

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility and address	Waste description
*	2. <i>Quarterly Verification Testing:</i> The facility must show that the waste does not contain constituents listed in paragraph (1) that exceed the delisting levels specified in paragraph (1) by collecting and analyzing one waste sample on a quarterly basis. The samples must be collected and analyzed in accordance with the approved sampling plan. 3. <i>Other Conditions:</i> The conditions in paragraphs (4) through (6) for Auto Alliance International Inc., Flat Rock, Michigan also apply.
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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 281**

[FRL–7154–2]

Nebraska: Tentative Approval of Nebraska Underground Storage Tank Program**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule; tentative determination on application of State of Nebraska for final approval; public comment period.

SUMMARY: Nebraska has applied to EPA for final approval of its underground storage tank (UST) program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). EPA has reviewed the Nebraska application and has made a tentative determination that Nebraska's UST program satisfies all of the requirements necessary to qualify for final approval. Thus, by this proposed rule, EPA is providing notice that EPA intends to grant final approval to Nebraska to operate its UST program in lieu of the Federal program. Nebraska's application for approval is available for public review and comment, and a public hearing will be held to solicit comments on the application, if there is significant public interest expressed.

DATES: A public hearing will be scheduled if there is sufficient public interest communicated to EPA by April 8, 2002. EPA will determine by April 22, 2002, whether there is significant interest to hold the public hearing. The State of Nebraska will participate in such public hearing held by EPA on this subject. Written comments on the Nebraska approval application, as well as requests to present oral testimony, must be received by the close of business on April 8, 2002.

ADDRESSES: Send written comments to Linda Garwood, EPA Region 7, ARTD/USTB, 901 North 5th Street, Kansas City, Kansas 66101. You can view and copy Nebraska's application during normal business hours at the following addresses: The Nebraska Department of Environmental Quality, Suite 400, The Atrium, 1200 N Street, Lincoln, Nebraska, 68509, telephone: (402) 471–3557; The U.S. EPA Docket Clerk, Office of Underground Storage Tanks, c/o RCRA Information Center, 1235 Jefferson Davis Highway, Arlington, Virginia 22202, telephone: (703) 603–9230, and EPA Region 7, Library, 901 N. 5th Street, Kansas City, KS 66101. If sufficient public interest is expressed, EPA will hold a public hearing on the State of Nebraska's application for program approval. Anyone wishing to learn the status of the public hearing on the State's application may telephone the following contacts after April 22, 2002: Linda Garwood, EPA Region 7, ARTD/USTB, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551–7268; David Chambers, Supervisor, Leaking Underground Storage Tanks Program, Nebraska Department of Environmental Quality, Suite 400, The Atrium, 1200 N Street, Lincoln, Nebraska 68509, (402) 471–4230.

FOR FURTHER INFORMATION CONTACT: Linda Garwood, EPA Region 7, ARTD/USTB, 901 North 5th Street, Kansas City, Kansas 66101.

SUPPLEMENTARY INFORMATION:**A. Background**

Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, requires that the EPA develop standards for Underground Storage Tanks (UST) systems as may be necessary to protect human health and the environment, and procedures for approving State programs in lieu of the Federal program. EPA promulgated State program approval procedures at 40 CFR part 281. Program approval may be granted by EPA pursuant to RCRA section 9004(b), if the Agency finds that the State program is “no less stringent”

than the Federal program for the seven elements set forth at RCRA section 9004(a)(1) through (7); includes the notification requirements of RCRA section 9004(a)(8); and provides for adequate enforcement of compliance with UST standards of RCRA section 9004(a). Note that RCRA sections 9005 (information-gathering) and 9006 (Federal enforcement) by their terms apply even in states with programs approved by EPA under RCRA section 9004. Thus, the Agency retains its authority under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the state authorized analogues to these provisions.

B. Nebraska UST Program

The UST program in Nebraska is implemented jointly by the Nebraska Department of Environmental Quality (NDEQ) and the Nebraska State Fire Marshal (NSFM). Section 81–15, 118 of the Nebraska Revised Statutes (N.R.S.) designates NDEQ as the lead agency for the UST program, but specifies that NSFM will conduct preventative activities under an interagency agreement with NDEQ.

The State of Nebraska initially submitted a state program approval application to EPA by letter dated December 15, 2000. Additional information was provided by Nebraska on March 21, 2001. EPA evaluated that information as well as other issues and determined the application package met all requirements for a complete program application. On December 5, 2001, EPA notified Nebraska that the application package was complete.

Included in the State's Application is an Attorney General's statement. The Attorney General's statement provides an outline of the State's statutory and

regulatory authority and details concerning areas where the State program is broader in scope or more stringent than the Federal program. Also included was a transmittal letter from the Governor of Nebraska requesting program approval, a description of the Nebraska UST program, a demonstration of Nebraska's procedures to ensure adequate enforcement, a Memorandum of Agreement outlining the roles and responsibilities of EPA and the Nebraska Department of Environmental Quality, and copies of all applicable state statutes and regulations. EPA has reviewed the application and supplementary materials, and has tentatively determined that the State's UST program meets all of the requirements necessary to qualify for final approval.

Specifically, the Nebraska UST program has requirements that are no less stringent than the federal requirements at: 40 CFR 281.30 New UST system design, construction, installation, and notification; 40 CFR 281.31 Upgrading existing UST systems; 40 CFR 281.32 General operating requirements; 40 CFR 281.33 Release detection; 40 CFR 281.34 Release reporting, investigation, and confirmation; 40 CFR 281.35 Release response and corrective action; 40 CFR 281.36 Out-of-service UST systems and closure; 40 CFR 281.37 Financial responsibility for UST systems containing petroleum; and 40 CFR 281.39 Lender Liability.

Additionally, the Nebraska UST program has adequate enforcement of compliance, as described at: 40 CFR 281.40 Requirements for compliance monitoring program and authority; 40 CFR 281.41 Requirements for enforcement authority; 40 CFR 281.42 Requirements for public participation; and 40 CFR 281.43 Sharing of information.

Notice of Public Hearing

EPA will hold a public hearing on the tentative decision, if sufficient public interest is expressed. Anyone wishing to learn the status of the public hearing on the State's application may telephone the contacts listed in the Addresses section above, after April 22, 2002. EPA will consider all public comments on the tentative determination received at the hearing, or received in writing during the public comment period. Issues raised by those comments may be

the basis for a decision to deny final approval to Nebraska. EPA expects to make a final decision on whether or not to approve Nebraska's program and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Administrative Requirements

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 therefore this action is not subject to review by OMB. This action proposes to authorize State requirements for the purpose of RCRA 9004 and would impose no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies 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.*). Because this proposed action proposes to authorize 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 (Pub. L. 104-4). For the same reason, this proposed action does not have tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000). It does not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This proposed 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 proposes to authorize State requirements as part of the State underground storage tank program without altering the relationship or the distribution of power and responsibilities established by RCRA.

This proposed action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This proposed action 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 under Executive Order 12866.

Under RCRA 9004, EPA grants approval of a State's program 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 program 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed 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. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the proposed action in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This document is issued under the authority of section 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: January 18, 2002.

Nat Scurry,

Acting Regional Administrator, Region 7.
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