

In reviewing delegation requests and mechanisms for delegation, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a delegation request or disapprove a proposed delegation mechanism for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a delegation request or proposed delegation mechanism, to use VCS in place of a delegation request or proposed delegation mechanism that otherwise satisfies the provisions of the Clean Air Act. 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. This 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.*).

This action granting delegation authority for implementation and enforcement of existing NSPS and approving a delegation mechanism for future NSPS is issued under the authority of sections 101, 110, 111, and 301 of the Clean Air Act, 42 U.S.C. 7401, 7410, 7411, and 7601.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 1, 2007.

Russell L. Wright, Jr.,

Acting Regional Administrator, Region 4.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL-8290-7]

Colorado; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination on the State of Colorado's Application for Final Approval.

SUMMARY: The State of Colorado has applied for approval of the underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the Colorado application and has reached a final determination that Colorado's underground storage tank program satisfies all of the requirements necessary to qualify for

approval under the regulations. Thus, the EPA is granting final approval to the State of Colorado to operate its Underground Storage Tank Program for petroleum and hazardous substances.

DATES: *Effective Date:* Final approval for the State of Colorado's Underground Storage Tank Program is effective on April 23, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R08-UST-2006-0295. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the following addresses: (1) Colorado Department of Labor & Employment, Division of Oil and Public Safety, Public Records Center, 633 17th Street, Suite 200, Denver, CO 80202 from 8 a.m. to Noon, and (2) U.S. EPA, Library, Region 8, 1595 Wynkoop Street, Room 2139, Denver, CO 80202-1129 from 10 a.m. to 4 p.m. We recommend that you contact Francisca Chambus, UST Team, at 303.312.6782 before visiting the Region 8 office.

FOR FURTHER INFORMATION CONTACT:

Francisca Chambus U.S. EPA, Region 8, MC: 8P-W-GW, 1595 Wynkoop Street, Denver, CO 80202-1129 or at 303.312.6782.

SUPPLEMENTARY INFORMATION:

I. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) authorizes EPA to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. 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 (on information-gathering) and 9006 (on 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.

II. Colorado

The Colorado Department of Labor & Employment, Division of Oil & Public Safety (OPS) is the lead implementing agency for the UST program in Colorado.

On November 13, 2002 the EPA received Colorado's application for State Program Approval (SPA) of Colorado's UST program. EPA reviewed their application and determined it to be complete. On November 27, 2006, the EPA published a tentative decision announcing its intent to grant Colorado final approval. Along with the tentative determination, EPA announced the availability of the application for public comment and provided notice that a public hearing would be provided if significant public interest was shown. EPA did not receive any comments or requests for a public hearing.

III. Decision

I conclude that the State of Colorado's application for final program approval meets all of the statutory and regulatory requirements established by Subtitle I of RCRA. Accordingly, Colorado is granted final approval to operate its Underground Storage Tank Program in lieu of the Federal program. This final determination to approve the Colorado program applies to all areas within the State except for land within formal Indian reservations located within or abutting the State of Colorado, including: the Ute Mountain Ute and Southern Ute Indian Reservations, any off-reservation 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. The State of Colorado now has the responsibility for managing underground storage tank facilities within its borders and carrying out all aspects of the UST program except for facilities located within "Indian Country," where EPA will retain regulatory authority. Colorado also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 9005 of RCRA 42 U.S.C. 6991d and to take

enforcement actions under section 9006 of RCRA 42 U.S.C. 6991e.

IV. Statutory and Executive Order Reviews

This rule only applies to the Colorado Department of Labor & Employment's underground storage tank program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law (see Supplementary Information). Therefore, this rule complies with applicable executive orders and statutory provisions as follows.

1. *Executive Order 12866*: Regulatory Planning Review—The Office of Management and Budget has exempted this rule from its review under Executive Order (EO) 12866.

2. *Paperwork Reduction Act*: This rule does not impose an information collection burden under the Paperwork Reduction Act.

3. *Regulatory Flexibility Act*: After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

4. *Unfunded Mandates Reform Act*: Because this rule 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.

5. *Executive Order 13132*: Federalism—EO 13132 does not apply to this rule because it will not have federalism implications (*i.e.*, 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).

6. *Executive Order 13175*: Consultation and Coordination with Indian Tribal Governments—EO 13175 does not apply to this rule because it will not have tribal implications (*i.e.*, substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes).

7. *Executive Order 13045*: Protection of Children from Environmental Health & Safety Risks: This rule is not subject to EO 13045 because it is not economically significant and it is not based on health or safety risks.

8. *Executive Order 13211*: Actions that Significantly Affect Energy Supply, Distribution, or Use: This rule is not subject to EO 13211 because it is not a significant regulatory action as defined in EO 12866.

9. *National Technology Transfer and Advancement Act*: Section 12(d) of the National Technology Transfer and

Advancement Act of 1995 ("NTTAA"), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 281

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

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

Dated: March 15, 2007.

Kerrigan G. Clough,

Deputy Regional Administrator, Region 8.
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