

Wednesday
June 4, 1986

510292601

**Environmental Protection
Agency**

Part IV

**Environmental
Protection Agency**

40 CFR Part 280

**Hazardous Waste; Interim Prohibition
Against Installation of Unprotected
Underground Storage Tanks; Interpretive
Rule**

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 280**

[FRL 2928-9]

Hazardous Waste; Interpretive Rule on the Interim Prohibition Against Installation of Unprotected Underground Storage Tanks

AGENCY: Environmental Protection Agency.

ACTION: Interpretive rule.

SUMMARY: New Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, provides for the regulation of underground storage tanks. Section 9003(g) of Subtitle I establishes interim requirements for underground storage tanks that are installed between May 7, 1985 and the effective date of new tank standards required to be promulgated by EPA under section 9003(e). This notice sets forth EPA's interpretation of Section 9003(g).

FOR FURTHER INFORMATION CONTACT: Pamela Harris, (202) 382-4814; or Steven Way, (202) 475-9328; or the RCRA/Superfund Hotline at (800) 424-9346 (toll free or (202) 382-3000 in Washington, DC).

SUPPLEMENTARY INFORMATION:**I. Introduction: The Hazardous and Solid Waste Amendments of 1984**

On November 8, 1984, the President signed into law the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616. These Amendments extend and strengthen the provisions of the Solid Waste Disposal Act of 1970 as amended by RCRA. A major portion of this new legislation, Subtitle I, provides for the development and implementation of a regulatory program for underground storage tanks used to contain regulated substances, which include petroleum and substances defined as hazardous substances under section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).¹

¹ "Underground storage tank" is defined under RCRA Subtitle I, section 9001(1) as any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. Such term does not include any—

(A) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(B) Tank used for storing heating oil for consumptive use on the premises where stored.

Among the provisions of new Subtitle I, section 9003 requires EPA to promulgate regulations pertaining to the detection, prevention, and correction of releases from underground storage tanks as may be necessary to protect human health and the environment.² Section 9003(c) sets forth minimum requirements that must be promulgated for all underground storage tanks and section 9003(e) sets forth additional requirements that must be promulgated for new underground storage tanks. Regulations under both sections 9003 (c) and (e) for tanks containing petroleum products are to be effective by May 8, 1987. With respect to tanks containing hazardous substances, regulations under section 9003(e) for new tanks are to be effective by November 8, 1987 and regulations under section 9003(c) for existing tanks are to be effective by November 8, 1988.

Until new tank standards promulgated under section 9003(e) become effective, section 9003(g)(1) establishes interim requirements for any tank installed on or after May 7, 1985. That section provides as follows:

... [N]o person may install an underground storage tank for the purpose of storing regulated substances unless such tank (whether of single or double walled construction)—

(A) will prevent releases due to corrosion or structural failure for the operational life of the tank;

(C) Septic tank.

(D) Pipeline facility (including gathering lines) regulated under—

(i) The Natural Gas Pipeline Safety Act of 1968, (49 U.S.C. App. 1671, et seq.).

(ii) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.), or

(iii) Which is an intrastate pipeline facility regulated under State laws comparable to the provisions of law referred to in clause (i) or (ii) of this subparagraph;

(E) Surface impoundment, pit, pond or lagoon.

(F) Storm water or waste water collection system.

(G) Flow-through process tank.

(H) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations, or

(I) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft or tunnel) if the storage tank is situated upon or above the surface of the floor.

"Regulated substances" are defined under RCRA Subtitle I, section 9001(2) as:

(A) Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under Subtitle C), and

(B) Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

² "Release" is defined under RCRA Subtitle I, section 9001(5) as any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water or subsurface soils.

(B) is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(C) the material used in the construction or lining of the tank is compatible with the substance to be stored.

As a limited exception, section 9003(g)(2) allows the installation of tanks without corrosion protection in soil with a resistivity of 12,000 ohm-cm or more. Under that provision, soil tests must be conducted in accordance with American Society for Testing and Materials (ASTM) Standard G57-78.

II. Purpose of the Interpretive Rule

An interpretive rule is a statement issued by an agency to advise the public of the agency's construction of the statutes and rules that it administers. An interpretive rule simply construes the language of the statute or regulation and does not impose additional obligations. Such rules are exempt from the notice and comment requirements of the Administrative Procedures Act, 5 U.S.C. 553(b)(A) (1982). A substantive rule, such as the new tank standards authorized by section 9003(e), is a rule that is issued by an agency pursuant to statutory authority that implements the statute. EPA intends this notice to be an interpretive rule, not a substantive rule.

Section 9003(g) establishes statutory requirements that took effect on May 7, 1985 without prior action on the part of EPA. Several of the requirements set forth under section 9003(g) are in the form of performance standards. EPA believes that the interpretive rule clarifies obligations of the regulated community in complying with the interim prohibition. The rule also puts the regulated community on notice of the circumstances under which the Agency will proceed with enforcement action for noncompliance.

III. Other Related EPA Activities

On July 15, 1985, EPA codified the statutory language of section 9003(g) in its regulations at 40 CFR 280.2.

EPA is preparing a guidance document that is available in draft form in the Regional Offices. This document discusses methods and technologies for preventing releases from tanks due to corrosion, structural failure, or the storage of materials that are incompatible with the tanks' construction or lining. This guidance will assist tank users in determining effective approaches to meet the performance standards in section 9003(g).

IV. Legislative History of Section 9003(g)

Many of the storage tank provisions now contained in Subtitle I, including section 9003(g), had their origins in a bill introduced by Senator Durenberger on February 29, 1984 as an amendment to the Safe Drinking Water Act, 130 Cong. Rec. S2026 (Feb. 29, 1984). Among these provisions was a requirement that EPA promulgate new tank standards within nine months of the date of enactment of the proposed amendments. Such standards were to include a prohibition on bare steel tanks. *Id.* at S2026. The provisions established an exception from the bare steel tank ban "where the Administrator finds there is minimal danger of corrosion." *Id.* In describing that provision, Senator Durenberger stated that "installation of common but less adequate tanks—those made of bare steel—would be prohibited unless the hydrogeology of the area is such that there is a minimal danger of corrosion." *Id.* at S2027.

On July 25, 1984, Senator Durenberger offered a modified version of his storage tank provisions as an amendment to RCRA. 130 Cong. Rec. S9164 (July 25, 1984). This amendment was passed by the Senate. *Id.* at S9201. In this modified version, the deadline for—new tank standards was extended and the bare steel ban was converted into an interim requirement that new tanks be installed in accordance with enforced national consensus code." This requirement was to go into effect ninety days after the bill was passed and remain effective until EPA promulgated new tank standards. *Id.* at S9163-64.

On the House of Representatives side, amendments to RCRA were passed but did not contain provisions for the regulation of underground storage tanks. 130 Cong. Rec. H9184 (November 3, 1983). On August 10, 1984, however, the House passed an underground storage tank bill as an amendment to CERCLA. 130 Cong. Rec. H8938, H9027 (August 10, 1984). The House bill contained an interim prohibition that provided as follows:

Until the effective date of the regulations promulgated by the Administrator under subsection (a) and after 180 days after the date of the enactment of this title, no person may install or begin using an underground storage tank for the purpose of storing hazardous substances unless such tank, of either single or double wall construction, is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material which would prevent corrosion for the operational life of the tank, or contained in a manner designed to prevent the release or threatened release of any stored hazardous substance

and unless in all cases the material used in the construction or lining of the tank is compatible with the substance to be stored. *Id.* at H8939.

Subsequently, a Conference Committee was formed to consider the RCRA amendments passed by the Senate and the House. Although the House CERCLA bill was not officially under consideration by the RCRA Conference Committee, the conferees adopted the language of that bill's interim prohibition with several significant modifications. 130 Cong. Rec. H11121 (Oct. 3, 1984). These modifications included the requirement that every new tank prevent releases due to "Structural failure" for its "operational life" (section 9003(g)(A)) and the exception from corrosion protection requirements for tanks located in soil with a resistivity of 12,000 ohm/cm or more. The Conference Report described the reported provision as follows:

Following enactment, the installation of bare steel tanks, i.e. those which provide little or no protection against corrosion, will be prohibited until the Administrator promulgates regulations establishing the conditions for installation. Bare steel tanks may be installed (pending promulgation of EPA regulations) only where properly conducted soil tests show resistivity at 12,000 ohms/cm or more. This provision replaces the provision in the Senate amendment which prohibits installation of bare steel tanks except in states that enforce a national consensus code.

130 Cong. Rec. 11139 (Oct. 3, 1984).

The bill, as reported by the Conference Committee, ultimately passed both houses and was signed by the President on November 8, 1984.

The legislative history of section 9003(g) reveals that, as originally introduced in the Senate, the section was aimed at preventing the installation of steel tank systems without corrosion protection. Ultimately, however, section 9003(g) was expanded not only to prohibit installation of bare steel tanks, but also to include requirements pertaining to the structural integrity of all newly installed tanks and the compatibility of the substances stored with the materials used in the construction and lining of such tanks.

V. EPA's Interpretation of Section 9003(g)

EPA reviewed the statutory language of section 9003(g) and its legislative history. Based upon this review, EPA's conclusions are set forth below.

Section 9003(g) (codified as 40 CFR 280.2) establishes three requirements that must be satisfied by all underground storage tanks (including

underground pipes connected to the tanks) installed between May 7, 1985 and the effective date of new tank standards promulgated under RCRA section 9003(e), with the exception of tanks qualifying for the exemption from corrosion protection requirements under section 9003(g)(2). There requirements are: (1) That the tank and underground piping be designed, constructed, and installed to prevent releases due to corrosion for the operational life of the tank and the piping; (2) that the tank and underground piping be designed, constructed, and installed to prevent releases due to structural failure for the operational life of the tank and the piping; and (3) that the materials used in the construction or lining of the tank and its underground piping be compatible with the substance to be stored in the tank.

The first two of the above requirements are established by section 9003(g)(1)(A), which provides that tanks must "prevent releases due to corrosion or structural failure for the operational life of the tank." The third requirement is established by section 9003(g)(1)(C). In addition, section 9003(g)(1)(B) sets forth minimum requirements for tank design and construction. Under section 9003(g)(1)(B), tanks must be either cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material or designed in a manner to prevent the release or threatened release of any stored substance.

In addition to cathodically protected tanks and tanks constructed or clad with non-corrosive materials, section 9003(g)(1)(B) would permit the use of other types of tanks and protective measures if they are "designed in a manner to prevent the release or threatened release of any stored substance." Interested parties may consult with EPA on a case-by-case basis concerning the effectiveness of particular technologies for preventing releases.

There are several examples of tanks that do not satisfy the requirement of section 9003(g)(1)(A) that they prevent releases due to corrosion for the operational life of the tank. A steel tank whose only corrosion protection is a coating of noncorrosive materials that is applied in such a way that it will not prevent releases due to corrosion for the operational life of the tank is not adequate. Similarly, a cathodically protected tank whose cathodic protection is not designed to prevent releases for the operational life of the

tank will not be deemed to have satisfied this requirement.

Paint and asphalt coatings are not adequate for cathodic protection. Asphalt paints are soluble in a number of regulated substances that are normally stored in tanks, including solvents and hydrocarbons, such as gasoline. Applications of both asphalt paints and lead paints are thin, easily damaged during installation and easily worn away during use. They do not provide a complete seal for the tank. Such paint or asphalt coatings do not provide corrosion resistance for the operational life of the tank and, therefore, do not comply with the interim prohibition.

Tanks that satisfy the requirement of section 9003(g)(1)(A) to prevent releases due to corrosion must still satisfy the requirements that they prevent releases due to "structural failure" and that the materials used in the construction of the tank be compatible with the substances to be stored. For example, a tank constructed of noncorrosive material that is subject to structural failure because of its design or installation would not satisfy the requirements of section 9003(g)(1). Similarly, a tank whose construction materials are not compatible with the product to be stored would not satisfy the requirements of section 9003(g)(1) because, although it satisfies the corrosion protection requirement of section 9003(g)(1)(A), it does not satisfy the compatibility requirement of section 9003(g)(1)(C).

Section 9003(g)(1) provides that "no person may install an underground storage tank" unless such tank satisfies the requirements of sections 9003(g)(1)(A), (B), and (C). EPA interprets the term "no person may install an underground storage tank" to encompass any persons responsible for having a tank installed, including among others owners, operators and installers. EPA also interprets section 9003(g) as applying to all new installations, including installation of previously used tanks and to any new installation of underground piping associated with underground

tanks subject to the prohibition. When the new installation is only piping, only the new piping would be subject to the standards in section 9003(g).

With respect to the exemption from corrosion protection requirements provided by section 9003(g)(2), EPA interprets this provision as permitting the installation of a tank without corrosion protection if a person, prior to installation, demonstrates by means of soil testing conducted in accordance with ASTM Standard G57-58 that the soil at the location where the tank is to be installed does not have a resistivity of less than 12,000 ohm-cm.

A tank exempted from corrosion protection requirements under this section, however, must still satisfy the requirement that the tank be designed, constructed, and installed to prevent releases due to the structural failure of the tank and that the materials used in the construction or lining of the tank be compatible with the substances to be stored in the tank. Thus, for example, a steel tank without any type of corrosion protection may be installed at a location where the soil continues to have a resistivity of 12,000 ohm-cm during the operational life of the tank. However, if the tank is constructed or installed so that it suffers structural failure or is not compatible with the stored product and releases its contents, the tank would not be in compliance with section 9003(g).

VI. Summary of Supporting Analyses

1. Executive Order 12291

Executive Order 12291 [46 FR 13193, February 9, 1981] requires that a regulatory agency determine whether a new regulation will be "major" regulation and, if so, that a Regulatory Impact Analysis be conducted. A major rule is defined as regulation which is likely to result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State, and local government agencies, or geographic regions;

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule does not have any of the impacts listed above. The Agency did conduct an economic impact analysis of the interim prohibition as part of the Hazardous Waste Management System: Final Codification Rule published in the **Federal Register** July 15, 1985. The Regulatory Impact Analysis concludes that upper bound cost estimates for the Interim Prohibition are under \$10 million per year.

The interpretive rule has been submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

2. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency publishes a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

The Regulatory Impact Analysis for the Final Codification Rule also addresses the impact of the Interim Prohibition on small entities and concludes that the Interim Prohibition will not have a significant economic impact on a substantial number of small entities. This interpretive rule does not, therefore, require a regulatory flexibility analysis.

Dated: May 21, 1986.

Lee M. Thomas,
Administrator.

[FR Doc. 86-12002 Filed 6-3-86; 8:45 am]

BILLING CODE 6560-50-M