



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[EPA-R05-UST-2020-0685; FRL-10020-05-Region 5]

Indiana: Final Approval of State Underground Storage Tank Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State of Indiana's Underground Storage Tank (UST) program submitted by the State. EPA has determined that these revisions satisfy all requirements needed for program approval. The State's federally-authorized program, as revised pursuant to this action, will remain 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 comment, it will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by EPA-R05-UST-2020-0685 by one of the following methods:

1. Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments.
2. Email: Kamke.Sherry@epa.gov.

Instructions: Direct your comments to Docket ID No. EPA-R05-UST-2020-0685. EPA's policy is that all comments received will be included in the public docket without change and may be available online at <https://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 <https://www.regulations.gov>, or email. The federal <https://www.regulations.gov> website is an "anonymous access" system, which means 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 EPA without going through <https://www.regulations.gov>, your email 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 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.

EPA encourages electronic submittals, but if you are unable to submit electronically, please reach out to EPA contact person listed in the notice for assistance with additional submission methods.

You can view and copy the documents that form the basis for this action and associated publicly available materials through www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Sherry Kamke, Environmental Engineer, Corrective Action Section #3, Remediation Branch (LR-17J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-5794, Kamke.Sherry@epa.gov. Out of an

abundance of caution for members of the public and our staff, EPA's Region 5 office will be closed to the public to reduce the risk of transmitting COVID-19. We encourage the public to submit comments via <https://www.regulations.gov> or via email. Please call or e-mail the contact listed above if you need alternative means to access the material provided in the docket.

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to Indiana's Underground Storage Tank Program

A. Why are revisions to state programs necessary?

States which have received final approval from 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 underground storage tank program. 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 EPA for approval. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) part 280. States can also initiate changes on their own to their underground storage tank program and these changes must then be approved by EPA.

B. What decisions has EPA made in this rule?

On October 11, 2018, in accordance with 40 CFR 281.51(a), Indiana submitted a complete program revision application seeking EPA approval for its UST program revisions (State Application). Indiana's revisions correspond to EPA's 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 from the Governor 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 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 Indiana'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 Indiana program provides for adequate enforcement of compliance (40 CFR 281.11(b)). Therefore, EPA grants Indiana 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 action on the regulated community?

This action does not impose additional requirements on the regulated community because the regulations being approved by this rule are already in effect in the State of Indiana, and 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 without a prior proposed rule because we view this as a noncontroversial action and we anticipate no adverse comment. Indiana did not receive any comments during its comment period when the rules and regulations being considered today were proposed at the state level.

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

Along with this direct final rule, EPA is publishing a separate document in the "Proposed Rules" section of this Federal Register that serves as the proposal to approve the State's UST program revisions, and provides an opportunity for public comment. If EPA receives comments that oppose this approval, EPA will withdraw this direct final rule by publishing a document in the **Federal Register** before it becomes effective. EPA will base any further decision on approval of the State Application 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 Indiana previously been approved?

On August 11, 2006, EPA finalized a rule approving the UST program that Indiana proposed to administer in lieu of the federal UST program. The State's program has not previously been codified.

G. What changes are we approving with this action and what standards do we use for review?

In order to be approved, each state program application must meet the general requirements in 40 CFR 281.11, and specific requirements in 40 CFR Subpart B (Components of a Program Application); Subpart C (Criteria for No Less Stringent); and Subpart D (Adequate Enforcement of Compliance). This also is true for proposed revisions to approved state programs.

As more fully described below, the State has made the changes to its approved UST program to reflect the 2015 Federal Revisions. EPA is approving the State's changes because they are equivalent to, consistent with, and no less stringent than the federal UST program and because EPA has confirmed that the Indiana UST program will continue to provide for adequate enforcement of compliance as described in 40 CFR 281.11(b) and part 281, Subpart D after this approval.

The Indiana Department of Environmental Management (IDEM or Department) is the lead implementing agency for the UST program in Indiana, except in Indian country.

IDEM continues to have broad statutory authority to regulate the installation, operation, maintenance, and closure of USTs, as well as UST releases under Indiana Code Title 4 State Offices and Administration, Article 22 Administrative Rules and Procedures, Chapter 2, Adoption of Administrative Rules; and selected provisions from Title 13 Environment, Article 23 Underground Storage Tanks. The Indiana UST Program gets its enforcement authority from the powers of the Department found in IC Sections 4-21.5-4, 13-14-2-6, 13-14-2-7, 13-23-1-4, 13-23-14-3, and 13-30-3. Under IC 13-14-2-2, an employee or agent of the Department has the

authority to enter and inspect any property premises or place where regulated substances are stored at any reasonable time. In the case of a release, IC Sections 13-23-13-2, 13-23-13-4, and 13-23-13-12 provide employees or agents of the Department the authority to take such action as necessary, including the authority to enter any property, premises or place where an UST is located for inspection, in order to conduct sampling, and to have access to records. IC Section 13-23-13-1 provides the Department with rulemaking authority for corrective action. Notice of violation may be issued, and penalties for non-compliance with Indiana's UST Act may be assessed under IC 13-30-3-3. The State also includes requirements for delivery prohibitions in the event of non-compliance as described in 329 Indiana Administrative Code (IAC) Section 9-1-15.1.

Specific authorities to regulate the installation, operation, maintenance, and closure of USTs, as well as UST releases are found under IC 13-23, in addition to the regulatory provisions in 329 IAC Article 9 Underground Storage, as amended effective June 28, 2018; Reporting and recordkeeping requirements are found under 329 IAC 9-3-1. The aforementioned statutory and regulatory sections satisfy the requirements of 40 CFR 281.40 and 281.41.

Through a Memorandum of Agreement between the State of Indiana and EPA, signed by EPA Region 5 Regional Administrator November 27, 2018, the State maintains procedures for receiving and ensuring proper consideration of information about violations submitted by the public. The State agrees to comply with public participation provisions contained in 40 CFR 281.42 including the provision that the State will not oppose intervention under Rule 24 of the Indiana Rules of Court, Rules of Trial Procedure, in the same manner as the Federal rules at 40 CFR 281.42.

To qualify for final approval, revisions to a state's program must be "equivalent to, consistent with, and no less stringent" than the 2015 Federal Revisions. In the 2015 Federal Revisions, EPA addressed UST systems deferred in the 1988 UST regulations, and added, among other things, new operation and maintenance requirements; secondary containment

requirements for new and replaced tanks and piping; operator training requirements; and a requirement to ensure UST system compatibility before storing certain biofuel blends. In addition, EPA removed past deferrals for emergency generator tanks, field constructed tanks, and airport hydrant systems. EPA analyzes revisions to approved state programs pursuant to the criteria found in 40 CFR 281.30 through 281.39.

The Department has revised its regulations to help ensure that the state's UST program revisions are equivalent to, consistent with, and no less stringent than the 2015 Federal Revisions. In particular, the Department has amended Indiana Administrative Code to incorporate the revised requirements of 40 CFR part 280, including the requirements added by the 2015 Federal Revisions. The State, therefore, has ensured that the criteria found in 40 CFR 281.30 through 281.38 are met.

Title 40 CFR 281.39 describes the state operator training requirements that must be met in order to be considered equivalent to, consistent with, and no less stringent than federal requirements. Indiana has elected to incorporate by reference the Federal Rules at 329 IAC 9-1-1(b) and (c); therefore, Indiana's operator training requirements are equivalent to, consistent with, and no less stringent than federal requirements.

As part of the State Application, the Chief Counsel in the Advisory Division of the State of Indiana - Office of the Attorney General certified that the laws of Indiana provide adequate authority to carry out the "no less stringent" technical requirements submitted by the State in order to meet the criteria in 40 CFR 281.30 through 281.39. EPA is relying on this certification in addition to the analysis submitted by the State in making our determination.

For further information on EPA's analysis of the State's application, see the supporting documentation for both the statutory and regulatory programs contained in the docket for this rulemaking.

H. Where are the revised rules different from the federal rules?

Broader in Scope Provisions

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 and are not federally enforceable (40 CFR 281.12(a)(3)(ii)). The following regulatory requirements are considered broader in coverage than the federal program as these state-only regulations are not required by federal regulation and are implemented by the state in addition to the federally approved program:

Indiana Code Title 13, Article 23 Underground Storage Tanks:

Chapter 6 Underground Storage Petroleum Tank Trust Fund, Sections 13-23-6-1 through 13-23-6-5; Chapter 7 Underground Petroleum Storage Tank Excess Liability Fund, Sections 13-23-7-1 through 13-23-7-7; Chapter 8 Use of Money in Excess Liability Fund, Sections 13-23-8-4 through 13-23-8-6; Chapter 9 Payment from Excess Liability Fund, Sections 13-23-9-1.3 through 13-23-9-6; and Chapter 13 Corrective Actions, Sections 13-23-13-6 and 13-23-13-7, because funds of this type are state specific and are broader in scope than the federal program.

Chapter 12 Fees, Sections 13-23-12-1 through 13-23-12-4 because fees are broader in scope and not imposed by the federal program.

More Stringent Provisions

Where an approved state program includes requirements that are considered more stringent than required by federal law, the more stringent requirements become part of the federally approved program (40 CFR 281.12(a)(3)(i)).

The following regulatory requirements are considered more stringent than the federal program, and on approval, they become part of the federally approved program and are federally enforceable:

Under 329 Indiana Administrative Code (IAC):

At Section 329 IAC 9-2-2(f) Indiana requires UST system owners and operators to ensure that workers performing UST installations, testing, upgrades, closures, removals, and change in

service are certified by the State Fire Marshall. The federal regulations do not require certification making the state requirement more stringent.

At Section 329 IAC 9-2-2(g) Indiana requires UST system owners and operators to submit notice of temporary closure, upgrades, or release detection installation within 30 days of completing such actions. The federal regulations do not contain similar requirements.

Indiana has state-only provisions related to reporting at 329 IAC 9-3-1(b)(4), and (b)(6) – (b)(15). These additional reporting requirements are more stringent than the federal regulations because 40 CFR 280.34 does not require the submittal of the documentation described in this state program requirement.

At Section 329 IAC 9-3-1(c)(5) – (c)(10) the state has additional recordkeeping requirements that require retention of additional items not required by the federal regulations. These additional requirements make the state program more stringent than the federal regulations.

329 IAC 9-2-3 requires UST system owners or operators to certify compliance with the release detection requirements of 40 CFR 280, Subpart D and Indiana Article 9 within the state's notification forms. The federal program requires certification, but does not require the use of specific notification forms or that the person who performs the work be certified by the state fire marshal, making this state-only requirement more stringent.

At Section 329 IAC 9-4-4(a)(1) the State requires owners and operators to contain, cleanup a spill or overflow, and report the incident in cases when a petroleum release to the environment equals or exceeds 25 gallons at 329 IAC 9-4-4(a)(1)(A). This state provision is more stringent than the federal regulations, because under the federal regulations these actions are only required if the release of petroleum exceeds 25 gallons.

Section 329 IAC 9-5-5.1 is more stringent because Indiana has additional and more detailed requirements for site characterization after release than federal regulations. Specifically, at 329 IAC 9-5-5.1(b), Indiana requires an investigation and submittal of a signed report

detailing specific information concerning site background, release incident description, initial response and abatement, free product recovery, investigation, sampling, results and conclusions, and recommendations.

At Section 329 IAC 9-5-4.2 the state provision is more stringent because Indiana has a more detailed requirement for the safe handling of flammable products. Specifically, at 329 IAC 9-5-4.2(3), Indiana requires that flammable products be handled in accordance with the site health and safety plan which is required under the State's corrective action plan at Section 329 IAC 9-5-7(e).

329 IAC 9-5-6 addresses further site investigations for soil and ground water cleanup. The state provisions are more stringent than the federal regulations because Indiana has additional and more detailed requirements for further site investigation in the event evidence exists that a contaminant exceeds the cleanup objectives of IC 13-12-3-2.

At Section 329 IAC 9-5-7 the state provisions are more stringent because Indiana has additional and more detailed requirements for the corrective action plan than the federal regulations including consideration of the proximity of potential contaminant receptors and suitability of chosen remediation method when approving corrective action plans and adherence to a written health and safety plan.

At 329 IAC 9-6-5(d) the State requires owners and operators provide certification of closure compliance pursuant to the notification form requirements at 329 IAC 9-2-2 (see specifically 329 IAC 9-2-2(f) and (g)). The federal program does not include a similar requirement making the state provision potentially more stringent than the federal regulations.

At 329 IAC 9-6-2.1(a) the State requires owners and operators to notify both the department and the office of the state fire marshal before beginning permanent closure or a change-in-service where the federal regulation requires notification only of the implementing agency. The state provision is more stringent than federal regulations because of this additional notification requirement.

Section 329 IAC 9-6-3 requires that when previously closed UST systems must be assessed and closed as directed by the State Commissioner, the closures be performed by a person certified under the rules of the fire prevention and building safety commission at 675 IAC 12-12. The State's requirement for certification is more stringent than federal regulations.

At Section 329 IAC 9-8-4(a) the state provision is more stringent than the federal regulations as it requires all UST system owners and operators to maintain financial responsibility for corrective action and third-party claims in a per-occurrence amount of at least \$1 million, without considering their monthly throughput or whether they are located at petroleum marketing facilities. The federal regulations allow owners or operators who do not meet the requirement of 280.93(a)(1) to maintain financial responsibility of \$500,000.

At Section 329 IAC 9-8-17(b) this state provision continues to require that the local government fund be funded for ten times the full amount of coverage required under 329 IAC 9-8-4 though EPA reduced the required local government fund funding amount from ten times the full amount of coverage required under § 280.93 to five times the coverage. The State's higher coverage requirement makes the state provision more stringent than the federal regulations.

At Section 329 IAC 9-8-25(a) and (b) the State requires owners or operators to replenish guarantees, letters of credit and surety bonds by the anniversary date or within 120 days after the reduction has occurred, whichever is sooner. The State's inclusion of this other option and subjecting owners or operators to whichever option is sooner is more stringent than the federal program that does not contain these requirements.

I. How does this action affect Indian country (18 U.S.C. 1151) in Indiana?

EPA's approval of Indiana's Program does not extend to Indian country as defined in 18 U.S.C. 1151. Indian country generally includes any land held in trust by the United States for an Indian tribe; and any other areas that are "Indian country" within the meaning of 18 U.S.C. 1151. Any lands removed from an Indian reservation status by federal court action are not considered reservation lands even if located within the exterior boundaries of an Indian reservation. EPA

will retain responsibilities under RCRA for underground storage tanks in Indian country.

Therefore, this action has no effect in Indian country. *See* 40 CFR 281.12(a)(2).

II. Statutory and Executive Order (EO) Reviews

This action only applies to Indiana's UST Program requirements pursuant to RCRA Section 9004 and imposes no requirements other than those imposed by state law. It complies with applicable 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, Oct. 4, 1993) and 13563 (76 FR 3821, Jan. 21, 2011). This action approves 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. Unfunded Mandates Reform Act and Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Because this action approves 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).

C. 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, Aug. 10, 1999), because it merely approves 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.

D. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

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

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

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a “significant regulatory action” as defined under Executive Order 12866.

F. 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.

G. 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.

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

EPA has complied with Executive Order 12630 (53 FR 8859, Mar. 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.

I. 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).

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

Executive Order 12898 (59 FR 7629, Feb. 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, consistent with, 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.

K. 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, 9005 and 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6974(b), and 6991c, 6991d, and 6991e.

List of Subjects in 40 CFR Parts 281 and 282

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

Dated: February 9, 2021.

Cheryl Newton,
Acting Regional Administrator, Region 5.

[FR Doc. 2021-03168 Filed: 2/16/2021 8:45 am; Publication Date: 2/17/2021]