

### Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

### Paperwork Reduction Act

The adjustment and emergency closures do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

### Other Requirements

The adjustments have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as boat, fishing gear, and gasoline dealers. The number of small entities affected is unknown; however, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the adjustments will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on

competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the adjustments have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the adjustments will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the adjustments meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform. In accordance with Executive Order 13132, the adjustments do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands. Cooperative salmon run assessment efforts with ADF&G will continue.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

### Drafting Information

Theodore Matuskowitz drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of

Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, USDA-Forest Service, provided additional guidance.

**Authority:** 16 U.S.C. 3, 472, 551, 668dd, 3101-3126; 18 U.S.C. 3551-3586; 43 U.S.C. 1733.

Dated: May 25, 2004.

**Thomas H. Boyd,**

*Acting Chair, Federal Subsistence Board.*

Dated: May 25, 2004.

**Steve Kessler,**

*Subsistence Program Leader, USDA-Forest Service.*

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**BILLING CODE 3410-11-P; 4310-55-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 282

[FRL-7657-4]

### Underground Storage Tank Program: Approved State Program for West Virginia

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Immediate final rule.

**SUMMARY:** The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the EPA to grant approval to States to operate their underground storage tank programs in lieu of the Federal program. The Code of Federal Regulations (CFR) contains a codification of EPA's decision to approve State programs and incorporates by reference those provisions of the State statutes and regulations that will be subject to EPA's inspection and enforcement authorities in accordance with sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions. This rule codifies the prior approval of the State of West Virginia's (State) underground storage tank program and incorporates by reference appropriate provisions of State statutes and regulations.

**DATES:** This regulation is effective August 16, 2004, unless EPA receives adverse written comments by the close of business July 15, 2004. If EPA receives adverse written comments, we will publish a timely withdrawal in the **Federal Register**. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of

August 16, 2004 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

**ADDRESSES:** Send written comments to Ms. Rosemarie Nino, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. Comments may also be submitted electronically through the Internet to: [nino.rose@epa.gov](mailto:nino.rose@epa.gov) or by facsimile at (215) 814–3163. You can examine copies of the codification materials during normal business hours at the following location: EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone Number (215) 814–5254.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rosemarie Nino, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone: (215) 814–3377.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 9004 of RCRA 42 U.S.C. 6991c, allows the EPA to approve a State underground storage tank program to operate in the State in lieu of the Federal underground storage tank program. EPA published a notice in the *Federal Register* announcing its decision to grant approval to West Virginia on September 23, 1997, and approval was effective on February 10, 1998 (63 FR 6667).

EPA codifies its approval of a State program in 40 CFR part 282 and incorporates by reference therein the State's statutes and regulations that make up the approved program which is federally-enforceable in accordance with sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions. Today's rulemaking codifies EPA's approval of West Virginia's underground storage tank program. This codification reflects the State program in effect at the time EPA granted West Virginia approval, in accordance with RCRA section 9004(a), 42 U.S.C. 6991c(a), for its underground storage tank program. Notice and opportunity for comment were provided earlier on the Agency's decision to approve the West Virginia program, and EPA is not now reopening that decision nor requesting comment on it.

To codify EPA's approval of West Virginia's underground storage tank program, EPA has added § 282.98 to title 40 of the CFR 40 CFR 282.98(d)(1)(i) incorporates by reference the State's statutes and regulations that make up the approved program which is federally-enforceable. 40 CFR 282.98

also describes the Attorney General's Statement, the Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which were evaluated as part of the approval process of the underground storage tank program, in accordance with Subtitle I of RCRA.

EPA retains the authority in accordance with 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 in approved States. With respect to such an enforcement action, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State-authorized analogues to these provisions. Therefore, West Virginia's inspection and enforcement authorities are not incorporated by reference, nor are they part of West Virginia's approved state program which operates in lieu of the Federal program. These authorities, however, are listed in 40 CFR 282.98(d)(1)(ii) for informational purposes, and also because EPA considered them in determining the adequacy of West Virginia's enforcement authority. West Virginia's authority to inspect and enforce the State's underground storage tank requirements continues to operate independently under State law.

Some provisions of the State's underground storage tank program are not part of the federally-approved State program. These non-approved provisions are not part of the RCRA Subtitle I program because they are "broader in scope" than Subtitle I of RCRA. See 40 CFR 281.12(a)(3)(ii). As a result, State provisions which are "broader in scope" than the Federal program are not incorporated by reference for purposes of Federal enforcement in 40 CFR part 282. Section 282.98 of the codification simply lists for reference and clarity the West Virginia statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not, therefore, part of the approved program being codified today. "Broader in scope" provisions cannot be enforced by EPA; the State, however, will continue to enforce such provisions.

*Statutory and Executive Order Reviews*

This rule only codifies EPA-authorized 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 Advancement Act—EPA codifies approved State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus,

section 12(d) of the National Technology Transfer and Advancement Act does not apply to this rule. 10. Congressional Review Act—EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) 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). This action will be effective on August 16, 2004.

#### List of Subjects in 40 CFR Part 282

Environmental protection, Hazardous substances, Incorporation by reference, Intergovernmental relations, State program approval, Underground storage tanks, Water pollution control.

Dated: March 25, 2004.

**Donald S. Welsh,**

*Regional Administrator, EPA Region III.*

■ For the reasons set forth in the preamble, 40 CFR part 282 is amended 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.

#### **Subpart B—Approved State Programs**

■ 2. Subpart B is amended by adding § 282.98 to read as follows:

##### **§ 282.98 West Virginia State-Administered Program.**

(a) The State of West Virginia’s underground storage tank program is approved in lieu of the Federal program in accordance with 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 West Virginia Department of Environmental Protection, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. EPA approved the West Virginia underground storage tank program on September 23, 1997, and approval was effective on February 10, 1998.

(b) West Virginia has primary responsibility for enforcing its underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with 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 in accordance with other statutory and regulatory provisions.

(c) To retain program approval, West Virginia must revise its approved program to adopt new changes to the Federal Subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If West 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) West Virginia has final approval for the following elements submitted to EPA in the State’s program application for final approval. On September 23, 1997, EPA published notice of approval of the State’s program in the **Federal Register**, 62 FR 49620. That approval became effective on February 10, 1998 (63 FR 6667). Copies of West Virginia’s program application may be obtained from the West Virginia Department of Environmental Protection, 1356 Hansford Street, Charleston, WV 25301–1401.

(1) *State statutes and regulations.* (i) The provisions cited in this paragraph, 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.*

(A) West Virginia Statutory Requirements Applicable to the Underground Storage Tank Program, 1997.

(B) West Virginia Regulatory Requirements Applicable to the Underground Storage Tank Program, 1997.

(ii) EPA considered the following statutes in evaluating the State program, but did not incorporate them by reference.

(A) The statutory provisions include:

(1) Code of West Virginia, Article 17: Underground Storage Tanks

Section 22–17–5 Powers and duties of director; integration with other acts  
Section 22–17–6 Promulgation of rules and standards by director, § 22–17–6.(b)(13)

Section 22–17–12 Confidentiality, § 22–17–12.(b)

Section 22–17–13 Inspections, monitoring, and testing

Section 22–17–15 Administrative orders; injunctive relief; requests for reconsideration

Section 22–17–16 Civil penalties

Section 22–17–17 Public participation

Section 22–17–18 Appeal to environmental quality board

Section 22–17–23 Duplicative enforcement prohibited

(2) [Reserved]

(iii) 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. These provisions are not federally enforceable.

(A) The statutory provisions include:

(1) Code of West Virginia, Article 17: Underground Storage Tanks

Section 22–17–6 Promulgation of rules and standards by director, § 22–17–6.(b)(12)

Section 22–17–7 Underground storage tank advisory committee; purpose

Section 22–17–19 Disclosures required in deeds and leases

Section 22–17–20 Appreciation of funds; underground storage tank administrative fund

Section 22–17–21 Leaking underground storage tank response fund

(2) [Reserved]

(B) The regulatory provisions include:

(1) West Virginia Code of State Regulations, Title 33: Office of Waste Management Rule, Series 30: Underground Storage Tanks

Section 33–30–3 Certification Requirements for Individuals who Install, Repair, Retrofit, Upgrade, Perform Change-in-Service, Close or Tightness Test Underground Storage Tank Systems

Section 33–30–4 Notification Requirements, § 33–30–4.2.b and 4.4.b

Section 33–30–5 Carriers

(2) West Virginia Code of State Regulations, Title 33: Office of Waste Management Rule, Series 31: Underground Storage Tank Fee Assessments

(3) West Virginia Code of State Regulations, Title 33: Office of Waste Management Rule, Series 32: Underground Storage Tank Insurance Trust Fund

(2) *Statement of legal authority.* (i) “Attorney General’s Statement”, signed by the State Attorney General on June 30, 1997, though not incorporated by reference, is referenced as part of the approved underground storage tank

program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(ii) Letter from the Attorney General of West Virginia to EPA, June 30, 1997, though not incorporated by reference, is referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The "Demonstration of Procedures for Adequate Enforcement" submitted as part of the original application on July 7, 1997, though not incorporated by reference, is referenced as part of the approved underground storage tank program in accordance with 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 original application on July 7, 1997, though not incorporated by reference, are referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region III and the West Virginia Division of Environmental Protection, signed by the EPA Regional Administrator on September 15, 1997, though not incorporated by reference, is referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

■ 3. Appendix A to Part 282 is amended by adding in alphabetical order "West Virginia" and its listing.

#### Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

\* \* \* \* \*

##### West Virginia

(a) The statutory provisions include:

(1) Code of West Virginia, Article 17: Underground Storage Tanks

Section 22-17-1 Short title

Section 22-17-2 Declaration of policy and purpose

Section 22-17-3 Definitions

Section 22-17-4 Designation of division of environmental protection as the state underground storage tank program lead agency

Section 22-17-6 Promulgation of rules and standards by director, except § 22-17-6.(b)(12) and (b)(13)

Section 22-17-8 Notification requirements

Section 22-17-9 Registration requirements; undertaking activities without registration

Section 22-17-10 Financial responsibility

Section 22-17-11 Performance standards for new underground storage tanks

Section 22-17-12 Confidentiality, except § 22-17-12.(b)

Section 22-17-14 Corrective action for underground petroleum storage tanks

Section 22-17-22 Underground storage tank insurance fund

(b) The regulatory provisions include:

(1) West Virginia Code of State Regulations, Title 33: Office of Waste Management Rule, Series 30: Underground Storage Tanks

Section 33-30-1 General

Section 33-30-2 Adoption of Federal Regulations

Section 33-30-4 Notification Requirements, except § 33-30-4.2.b and 4.4.b

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 282

[FRL-7658-3]

#### Underground Storage Tank Program: Approved State Program for Virginia

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Immediate final rule.

**SUMMARY:** The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the EPA to grant approval to States to operate their underground storage tank programs in lieu of the Federal program. The Code of Federal Regulations (CFR) contains a codification of EPA's decision to approve State programs and incorporates by reference those provisions of the State statutes and regulations that will be subject to EPA's inspection and enforcement authorities in accordance with sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions. This rule codifies the prior approval of the Commonwealth of Virginia's (Commonwealth or State) underground storage tank program and incorporates by reference appropriate provisions of State statutes and regulations.

**DATES:** This regulation is effective August 16, 2004, unless EPA receives adverse written comments by the close of business July 15, 2004. If EPA receives adverse written comments, we will publish a timely withdrawal in the **Federal Register**. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of August 16, 2004, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

**ADDRESSES:** Send written comments to Ms. Rosemarie Nino, Mailcode 3WC21,

RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

Comments may also be submitted electronically through the Internet to: [nino.rose@epa.gov](mailto:nino.rose@epa.gov) or by facsimile at (215) 814-3163. You can examine copies of the codification materials during normal business hours at the following location: EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103-2029, Phone Number (215) 814-5254.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rosemarie Nino, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029. Phone: (215) 814-3377.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 9004 of RCRA, 42 U.S.C. 6991c, allows the EPA to approve a State underground storage tank program to operate in the State in lieu of the Federal underground storage tank program. EPA published a notice in the **Federal Register** announcing its decision to grant approval to Virginia on September 28, 1998, and approval was effective on October 28, 1998 (63 FR 51528).

EPA codifies its approval of a State program in 40 CFR part 282 and incorporates by reference therein the State's statutes and regulations that make up the approved program which is federally-enforceable in accordance with sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions. Today's rulemaking codifies EPA's approval of Virginia's underground storage tank program. This codification reflects the State program in effect at the time EPA granted Virginia approval, in accordance with RCRA section 9004(a), 42 U.S.C. 6991c(a), for its underground storage tank program. Notice and opportunity for comment were provided earlier on the Agency's decision to approve the Virginia program, and EPA is not now reopening that decision nor requesting comment on it.

To codify EPA's approval of Virginia's underground storage tank program, EPA has added § 282.96 to title 40 of the CFR. 40 CFR 282.96(d)(1)(i) incorporates by reference the State's statutes and regulations that make up the approved program which is federally-enforceable. 40 CFR 282.96 also describes the Attorney General's Statement, the Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of