# ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 281

[FRL-5166-9]

### Iowa; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

**ACTION:** Notice of final determination on Iowa's application for final approval.

SUMMARY: The State of Iowa has applied for final approval of its underground storage tank (UST) program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Iowa's application and has reached a final determination that Iowa's underground storage tank program satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to the State of Iowa to operate its program. **EFFECTIVE DATE:** Final approval for Iowa shall be effective at 1:00 pm eastern time on May 8, 1995.

FOR FURTHER INFORMATION CONTACT: Lee Daniels, Coordinator, Underground Storage Tank Section, EPA Region 7, 726 Minnesota Ave., Kansas City, Kansas, 66101. Phone: (913) 551–7651.

#### SUPPLEMENTARY INFORMATION:

## A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables EPA to approve state UST programs to operate in the state in lieu of the Federal UST program. To qualify for final authorization, a state's program must be: (1) "No less stringent" than the Federal program in leak detection, maintaining records, release reporting, corrective action, tank closure, financial responsibility, new tank standards and the notification requirements of Section 9004(a)(8) of RCRA, 42 U.S.C. 6991c(a)(8); and (2) provide for adequate enforcement (Section 9004(a) of RCRA, 42 U.S.C. 6991c(a)).

### B. State of Iowa

On March 17, 1994, Iowa submitted an application for "complete" program approval. On April 25, 1994, Iowa submitted H.F. 2118 which amended Iowa Code § 455B.471(6) for inclusion in the application. This bill amended the definition of an "owner" of an underground storage tank and provided the conditions under which a "lender" might be exempted from that definition. Also, on June 7, 1994 Iowa modified its application so that it is not seeking

authorization over Indian lands. Together, these comprise the Iowa application. The Iowa program provides for regulation of both petroleum and hazardous substance tanks. Iowa also regulates farm/residential tanks of 1,100 gallons or less capacity. However, this part of the Iowa program is broader in scope than the Federal program and is not included in this final approval. On August 9, 1994, EPA published a tentative decision announcing its intent to grant Iowa final approval. Further background on the tentative decision to grant approval appears at 59 FR 40507, August 9, 1994.

Along with the tentative determination, EPA announced the availability of the application for public comment. Also, EPA provided notice that a public hearing would be provided only if significant public interest on substantive issues was shown. EPA did receive significant comments on the application and a public hearing was held on December 1, 1994 in Des Moines, Iowa.

### C. Public Comments and Hearing

The following summarizes the comments and responds to the significant issues raised by those comments.

Twenty-three written comments were received during the public comment period, which ran from August 9, 1994, when the tentative program approval notice was published, until December 9, 1994. Nine commenters spoke at the public hearing. Commenters included owners of USTs, an association of petroleum marketers, an association of trucking companies and service providers to trucking companies, local government officials and the Iowa Department of Natural Resources (IDNR). The Iowa Comprehensive Petroleum Underground Storage Tank Fund provided a written comment following the public hearing.

The majority of comments concerned four major issues: (1) Whether the IDNR adequately enforces the financial responsibility requirements applicable to UST owners, (2) whether the IDNR adequately enforces the leak detection requirements applicable to UST owners, (3) whether the IDNR wastes resources for site assessments instead of actual cleanups, and (4) whether the IDNR should use risk-based cleanup standards.

Other commenters stated that owners who timely comply with the UST requirements are competitively disadvantaged when the IDNR does not enforce the rules for everyone, or when compliance deadlines are moved. Others criticized the IDNR for specific cleanup requirements imposed on sites which they owned. The IDNR was criticized for the high costs of site assessments and the costs of complying with the IDNR requirements for longterm monitoring after contaminated soils were removed. One commenter cited an example of contamination that recurred after a cleanup due to fluctuating water tables. Others cited diminished property values and lost economic development due to contamination.

While some of the commenters requested that the EPA deny program approval, the petroleum marketers association echoed the four major comments above but specifically requested approval of the Iowa program. However, the marketers association did request that the EPA continue providing the IDNR technical and administrative assistance to improve enforcement of UST regulations and the adoption of risk-based cleanup standards. The trucking association criticized the IDNR for wasting resources without doing enough cleanups and for not using riskbased cleanup standards, but did not request denial of program approval.

At the public hearing and in a written comment, the IDNR specifically addressed the four major issues identified above. However, not all of those four issues are within the scope of the EPA's review for state program approval. For the EPA the sole concerns are whether the state has the legal authorities, the program capability to meet the objectives of the federal UST requirements and provides adequate enforcement of compliance. Thus, even though the EPA encourages the effective use of state cleanup funds, such funds are not required elements for state program approval and Iowa's administration of its state cleanup fund was not reviewed by the EPA for program approval. Similarly, while the EPA encourages states to use risk-based decision-making in the corrective action process, there is no federal requirement for state program approval for any particular methodology. Nonetheless, in order to fully address the public's concerns the EPA has included in this responsiveness summary the IDNR's response to each of the major issues.

With respect to enforcement of the leak detection and financial responsibility requirements, the IDNR noted that the state's UST requirements follow the federal requirements. The federal UST regulation does not require compliance reporting by the owner to the regulating agency, but only that leak detection and financial responsibility records be kept on-site or reasonably accessible. Therefore, for the IDNR the