



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA-R03-UST-2020-0291; FRL 10018-06-Region 3]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Solid Waste Disposal Act of 1965, as amended (commonly known as the Resource Conservation and Recovery Act (RCRA)), the Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Commonwealth of Virginia's Underground Storage Tank (UST) program submitted by the Commonwealth of Virginia (Virginia or State). This action also codifies EPA's approval of Virginia's state program and incorporates by reference (IBR) those provisions of Virginia's regulations and statutes that EPA has 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 significant negative comments opposing this action by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If EPA receives significant negative comments opposing this action, EPA 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:* <https://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. *E-mail:* uybarreta.thomas@epa.gov.

Instructions: Direct your comments to Docket ID No. EPA-R03-UST-2020-0291.

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 e-mail. The federal website, <https://www.regulations.gov>, 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 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. 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 the EPA contact person listed in the notice for assistance. If you need assistance in a language other than English, or you are a person with disabilities who needs a reasonable accommodation at no cost to you, please reach out to the EPA contact person by e-mail or phone.

Docket: All documents in the docket are listed in the <https://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. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Thomas UyBarreta, (215) 814-2953, uybarreta.thomas@epa.gov, RCRA Programs Branch; Land, Chemicals, and Redevelopment Division; EPA Region 3, 1650 Arch Street (Mailcode 3LD30), Philadelphia, PA 19103-2029.

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to Virginia’s Underground Storage Tank Program

A. Why are revisions to state programs necessary?

Section 9004 of RCRA authorizes EPA to approve state underground storage tank (UST) programs to operate in lieu of the federal UST program. EPA may approve a state program if the state demonstrates, pursuant to section 9004(a), 42 U.S.C. 6991c(a), that the state program includes the elements set forth at section 9004(a)(1) through (9), 42 U.S.C. 6991c(a)(1) through (9), and provides for adequate enforcement of compliance with UST standards (section 9004(a), 42 U.S.C. 6991c(a)). Additionally, EPA must find, pursuant to section 9004(b), 42 U.S.C. 6991c(b), that the state program is “no less stringent” than the federal program in the elements set forth at section 9004(a)(1) through (7), 42 U.S.C. 6991c(a)(1) through (7). States such as Virginia that have received final UST program approval from EPA under section 9004 of RCRA must, in order to retain such approval, revise their approved programs when the controlling federal or state statutory or regulatory authority is changed and EPA determines a revision is required. In 2015, EPA revised the federal UST regulations and determined that states must revise their UST programs accordingly.

B. What decisions has EPA made in this rule?

On February 11, 2019, in accordance with 40 CFR 281.51(a), Virginia submitted a complete program revision application seeking EPA approval for its UST program revisions (State Application). Virginia’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. As required by 40 CFR 281.20, the State Application contains the following: a transmittal letter requesting program 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; an Attorney General's statement in accordance with 40 CFR 281.24 certifying to applicable state authorities; and copies of all relevant state statutes and regulations. EPA has reviewed the State Application and determined that the revisions to Virginia's UST program are no less stringent than the corresponding federal requirements in subpart C of 40 CFR part 281, and that the Virginia program provides for adequate enforcement of compliance (40 CFR 281.11(b)). Therefore, EPA grants Virginia final approval to operate its UST program with the changes described in the State Application, and as outlined below in section I.G. of this preamble.

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 Virginia, 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 concurrently with a proposed rulemaking because EPA views this as a noncontroversial action and anticipates no significant negative comment. EPA is providing an opportunity for public comment now.

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, providing opportunity for public comment. If EPA receives significant negative comments that oppose this approval, EPA will publish a timely withdrawal in the

Federal Register informing the public that the rule will not take effect. EPA will not make any further decision on the approval of the State program changes until it considers any significant negative comment received during the comment period. EPA will address any significant negative comment 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 Virginia previously been approved?

On September 28, 1998, the EPA finalized a rule approving Virginia’s UST program, effective October 28, 1998 (63 FR 51528), to operate in lieu of the federal program. On June 15, 2004, effective August 16, 2004 (69 FR 33312), EPA codified the approved Virginia program, incorporating by reference the State’s 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 is EPA approving with this action?

On February 11, 2019, in accordance with 40 CFR 281.51(a), Virginia submitted a complete application for final approval of its UST program revisions adopted on September 4, 2017, effective January 1, 2018. EPA has reviewed Virginia’s UST program requirements and determined that such requirements are no less stringent than the federal regulations and that the criteria set forth in 40 CFR part 281 subpart C are met. EPA now makes an immediate final decision, subject to receipt of any significant negative written comments that oppose this action, that Virginia’s UST program revisions satisfy all of the requirements necessary to qualify for final approval. Therefore, EPA grants Virginia final approval for the following program changes:

Required Federal Element	Implementing State Authority
40 CFR 281.30, New UST Systems and Notification	9VAC25-580-20, -30, -50.1 to .5, & .7, -70, -120(1)(a), -380, -390
40 CFR 281.31, Upgrading Existing UST Systems	9VAC25-580-20, -60, -380, -390

40 CFR 281.32, General Operating Requirements	9VAC25-580-20, -60, -80, -82, -85, -90, -100, -110, -120, -180
40 CFR 281.33, Release Detection	9VAC25-580-20, -50, -85, -130 to -170, -380, -390
40 CFR 281.34, Release Reporting, Investigation, and Confirmation	9VAC25-580-20, -80B, -190, -200 to -220
40 CFR 281.35, Release Response and Corrective Action	9VAC25-580-20, -230 to -280, -300
40 CFR 281.36, Out-of-service Systems and Closure	9VAC25-580-20, -310 to -350, -390
40 CFR 281.37, Financial Responsibility for USTs Containing Petroleum	9VAC25-590-40, -50 to -150, -160, -170, -200, -210, -250, -260
40 CFR 281.38, Lender Liability	9VAC25-590-240, -260
40 CFR 281.39, Operator Training	9VAC25-580-20, -125

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. Virginia's State Water Control Board has broad statutory and regulatory authority with respect to USTs to regulate installation, operation, maintenance, closure, and UST releases, and to the issuance of orders, as implemented by the Virginia Department of Environmental Quality (VADEQ). The statutory authority is found in the Code of Virginia in the following titles: Title 2.2, Subtitle I, Chapter 5: Department of Law, Article 1: General Provisions, section 2.2-507; Title 2.2, Subtitle II, Chapter 40: Administrative Process Act; Title 2.2, Subtitle II, Chapter 48: Virginia Debt Collection Act; Title 10.1, Subtitle II, Chapter 11.1: Department of Environmental Quality, Article 1: General Provisions, sections 10.1-1182, -1186, -1186.3, -1186.4; Title 36, Chapter 6: Uniform Statewide Building Code (USBC), sections 36-97 to -119.1, in particular, sections 36-97, -98.1, -99.6; Title 42.1, Chapter 7: Virginia Public Records Act; and Title 62.1, Chapter 3.1: State Water Control Law, in the following articles: Article 2: Control Board Generally, sections 62.1-44.13, .15, Article 5: Enforcement and Appeal Procedure, sections 62.1-44.20, .21, .23, Article 6: Offenses and Penalties, sections 62.1-44.31, .32, Article 9: Storage Tanks, sections 62.1-44.34:8 to :9, and Article 10: Petroleum Storage Tank Fund, sections 62.1-44.34:10 to :13. The regulatory authority is found in the Virginia Administrative Code at Title 9, Agency 25: State Water Control Board, Chapter 580, 9VAC25-580 et seq. and Chapter 590, 9VAC25-590 et seq., and the

Virginia Uniform Statewide Building Code, Part I, Virginia Construction Code (VCC), Chapter 1, Sections 101.2, 102.3.10, 103, 108.1, 414.6.2 and Chapter 2.

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 is not federally enforceable (40 CFR 281.12(a)(3)(ii)). The following Virginia requirements are considered “broader in scope” than the federal program. In accordance with 40 CFR 281.12(a)(3)(ii), this additional coverage is not part of the federally-approved program and is not federally enforceable.

Virginia’s statutory and regulatory definitions of a regulated substance under Va. Code Sec. 62.1-44.34:8 and :10 and 9VAC25-580-10, include an element, compound, mixture, solution or substance that, when released into the environment, may present substantial danger to the public health or welfare or the environment. The federal definition of regulated substance, which is found at 40 CFR 280.12, includes only hazardous substances and petroleum. To the extent that Virginia regulates a larger tank community with respect to regulated substance tanks which are not specifically exempted, such a requirement is “broader in scope” than the federal program.

Under Va. Code Sec. 62.1-44.34:13, Virginia levies a fee on certain types of fuels sold in the State to maintain the Petroleum Storage Tank Fund. Such fee requirements are “broader in scope” than the federal program.

Virginia requires owners and operators of UST systems undergoing installation, upgrade, repair and closure to obtain a permit from local building officials (for state-owned facilities, the Department of General Services serves as the building official) and an inspection in accordance with the USBC and VCC when conducting such activities. 9VAC25-580-40, -50, -60, -110, -

160, -170, -310, -320, -380, -390. The USBC permitting and inspection requirements are “broader in scope” than the federal program.

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

Virginia is not authorized to carry out its program in Indian Country (18 U.S.C. 1151) within the State. This authority remains with EPA. Therefore, this action has no effect in Indian Country. See 40 CFR 281.12(a)(2).

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 Code of Federal Regulations (CFR). Section 9004(b) of RCRA, as amended, allows EPA to approve state UST programs to operate in lieu of the federal program. EPA codifies its authorization of state programs in 40 CFR part 282 and incorporates by reference state statutes and regulations that EPA will enforce under sections 9005 and 9006 of RCRA and any other applicable statutory 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 Virginia’s UST program?

EPA incorporated by reference Virginia’s UST program, approved effective October 28, 1998, on June 15, 2004 (69 FR 33312, June 15, 2004). In this document, EPA is revising 40 CFR 282.96 to include the approved revisions.

C. What codification decisions has EPA made in this rule?

Incorporation by reference: In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Virginia statutes and regulations described in the

amendments to 40 CFR part 282 set forth below. EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 3 office (see the FOR FURTHER INFORMATION CONTACT section of this preamble for more information).

One purpose of this *Federal Register* document is to codify Virginia's approved UST program. The codification reflects the State program that will be in effect at the time EPA's approved revisions to the Virginia UST program addressed in this direct final rule become final. If, however, EPA receives any significant negative comment opposing the proposed rulemaking then this codification will not take effect, and the State rules that are approved after EPA considers public comment will be codified instead. The document incorporates by reference Virginia's UST statutes and regulations and clarifies which of these provisions are included in the approved and federally-enforceable program. By codifying the approved Virginia program and by amending the CFR, the public will more easily be able to discern the status of the federally-approved requirements of the Virginia program.

EPA is incorporating by reference the Virginia approved UST program in 40 CFR 282.96. Section 282.96(d)(1)(i)(A) and (B) incorporates by reference for enforcement purposes the State's statutes and regulations.

Section 282.96 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 Virginia'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. If EPA determines it will take such actions in Virginia, EPA will rely on federal sanctions, federal inspection

authorities, and federal procedures rather than the State's authorized analogs to these provisions. Therefore, EPA is not incorporating by reference such approved Virginia procedural and enforcement authorities. Section 282.96(d)(1)(ii) of 40 CFR lists those approved Virginia 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. 40 CFR 281.12(a)(3)(ii) states that where an approved state program has a greater scope of coverage than required by federal law, the additional coverage is not a part of the federally-approved program. As a result, State provisions that are "broader in scope" than the federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.96(d)(1)(iii) lists for reference and clarity the Virginia statutory and regulatory provisions that are "broader in scope" than the federal program and which are not, therefore, part of the approved program being codified in this action. 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 Virginia'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 Virginia'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: Protection 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 that are 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 DATE OF PUBLICATION IN THE FEDERAL REGISTER]** because it is a direct final rule.

Authority: This rule is issued under the authority of section 9004 of the Solid Waste Disposal Act of 1965, as amended, 42 U.S.C. 6991c.

List of Subjects in 40 CFR Part 282

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Incorporation by reference, Insurance, Intergovernmental relations, Oil pollution, Penalties, Petroleum, Reporting and recordkeeping requirements, State program approval, Surety bonds, Underground storage tanks, Water pollution control, Water supply.

Diana Esher,
Acting Regional Administrator,
EPA Region 3.

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 § 282.96 to read as follows:

§ 282.96 Virginia State-Administered Program.

(a) The Commonwealth of Virginia 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 Virginia Department Environmental Quality, was approved by EPA pursuant to 42 U.S.C. 6991c and 40 CFR part 281 of this chapter. EPA approved the Virginia underground storage tank program on September 28, 1998, and approval was effective on October 28, 1998. A subsequent program revision application was approved by EPA and became effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

(b) Virginia 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, regardless of whether the State has taken its own actions, as well as under any other applicable statutory and regulatory provisions.

(c) To retain program approval, Virginia 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 Virginia 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 notice of any change will be published in the *Federal Register*.

(d) Virginia has final approval for the following elements of its program application originally submitted to EPA and approved on September 28, 1998 and effective October 28, 1998, and the program revision application approved by EPA, effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

(1) *State statutes and regulations*—(i) *Incorporation by reference*. The provisions cited in this paragraph, and listed in Appendix A to Part 282, with the exception of the provisions cited in paragraphs (d)(1)(ii) and (iii) of this section, are incorporated by reference as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* (See § 282.2 for incorporation by reference approval and inspection information.) 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 Virginia regulations and statutes that are incorporated by reference in this paragraph from the Office of Spill Response and Remediation, Virginia DEQ, 1111 East Main Street, Suite 1400 Richmond, VA 23219; Phone number: 804-698-4010; tank@deq.virginia.gov. You may inspect all approved material at the EPA Region 3 office, 1650 Arch Street, Philadelphia, PA 19103-2029 (Phone number 215-

814-2953) or the National Archives and Records Administration (NARA). For information on the availability of the material at NARA, e-mail fedreg.legal@nara.gov or go to <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(A) Virginia Statutory Requirements Applicable to the Underground Storage Tank Program, April 2004.

(B) Virginia Regulatory Requirements Applicable to the Underground Storage Tank Program, June 2018.

(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) Code of Virginia, Title 2.2, Subtitle I, Chapter 5: Department of Law, Article 1: General Provisions, Section 2.2-507

(2) Code of Virginia, Title 2.2, Subtitle II, Chapter 40: Administrative Process Act, Sections 2.2-4000 to -4031, insofar as the provisions and procedures serve to implement the underground storage tank program

(3) Code of Virginia, Title 2.2, Subtitle II, Chapter 48: Virginia Debt Collection Act, Sections 2.2-4800 to -4809, insofar as the provisions and procedures serve to implement the underground storage tank program

(4) Code of Virginia, Title 10.1, Subtitle II, Chapter 11.1: Department of Environmental Quality, Article 1: General Provisions, Sections 10.1-1182, -1186, -1186.3, -1186.4

(5) Code of Virginia, Title 36, Chapter 6: Uniform Statewide Building Code, Sections 36-97 to -119.1, especially sections 36-97, -98.1, -99.6

(6) Code of Virginia, Title 42.1, Chapter 7: Virginia Public Records Act, Sections 42.1-76 to -90.1, insofar as the provisions and procedures serve to implement the underground storage tank program

(7) Code of Virginia, Title 62.1, Chapter 3.1: State Water Control Law, Article 2: Control Board Generally, Sections 62.1-44.13, .15; Article 5: Enforcement and Appeal Procedure, Sections 62.1-44.20, .21, .23; Article 6: Offenses and Penalties, Sections 62.1-44.31, .32

(B) The regulatory provisions include:

(1) Virginia Administrative Code, Title 9, Agency 25: State Water Control Board, Chapter 580: Underground Storage Tanks: Technical Standards and Corrective Action Requirements, Part I Definitions, Applicability, and Installation Requirements for Partially Excluded Systems, 9VAC25-580-10 Definitions for “Delivery prohibition” and “Delivery prohibition tag;” Part IX Delivery Prohibition, 9VAC25-580-370 Requirements for delivery prohibition

(2) 2015 Virginia Uniform Statewide Building Code, Part I, Virginia Construction Code, Sections 101.2, 102.3.10, 103, 108.1, 414.6.2, Chapter 2

(iii) *Provisions not incorporated by reference.* The following statutory and regulatory provisions are “broader in scope” than the federal program, are not part of the approved program, and are not incorporated by reference herein. These provisions are not federally enforceable:

(A) The statutory provisions include:

(1) Code of Virginia, Title 62.1, Chapter 3.1: State Water Control Law, Article 9: Storage Tanks

Section 62.1-44.34:8 Definitions, “Regulated substance” insofar as the term includes substances not regulated under the federal program

(2) Code of Virginia, Title 62.1, Chapter 3.1: State Water Control Law, Article 10: Petroleum Storage Tank Fund

Section 62.1-44.34:10 Definitions, “Regulated substance” insofar as the term includes substances not regulated under the federal program

Section 62.1-44.34:13 Levy of fee for Fund maintenance

(B) The regulatory provisions include Virginia Administrative Code, Title 9, Agency 25: State Water Control Board, Chapter 580: Underground Storage Tanks: Technical Standards and Corrective Action Requirements

(1) Section 9VAC25-580-10 Definitions, “Regulated substance” insofar as the term includes substances not regulated under the federal program

(2) Section 9VAC25-580-40 Permitting and inspection requirements for all UST systems, USBC permitting and inspection requirements

(3) Section 9VAC25-580-50 Performance standards for new UST systems, subdivision 4.b. USBC permitting and inspection requirements, subdivision 5. USBC permitting requirement to demonstrate compliance with subdivision 4. of 9VAC25-580-50

(4) Section 9VAC25-580-60 Upgrading of existing UST systems, USBC permitting and inspection requirements

(5) Section 9VAC25-580-110 Repairs allowed, USBC permitting and inspection requirements

(6) Section 9VAC25-580-160 Methods of release detection for tanks, USBC permitting and inspection requirements

(7) Section 9VAC25-580-170 Methods of release detection for piping, USBC permitting and inspection requirements

(8) Section 9VAC25-580-310 Temporary closure, USBC permitting and inspection requirements

(9) Section 9VAC25-580-320 Permanent closure and changes-in-service, USBC permitting and inspection requirements

(10) Section 9VAC25-580-380 General Requirements, USBC permitting and inspection requirements

(11) Section 9VAC25-580-390 Additions, exceptions, and alternatives for UST systems with field-constructed tanks and airport hydrant systems, USBC permitting and inspection requirements

(2) *Statement of legal authority.* “Attorney General’s Statement,” signed by the Assistant Attorney General, via authority delegated by the Attorney General, on November 20, 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 “Virginia UST Program Demonstration of Adequate Enforcement Procedures” submitted as part of the program revision application for approval on February 11, 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 program revision application on February 11, 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 3 and the Virginia Department of Environmental Quality, signed by the EPA Regional Administrator on November 26, 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 Virginia to read as follows:

APPENDIX A TO PART 282—STATE REQUIREMENTS INCORPORATED BY REFERENCE IN PART 282 OF THE CODE OF FEDERAL REGULATIONS

* * * * *

Virginia

(a) The statutory provisions include:

(1) Code of Virginia, Title 62.1, Chapter 3.1: State Water Control Law

Article 9: Storage Tanks

Section 62.1-44.34:8 Definitions, except “Regulated substance” insofar as the term includes substances not regulated under the federal program

Section 62.1-44.34:9 Powers and duties of Board

Article 10: Petroleum Storage Tank Fund

Section 62.1-44.34:10 Definitions, except “Regulated substance” insofar as the term includes substances not regulated under the federal program

Section 62.1-44.34:11 Virginia Petroleum Storage Tank Fund

Section 62.1-44.34:12 Financial Responsibility

(b) The regulatory provisions include:

(1) Virginia Administrative Code, Title 9, Agency 25: State Water Control Board, Chapter 580:
Underground Storage Tanks: Technical Standards and Corrective Action Requirements

Part I: Definitions, Applicability, and Installation Requirements for Partially Excluded UST Systems

9 VAC 25-580-10 Definitions, except the terms “Delivery prohibition,” “Delivery prohibition tag,” and “Regulated substance” insofar as the term includes substances not regulated under the federal program

9 VAC 25-580-20 Applicability

9 VAC 25-580-30 Installation requirements for partially excluded UST systems

Part II: UST Systems: Design, Construction, Installation, and Notification

9 VAC 25-580-50 Performance standards for new UST systems, except USBC permitting and inspection requirements at -50.4 and -50.5

9 VAC 25-580-60 Upgrading of existing UST systems, except USBC permitting and inspection requirements

9 VAC 25-580-70 Notification requirements

Part III: General Operating Requirements

9 VAC 25-580-80 Spill and overflow control

9 VAC 25-580-82 Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overflow prevention equipment

9 VAC 25-580-85 Periodic operation and maintenance walkthrough inspections

9 VAC 25-580-90 Operation and maintenance of corrosion protection

9 VAC 25-580-100 Compatibility

9 VAC 25-580-110 Repairs allowed, except USBC permitting and inspection requirements

9 VAC 25-580-120 Reporting and recordkeeping

9 VAC 25-580-125 Operator training

Part IV: Release Detection

9 VAC 25-580-130 General requirements for all petroleum and hazardous substance UST systems

9 VAC 25-580-140 Requirements for petroleum UST systems

9 VAC 25-580-150 Requirements for hazardous substance UST systems

9 VAC 25-580-160 Methods of release detection for tanks, except USBC permitting and inspection requirements

9 VAC 25-580-170 Methods of release detection for piping, except USBC permitting and inspection requirements

9 VAC 25-580-180 Release detection recordkeeping

Part V: Release Reporting, Investigation, and Confirmation

9 VAC 25-580-190 Reporting of suspected releases

9 VAC 25-580-200 Investigation due to off-site impacts

9 VAC 25-580-210 Release investigation and confirmation steps

9 VAC 25-580-220 Reporting and cleanup of spills and overfills

Part VI: Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances

9 VAC 25-580-230 General

9 VAC 25-580-240 Initial response

9 VAC 25-580-250 Initial abatement measures and site check

9 VAC 25-580-260 Site characterization

9 VAC 25-580-270 Free product removal

9 VAC 25-580-280 Corrective action plan

9 VAC 25-580-300 Public participation

Part VII: Out-of-Service UST Systems and Closure

9 VAC 25-580-310 Temporary closure, except USBC permitting and inspection requirements

9 VAC 25-580-320 Permanent closure and changes-in-service, except USBC permitting and inspection requirements

9 VAC 25-580-330 Assessing the site at closure or change-in-service

9 VAC 25-580-340 Applicability to previously closed UST systems

9 VAC 25-580-350 Closure records

Part VIII: Delegation

9 VAC 25-580-360 Delegation of authority

Part X: UST Systems with Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems

9 VAC 25-580-380 General requirements, except USBC permitting and inspection requirements

9 VAC 25-580-390 Additions, exceptions, and alternatives for UST systems with field constructed tanks and airport hydrant systems, except USBC permitting and inspection requirements

Forms (9VAC25-580)

(2) Virginia Administrative Code, Title 9, Agency 25: State Water Control Board, Chapter 590: Petroleum Underground Storage Tank Financial Responsibility Requirements

9 VAC 25-590-10 Definitions

9 VAC 25-590-15 Applicability of incorporated references based on the dates that they became effective

9 VAC 25-590-20 Applicability

9 VAC 25-590-30 Compliance dates

9 VAC 25-590-40 Amount and scope of financial responsibility requirement

9 VAC 25-590-50 Allowable mechanisms and combinations of mechanisms

9 VAC 25-590-60 Financial test of self-insurance

9 VAC 25-590-70 Guarantee

9 VAC 25-590-80 Insurance and group self-insurance pool coverage

9 VAC 25-590-90 Surety bond

9 VAC 25-590-100 Letter of credit

9 VAC 25-590-105 Certificate of deposit

9 VAC 25-590-110 Trust fund

9 VAC 25-590-130 Substitution of financial assurance mechanisms by owner or operator

9 VAC 25-590-140 Cancellation or nonrenewal by a provider of financial assurance

9 VAC 25-590-150 Reporting by owner or operator

9 VAC 25-590-160 Recordkeeping

9 VAC 25-590-170 Drawing on financial assurance mechanism

9 VAC 25-590-180 Release from the requirements

9 VAC 25-590-190 Bankruptcy or other incapacity of owner, operator or provider of financial assurance

9 VAC 25-590-200 Replenishment of guarantees, letters of credit, certificates of deposit, or surety bonds

9 VAC 25-590-210 Virginia Petroleum Storage Tank Fund

9 VAC 25-590-220 Notices to the State Water Control Board

9 VAC 25-590-230 Delegation of authority

9 VAC 25-590-240 Lender liability

9 VAC 25-590-250 Local government financial responsibility demonstration

9 VAC 25-590-260 Modifications to language incorporated by reference

Appendix I: Letter from Chief Financial Officer

Appendix II: Guarantee

Appendix III: Endorsement

Appendix IV: Certificate of Insurance

Appendix V: Payment and Performance Bond

Appendix VI: Irrevocable Standby Letter of Credit

Appendix VII: Trust Agreement.

Appendix VIII: Certification of Acknowledgement

Appendix IX: Certification of Financial Responsibility

Appendix X: Certification of a Valid Claim

Appendix XI: Letter from Chief Financial Officer (Short Form)

Appendix XII: Certificate of Group Self-Insurance Pool Membership

Appendix XIII: Assignment of Certificate of Deposit

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