code of Georgia Annotated, 701 East Water Street, Charlottesville, VA 22902-5389; Phone number: 1-800-833-9844; Website: http://sos.ga.gov/index.php/elections/georgia_code_-_lexisnexis. Copies of the Georgia regulations that are incorporated by reference are available from the Administrative Procedures Division, Office of the Georgia Secretary of State, 5800 Jonesboro Road, Morrow, Georgia 30260; Phone number: (678) 364-3785; Website: <http://rules.sos.ga.gov/gac/391-3-15>.

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[FR Doc. 2020-02254 Filed: 2/13/2020 8:45 am; Publication Date: 2/14/2020]