

United States  
Environmental Protection  
Agency

Office of  
Solid Waste and  
Emergency Response

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<b>TITLE:</b>	Procedures And Requirements For Codification Of Approved State UST Programs
<b>DATE:</b>	September 1994
<b>ORIGINATING OFFICE:</b>	OSWER

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The policies and procedures set out in this document are intended solely for the guidance of Government personnel. They are not intended, nor can they be relied upon, to create any rights, substantive or procedural, enforceable by any party in litigation with the United States. The Agency reserves the right to act at variance with these policies and procedures and to change them at any time without public notice.

## **I. Background**

Codification is the process that identifies the elements of approved State programs by placing them in the Code of Federal Regulations (CFR). The codification of State programs is designed to enhance the public's ability to discern the current status of the approved State program and alert the public to the specific State regulations that the Federal government can enforce if necessary. This process will be particularly helpful as States adopt additional Federal requirements or revise their approved UST programs.

Appropriate provisions of state statutes and regulations are "incorporated by reference." Other elements of the approved state program, such as the Attorney General's Statement, Memorandum of Agreement, Program Description, and Demonstration of Procedures for Adequate Enforcement are merely "referenced". These documents are referenced by listing the title and date of signature in the codification notice. It is important to understand that while the state program itself is being codified through publication in the CFR, it is the process of incorporation by reference of applicable statutory and regulatory elements that makes the state requirements the federal law as well.

The effect of incorporation by reference is that the incorporated material has the same legal effect as if it were published in full in the CFR. State enforcement authorities contained in statutes and regulations are identified in the codification rule but not incorporated by reference since EPA uses its own authorities to enforce approved State requirements.

EPA enforces State regulations that are more stringent than the Federal requirements, but not those that are broader in scope. For example, EPA will enforce State regulations that require reporting of all suspected releases, even though Federal regulations require only that releases of greater than 25 gallons be reported. However, EPA cannot enforce State regulations against farm tanks excluded from regulations at the Federal level. Therefore, the codification rule, which is published in the Federal Register, must identify where the State is broader in scope so that the public as well as the regulated community can know that the Federal government will not be enforcing those broader in scope program requirements.

### **A. Authorization Generally**

Subtitle I of the Resource Conservation and Recovery Act (RCRA) establishes a system which ensures the proper use and handling of underground storage tanks (USTs). To do this, RCRA establishes a partnership between the federal government and the states. Section 9004(d)(2) of RCRA provides, in part, that:

[once a State has submitted its program], [i]f the Administrator determines that [the] State program complies with the provisions of this section and provides for adequate enforcement of compliance with the requirements and standards adopted pursuant to this section, he shall approve the State program in lieu of the Federal program and the State shall have primary enforcement responsibility with respect to requirements of its program. [Emphasis added]

The effect of this provision is to allow the states to seek authorization to enact and administer state laws and regulations in place of the federal regulatory program found at 40 C.F.R. Part 280. However, the state program must be no less stringent than the federal program and it must provide for adequate enforcement.

Once a state is authorized for Subtitle I, the state regulations provide the substantive requirements that must be met at facilities located within the state. When the state becomes authorized, the federal UST regulations are no longer applicable in that state. As in states authorized under Subtitle C of RCRA, both the federal government and the state exercise enforcement authority.

#### **B. State Regulations Which Are More Stringent or Broader in Scope Than Their Federal Counterparts**

As mentioned above, Section 9004(b)(1) does not allow approval for a state whose laws are less stringent than the federal requirements. However, states may enact laws more stringent than their federal counterparts. Section 9008 of RCRA. In addition, states may enact laws broader in scope than their federal counterparts; that is, the state laws have no counterpart in the federal UST program. This authority is specifically codified in 40 C.F.R. § 281.12(a)(3).

State program requirements that are broader in scope of coverage than the federal program are not a part of the federally-approved program, 40 C.F.R. § 281.12(a)(3)(ii). Since that portion of the state program does not have a counterpart in the federal program, it does not become a requirement of Subtitle I, the violation of which EPA is entitled to enforce pursuant to Section 9006(a). Therefore, EPA may not enforce that portion of a state program which is broader in scope of coverage than a federal program. Examples of regulations which are broader in scope than the federal program include: the regulation of tanks storing heating oil for consumptive use on the premises where stored; the regulation of flow-through process tanks; and the regulation of farm or residential tanks of 1,100 gallons or less capacity storing motor fuel for non-commercial purposes. Consequently, EPA will not incorporate by reference states laws which are broader in scope than the federal program.

While state provision which are broader in scope of coverage generally do not have a counterpart in the federal program, the subject matter of the more stringent state provisions is usually covered in similar provisions of the federal program. Examples of more stringent state provisions would include: a requirement that not only must tanks be protected from corrosion, but that tanks must be made solely of corrosion proof materials; that notice of use of a new tank system must be made within 15 days instead of the 30 days allowed by the federal program; or that owners or operators of petroleum USTs demonstrate pre-occurrence financial responsibility of at least \$2 million instead of the \$1 million or \$500,000.00 required by the federal program.

Provisions in state programs which are more stringent than their federal counterparts are, nevertheless, a part of the approved state program, and are enforceable by EPA. Congress intended this result when, in Section 9008, it specifically permitted more stringent regulations, and, at the same time, authorized EPA to enforce those provisions under Section 900(a)(2). Thus, more stringent state provisions in an approved program are, unlike those which have no counterpart in the federal program, a part of the requirements of Subtitle I, which EPA is required to enforce. Consequently, EPA will incorporate by reference these laws which are more stringent than the federal program.

#### **C. State Enforcement Authorities**

State enforcement authorities do not become part of the authorized state program that EPA can enforce. Congress provided EPA with the necessary authority to use federal procedures for enforcement of all applicable UST rules and regulations, and it intended that those procedures be used in the event of federal

enforcement of a state's UST laws. For example, Section 9006(a)(1) of RCRA authorizes the Administrator, in the event of a violation of any requirement of Subtitle I, to issue an order requiring compliance immediately or within a specified time. Section 9006(a)(2) makes it clear that such orders may be issued in states which are authorized to carry out the UST program under Section 9004 (after notice to the affected state); and Section 9006(a)(3) provides for a penalty for non-compliance. Provisions for public hearings on any order issued subpoenas are also included in Section 9006(b). Section 9006(c) specifies the scope and content of the compliance orders which may be issued under this Section.

Congress provided a specific mechanism for federal administrative enforcement proceedings, to be used in cases of federal enforcement of state programs in lieu of any administrative procedures contained in the laws and regulations of the state in which the violation occurred. Thus, EPA will not incorporate by reference state enforcement authorities.

#### **D. Why Codify?**

The question has arisen as to why EPA must publish state programs authorized pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c(d)(2), in the Code of Federal Regulations.

Codification is one of two necessary components for final approval of an authorized state UST program. Authorization, the first step, provides the necessary EPA review and approval. Codification, the second step, incorporates state law into the federal scheme, thus supplanting the federal program for that state. The authorized program then becomes the only program enforceable by either the state or the federal government as it applies to regulated entities. This interpretation is supported by the language of section 9006(a) of RCRA, 42 U.S.C. § 6991e(a) which state,

... whenever ... the Administrator determines that any person is in violation of any requirement of this subchapter, the Administrator may issue an order requiring compliance within a reasonable specified time period or the Administrator may commence a civil action in the United States district court in which the violation occurred . . .

The key phrase is "of this subchapter". In order to become requirements of this subchapter, the authorized state UST program requirements must be made federal requirements.

Codification also serves to place regulated entities and members of the public on notice of the requirements pertaining to the operation of USTs. Under the Administrative Procedure Act (APA), each agency must make available to the public certain information.

Each agency shall separately state and currently publish in the Federal Register for the guidance of the public . . .

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and,

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be

published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonable available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

5 U.S.C. § 552(a). The regulations on how to incorporate by reference appear at 1 C.F.R. Part 51.

Therefore for the Federal government to be able to enforce the provisions of state laws and regulations that have been approved to operate in lieu of the federal program, those requirements either have to be published in the Federal Register or incorporated by reference therein. Only the substantive rules must be published or incorporated by reference, because the federal government uses its own enforcement authorities when bringing actions for alleged violations of the authorized state UST program. Thus, general enabling statutes that do not embody specific requirements that whirl become enforceable by the federal government pursuant to section 9006 of RCRA need not be incorporated by reference, although they are, of course, part of the approved state program.

Part 282 has been reserved for codification of approved State UST programs (see Appendix A). Appendix F to this guidance contains a list of the sections within Part 282 that have been specifically reserved for each of the 56 States and Territories. The Regions should use this list to identify the sections of Part 282 that should be included in their codification rules.

## **II. Steps in the Codification Process**

Regions will be required to follow a number of standard steps when codifying their approved state programs.

1. The major effort will be to write the Federal Register rule signifying the codification of the state program. (As part of this effort each Region should set up a docket, with a new file and docket number, for all codification materials and any public comments.) OUST Headquarters has developed a model codification rule and will provide it to the Regions electronically to facilitate the codification process (see Appendix B).
2. The U.S. Government Printing Office (GPO) offers a 20 percent discount for Federal Register documents submitted with a disk. Regions should therefore explore the possibility of submitting their rules on disk. There are a number of requirements, however, that must be met when submitting electronic files for publication in the Federal Register (see Appendix C).
3. As part of producing the codification notice, the Regions will need to review the State program approval application in order to determine what state materials are to be incorporated by reference (i.e., relevant portions of state statutes and regulations). These need to be clearly identified in the notice and placed into binders for public review.
4. After determining what materials are needed for incorporation by reference, the Region will need to ensure that it has legally enforceable copies of all relevant materials so they may assemble the binders. Two binders are required. One binder will contain statutory provisions; another will contain regulatory provisions. The statutes and regulations must be of proper quality to meet OFR standards (see sample binders in Appendix G).
5. A letter from EPA to OFR requesting the incorporation by reference must be submitted at least 20 working days in advance of the desired publication date (see Appendix E). The letter should be

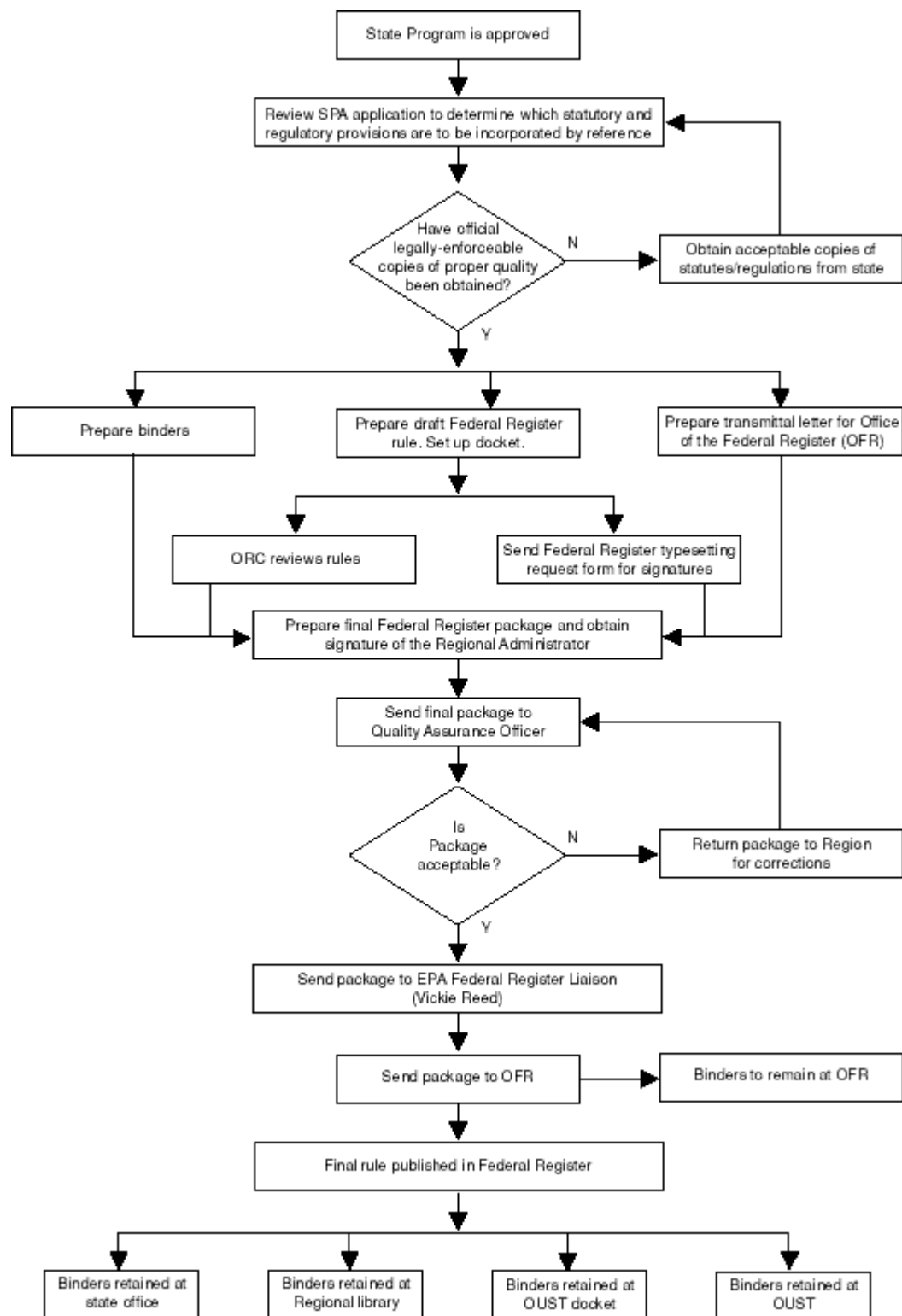
accompanied by the binders, the Federal Register rule, and note the section(s) of the CFR into which the materials will be incorporated. This letter also must include the name and phone number of the Regional codification contact.

6. A transmittal memo to Vickie Reed, Headquarters Federal Register liaison, must be prepared, as must a Federal Register typesetting request form.
7. The entire package must then be submitted for review to the Quality Assurance Officer at OPPE. Send the package c/o Vickie Reed (mail code 2136).
8. The Quality Assurance Officer assesses the materials to determine whether the documents submitted meet all applicable OFR criteria. As part of this process, the table of contents will be checked against the materials in the binder and the listing to the appendix in the Federal Register rule.
9. If the materials meet the criteria, all materials (transmittal letters, binders, the rule, other forms, etc.) are submitted to OFR through the Headquarters Federal Register liaison. If the materials do not meet the criteria, any needed changes will be specified and the materials will be returned to the Region for corrections.
10. OFR will publish a codification rule specifying the state statutory and regulatory provisions that have been incorporated by reference.
11. Copies of all incorporation by reference materials must be made available for public review at a number of locations following publication in the Federal Register, including the state office, the Regional library, the OUST docket, and OUST. OFR will also retain a copy of the materials.

See Appendix D for additional guidance on the procedures involved in preparing and submitting Federal Register notices.



## STEPS IN THE CODIFICATION PROCESS



### III. Legally Enforceable Statutes and Regulations

It is EPA's burden to ensure that the copies of statutes and regulations submitted for incorporation by reference are the legally enforceable copies in the state. The question of which version is enforceable and when it is effective is to be determined with reference to state law. There are three categories of legally enforceable regulations:

1. Regulations that are published in the state register. These regulations are not effective until they are published in the state register.
2. Regulations that are immediately effective upon adoption and Signature by the Secretary of State. These regulations have either an official stamp denoting the date of adoption and signature or some other form of certification that the material was adopted by the state. This certification also needs to be included in the binder of incorporated by reference materials.
3. Regulations that are immediately effective (as above), except that the state periodically publishes a compilation of their regulations. The official version in such states is the originally adopted version signed by the Secretary of State.

Because states may submit different categories of applicable regulations to EPA, the Regions will need to check with their states in determining which is the legally enforceable copy.

In addition, the Region must obtain legally enforceable versions of state statutes. This version may be either an officially signed version or one published in the state code; the Region will need to confirm with the state which is the legally enforceable copy.

An electronic copy of state statutes and regulations is not a valid format for incorporation by reference materials submitted to OFR, because it lacks certification that the materials have been officially adopted by the state. The same holds true for secondary sources such as the Bureau of National Affairs (BNA) publication Environment Reporter. Additionally, documents being submitted for approval should not be combined from different sources or from volumes of different dates.

Regions codifying states that have incorporated the federal UST regulations by reference would follow the procedures outlined above when incorporating by reference the applicable state provisions, provided that the state has devised an internal numbering system for those regulations that distinguishes them from the federal regulations. They would simply need to cite the appropriate sections of the state regulations for incorporation by reference.

There may be cases where an approved state has included statutory and/or regulatory provisions in its application for program approval that are not UST-specific but instead supplement the UST provisions. In such cases, particularly if the provisions are not cited in the Attorney General's statement as authorities upon which the UST program relies, it is appropriate to reference them in the codification notice. However, these provisions should not be incorporated by reference. Only those provisions that are applied to a specific aspect of the UST program may need to be incorporated by reference.

## **IV. Quality Guidelines for Incorporation by Reference of State Statutes and Regulations**

The Office of the Federal Register imposes a number of requirements and prerequisites for incorporating materials by reference in published Agency regulations. Incorporation by reference is a mechanism that permits more efficient use of resources by reducing the volume of material published in the Federal Register and Code of Federal Regulations. Incorporation by reference allows Federal agencies to comply with the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. The legal effect of incorporation by reference is that the material is treated as if it were published in the Federal Register. This material, like any other properly issued regulation, has the force and effect of law.

The Director of the Federal Register is authorized to decide when an agency may incorporate material by reference. The Director may approve an incorporation by reference if the material meets the requirements of 1 CFR Part 51. OFR has had concerns regarding the format, quality, condition, and EPA's location of materials to be incorporated by reference. Central to OFR's concerns was the availability of legible materials for public review. Before January 3, 1994, no approved State UST programs had been codified due to a combination of confusion over proper codification procedures and inferior quality and format of the materials that were submitted to OFR by other EPA program offices.

In order to obtain OFR's approval for the use of incorporation by reference of material in its regulations, EPA and OFR representatives met to develop the following set of quality guidelines for submitting incorporation by reference materials as part of the codification process.

1. The 40 CFR Part 55 incorporation by reference model would be followed in developing a Part 282 for all materials to be incorporated by reference. Incorporation by reference material must be placed in binders, which must have a table of contents. All pages should be numbered for easy reference.
2. The materials must be inspected page by page to ensure that they are clear, complete, and legible. The copies submitted must be of a high enough quality to produce legible photocopies. If high-quality copies are not available in the Regional office, they should be obtained from the State. No marred or disfigured pages may be included, and the storage method must not obscure the text in any way (e.g., by hole punches). Experience has shown that it may be difficult and/or expensive to get "acceptable" copies of their statutes and regulations as part of the official state program approval application.
3. All documents should be inspected to be sure that they have titles, dates, edition numbers, author/publisher, and identification number (where applicable). If they do not, the Region is responsible for obtaining copies of documents that satisfy the criteria.
4. The Region should number consecutively in the lower right hand corner all pages that are to be placed in the incorporation by reference binder. These page numbers will supersede any page numbers on the source documents and will be used to create a table of contents for the binder. If possible, the title page from the statute or regulation should also be placed in the binder to indicate where the excerpts come from.
5. A table of contents listing the materials included in the binder and their page numbers must be developed and placed at the front of the binder so that readers can quickly find the provisions in

which they are interested. The table of contents should look very similar to the Appendix to the Federal Register notice. Any words, phrases, sentences, paragraphs or subsections that are "crossed-out" in the binder materials need to be noted in both the Appendix to the rule and the table of contents to each binder. (Please refer to the New Hampshire binders in Appendix G of this document for examples.)

6. If there are portions of statutes or regulations on a page that are not to be incorporated by reference (e.g., an incorporated section ends and an unrelated provision immediately follows), it is acceptable to place them into the binder and cross them out. This eliminates the need for cutting and pasting. However, the Region needs to be very clear about which of the statutory and regulatory provisions are to be incorporated by reference and which are not.
7. Statutes and regulations will be placed in separate 8.5 x 11 binders. In order to avoid unnecessary photocopying, it is acceptable to include a pre-printed and bound booklet of statutes or regulations that is not 8.5 x 11 if a press bar binder is used to secure the document. For all binders please place a label containing the binder title and CFR number on both the front and spine of the binder.
8. The Memorandum of Agreement, Program Description, and Demonstration of Adequate Enforcement Procedures will be referenced in the rulemaking, but copies of these documents will not be placed into the binders.
9. While OFR has not mandated that binders from all states be identical, the Regions should keep in mind that the goal is to produce a binder that can be easily read and photocopied, and will withstand repeated viewings. Thus, the binder should be assembled so that loss of pages through use is minimal.
10. Each statement of incorporation by reference must identify where and how copies may be examined and obtained.
11. OFR will maintain a copy of the incorporation by reference binders. EPA will also maintain a copy in the EPS OUST docket, Room M 2616, 401 M Street, SW, Washington, DC 20460; at OUST Headquarters (contact Jerry Parker); and in the library of the appropriate EPA Regional office. The state also will maintain a copy of the binders.
12. Codification of revisions to approved state programs will require publication of an amendment to the CFR in the Federal Register and submittal of a separate binder with a revision date on the cover page, with copies deposited in all the above locations. The Director of the Federal Register must be notified in writing that the incorporated by reference materials are being updated. Codification of revisions is not a process of merely adding the changes to the old binders.

An acceptable format consistently applied to all materials submitted for incorporation by reference reduces the OFR resources required for review and significantly decreases the period of time between submission and approval. In addition, a consistent format affords maximum convenience to the public user.

Much of the work involved in assuring that all incorporation by reference materials meet the quality requirements, particularly that resulting from OFR rejection of inferior quality documents, can be avoided if the Region communicates the requirements to its states early in the state program approval and codification process. If the states understand what is required of the Regions, materials of an acceptable quality and format can be submitted to the Region the first time, and reassembly of the materials will not be necessary.

## **APPENDIX A: PART 282 Framework Rule and New Hampshire Codification Rule**

### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 282**

**[FRL-4794-8]**

#### **Underground Storage Tank Program; Approved State Program for New Hampshire**

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

**ACTION:** Immediate final rule.

**SUMMARY:** The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the U.S. Environmental Protection Agency to grant approval to states to operate their underground storage tank programs in lieu of the federal program. This action establishes part 282 for codification of the decision to approve a state program and for incorporation by reference of those provisions of state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions. As part of this initial action, part 282 codifies the prior approval of New Hampshire's underground storage tank program and incorporates by reference appropriate provisions of state statutes and regulations.

**DATE:** This regulation is effective January 3, 1994, unless EPA publishes a prior Federal Register rule withdrawing this immediate final rule. All comments on this regulation must be received by the close of business December 2, 1993. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of January 3, 1994, in accordance with 5 U.S.C. 552(a).

**ADDRESSES:** Comments may be mailed to the Docket Clerk (Docket No. UST 4-5), Office of Underground Storage Tanks (OS-305), U.S. Environmental Protection Agency, 401 M. Street, SW., Washington, DC 20460. Comments received by EPA may be inspected in the public docket, located in room 2616 (Mall), U.S. Environmental Protection Agency, 401 M. Street, SW., Washington, DC 20460 from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** RCRA Hotline, toll free at (800) 424-9346 or in Washington, DC at (202) 382-3000. For technical questions on the part 282 rule, consult Jerry Parker, U.S. EPA, Office of Underground Storage Tanks, at (703) 603-7167. For technical questions on the New Hampshire codification, consult Susan Hanamoto, Underground Storage Tank Program, U.S. EPA Region I, JFK Federal Building, Boston, MA 02203-2211, Phone: (617) 573-5748.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

Section 9004 of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6991c, allows the U.S. Environmental Protection Agency (EPA) to approve state underground storage tank programs to operate in the state in lieu of the federal underground storage tank program. EPA published a Federal Register rule announcing its decision to grant approval to New Hampshire (56 FR 28089, June 19, 1991). Approval was effective on July 19, 1991.

EPA will codify its approval of state programs in a new 40 CFR part 282 and incorporate by reference therein the state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under 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 rule establishes part 282, reserves sections within part 282 for each state, and codifies EPA's approval of the New Hampshire underground storage tank program. This codification reflects that state program in effect at the time EPA granted New Hampshire approval under section 9004(a), 42 U.S.C. 6991c(a), for its underground storage tank program. The establishment of part 282 is an Agency procedure exempt from the notice and comment requirements of 5 U.S.C. 553, as is the codification of the New Hampshire UST program. Notice and opportunity for comment were provided earlier on the Agency's decision to approve the New Hampshire program, and EPA is not now reopening that decision nor requesting comment on it.

This effort provides clear notice to the public of the scope of the approved program in each state. By codifying the approved New Hampshire program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in New Hampshire, the status of federally approved requirements of the New Hampshire program will be readily discernible. Only those provisions of the New Hampshire underground storage tank program for which approval has been granted by EPA will be incorporated by reference for enforcement purposes.

To codify EPA's approval of New Hampshire's underground storage tank program, EPA has added § 282.79 to title 40 of the CFR, Section 282.79 incorporates by reference for enforcement purposes the State's statutes and regulations. Section 282.79 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the underground storage tank program under subtitle of RCRA.

The Agency retains the authority under 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, the Agency will rely on federal sanctions, federal inspection authorities and federal procedures, rather than the state authorized analogs to these provisions. Therefore, the approved New Hampshire enforcement authorities will not be

incorporated by reference. Section 282.79 lists those approved New Hampshire authorities that fall into this category.

The public also needs to be aware that 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 enforcement in part 282. Section 282.79 simply lists for reference and clarity the New Hampshire 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.

### **Certification Under the Regulatory Flexibility Act**

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the EPA hereby certifies that this action will not have any economic impact on any small entities. It establishes a new part 282 in 40 CFR and codifies the decision already made to approve the New Hampshire underground storage program and has no separate effect on owners and operators of underground storage tanks or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

### **Compliance With Executive Order 12291**

This immediate final rule has been submitted to OMB for review under Executive Order 12291. The Agency has determined that it is a non-major rule because it will not 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, or local government agencies, or geographic regions; or (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.

The Office of Management and Budget has exempted individual state codifications from the requirements of section 3 of Executive Order 12291.

### **Paperwork Reduction Act**

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., federal agencies must consider the paperwork burden imposed by any information request contained in a proposed or final rule. This rule will not impose any information requirements upon the regulated community.

## **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: October 13, 1993.

**Carol M. Browner,**  
Administrator.

For the reasons set forth in the preamble, chapter 1 of title 40 of the Code of Federal Regulations is amended by adding a new part 282 to read as follows:

### **PART 282-APPROVED UNDERGROUND STORAGE TANK PROGRAMS**

#### **Subpart A-General Provisions**

Sec.

282.1 Purpose and scope.

282.2 Incorporation by reference.

282.3-282.49 [Reserved]

#### **Subpart B-Approved State Programs**

282.50-282.78 [Reserved]

282.79-New Hampshire.

282.80-282.105 [Reserved]

**Appendix A** to Part 282-State Requirements incorporated by Reference in Part 282 of the Code of Federal Regulations

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**Authority:** 42 U.S.C 6912, 6991C, 6991D, and 6991c.

### **PART 282-APPROVED UNDERGROUND STORAGE TANK PROGRAMS**

#### **Subpart A-General Provisions**

##### **§282.1 Purpose and scope.**

This part sets forth the applicable state underground storage tank programs under section 9004 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6991c and 40 CFR part 281. "State" is defined in 42 U.S.C. 1004(31) as any of the several states, the District of Columbia, the Commonwealth



of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands."

#### **§282.2 Incorporation by reference.**

1. Material listed as incorporated by reference in part 282 was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the Federal Register.
2. Copies of materials incorporated by reference may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. Copies of materials incorporated by reference may be obtained or inspected at the EPA OUST Docket, 401 M. Street, SW., Washington, DC 20460, and at the library of the appropriate Regional Office listed below:
  1. Region 1 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont): JFK Federal Building, Boston, MA 02203-2211,
  2. Region 2 (New Jersey, New York, Puerto Rico, Virgin Islands): Federal Office Building, 26 Plaza, New York, NY 10278.
  3. Region 3 (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia): 841 Chestnut St. Building, Philadelphia, PA 191007.
  4. Region 4 (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee): 345 Courtland St., NE, Atlanta, GA 30365.
  5. Region 5 (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin): 77 West Jackson Boulevard, Chicago, IL 60604.
  6. Region 6 (Arkansas, Louisiana, New Mexico, Oklahoma, Texas): 1445 Ross Avenue, Dallas, TX 75202-2733.
  7. Region 7 (Iowa, Kansas, Missouri, Nebraska): 726 Minnesota Avenue, Kansas City, KS 66101.
  8. Region 8 (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming): 999 18th Street, Denver, CO 80202-2405.
  9. Region 9 (Arizona, California, Hawaii, Nevada, Guam, American Samoa, Commonwealth of the Northern Mariana Islands): 75 Hawthorne Street, San Francisco, CA 94105.
  10. Region 10 (Alaska, Idaho, Oregon, Washington): 1200 Sixth Avenue, Seattle, WA 98101.
3. For an informational listing of the state and local requirements incorporated in part 282, see appendix A to this part.

#### **§§282.3 through 282.49 [Reserved]**

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#### **Subpart B-Approved State Programs**

##### **§§282.50-282.78 [Reserved]**

##### **§282.79 New Hampshire.**

1. The State of New Hampshire is approved to administer and enforce an underground storage tank program in lieu of the federal program under 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 New Hampshire Department of Environmental Services, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this Chapter. EPA's approval was effective on July 19, 1991.
2. New Hampshire has primary responsibility for enforcing its underground storage tanks program. However, EPA retains the authority to exercise its enforcement authorities under sections 9005

and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, as well as under other applicable statutory and regulatory provision.

3. To retain program approval, New Hampshire must revise its approved program to adopt 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 New Hampshire 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 section and notice of any change will be published in the Federal Register.
4. New Hampshire has final approval for the following elements submitted to EPA in New Hampshire's program application for final approval and approved by EPA on June 19, 1991, becoming effective on July 19, 1991. Copies may be obtained from the Underground Storage Tank Program. New Hampshire Department of Environmental Services, 6 Hazen Drive, Concord, NH 03302-0095.

1. *State statutes and regulations.*

1. The provisions cited in this paragraph are incorporated by reference as part of the underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

1. New Hampshire Statutory Requirements Applicable to the Underground Storage Tank Program, 1993.

2. New Hampshire Regulatory Requirements Applicable to the Underground Storage Tank Program, 1993.

2. The following statutes and regulations are part of the approved state program, although not incorporated by reference herein for enforcement purposes.

1. The statutory provisions include: New Hampshire Revised Statutes Annotated (Supplement 1988) Sections 146-C:9a, 146-C:10, and 146-C:10a; 147 A:1 through 147-A:13; 541-A:1 through 541-A:10; 91-A:1 through 91-A:8.

2. The regulatory provisions include: New Hampshire Code of Administrative Rules (1990) Part Env. C-602.08; Part He-P 1905.

3. 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 herein for enforcement purposes.

1. The statutory provisions include: New Hampshire Revised Statutes Annotated (Supplement 1988) Section 146-C:1.XII, insofar as it refers to heating oil for consumptive use on the premises where stored.

2. The regulatory provisions include: New Hampshire Code of Administrative Rules (1990) Sections Env-Ws411.01 and 411.02, insofar as they refer to heating oil for consumptive use on the premises where stored.

2. *Statement of legal authority.*

1. "Attorney General's Statement for Final Approval", signed by the Attorney General of New Hampshire on November 1, 1990, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

2. Letter from the Attorney General of New Hampshire to EPA, November 1, 1990, though not incorporated by reference, is referenced as part of the approved underground storage tank program under 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 in December 1990, though not incorporated by reference, if referenced as part of the

approved underground storage tank program under 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 in December 1990, though not incorporated by reference, are referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*
5. *Memorandum of agreement.* The Memorandum of Agreement between EPA Region I and the New Hampshire Department of Environmental Service, signed by the EPA Regional Administrator on August 8, 1991, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

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

The following is an informational listing of the state requirements incorporated by reference in part 282 of the Code of Federal Regulations:

*New Hampshire*

1. The statutory provisions include New Hampshire Revised Statutes Annotated 1955, 1990 Replacement Edition, and 1992 Cumulative Supplement, Chapter 146-C. Underground Storage Facilities:
  - Section 146-C:1 Definitions, except for the following words in 146-C:1. XII, "heating or."
  - Section 146-C:2 Discharges Prohibited.
  - Section 146-C:3 Registration of Underground Storage Facilities.
  - Section 146-C:4 Underground Storage Facility Permit Required.
  - Section 146-C:5 Records Required; Inspections.
  - Section 146-C:6 Transfer of Ownership.
  - Section 146-C:6-a Exemption.
  - Section 146-C:7 New Facilities.
  - Section 146-C:8 Prohibition Against Reusing Tanks.
  - Section 146-C:9 Rulemaking.
  - Section 146-C:11 Liability for Cleanup Costs: Municipal Regulations.
  - Section 146-C:12 Federal Assistance and Private Funds.
2. The regulatory provisions include:
  1. New Hampshire Code of Administrative Rules (November 1990) Part Env-Ws411, Control of Underground Storage Facilities:
    - Section 411.01 Purpose, except for the following words, "heating oils."
    - Section 411.02 Applicability, except for 411.02(d).
    - Section 411.03 Definitions.
    - Section 411.04 Registration.
    - Section 411.05 Change in Use.
    - Section 411.06 Information Required for Registration.
    - Section 411.07 Permit to Operate.
    - Section 411.08 Transfer of Facility Ownership.
    - Section 411.10 Financial Responsibility.
    - Section 411.11 Inventory Monitoring.
    - Section 411.12 Regulated Substance Transfers.
    - Section 411.13 Tightness Testing.
    - Section 411.14 Certification of Technicians Performing Tightness Tests.
    - Section 411.15 Tightness Test Failures.
    - Section 411.16 Unusual Operating Conditions.
    - Section 411.17 Temporary Closure.
    - Section 411.18 Permanent Closure.
    - Section 411.19 Prohibition Against Reusing Tanks.
    - Section 411.20 Requirements for Approval of Underground Storage Systems.
    - Section 411.21 Tank Standards for New Underground Storage Systems.

- Section 411.22 Piping Standards for New Underground Storage Systems.
  - Section 411.23 Secondary Containment for New Tanks.
  - Section 411.24 Secondary Containment for New Pressurized Piping.
  - Section 411.25 Spill Containment and Overfill Protection.
  - Section 411.26 Leak Monitoring for New Tanks.
  - Section 411.27 Leak Monitoring for New Underground Piping Systems.
  - Section 411.28 Installation of New Underground Storage Systems.
  - Section 411.29 Release Detection for Tanks Without Secondary Containment and Leak Monitoring, except for the following words in 411.29(a), "With the exception of on premise use heating oil systems."
  - Section 411.30 Release Detection for Piping.
  - Section 411.31 Operation of Leak Monitoring Equipment.
  - Section 411.32 Corrosion Protection for Steel Tanks.
  - Section 411.33 Corrosion Protection for Piping.
  - Section 411.34 Submission of Corrosion Protection Plan.
  - Section 411.35 Relining Steel Tanks.
  - Section 411.36 Repair of Fiberglass-Reinforced Plastic Tanks.
  - Section 411.37 Repair and Replacement of Piping Systems.
  - Section 411.38 Field Fabricated Tanks.
  - Section 411.39 Secondary Containment for Hazardous Substance Systems.
  - Section 411.40 Waivers.
2. New Hampshire Code of Administrative Rules (November 1990) Part Env-Ws 412, Reporting and Remediation of Oil Discharges:
- Section 412.01 Purpose.
  - Section 412.02 Applicability.
  - Section 412.03 Definitions.
  - Section 412.04 Notification.
  - Section 412.05 Initial Response Action.
  - Section 412.06 Abatement Measures.
  - Section 412.07 Free Product Removal.
  - Section 412.08 Initial Site Characterization.
  - Section 412.09 Investigation Due to Discovery of Discharges from Unknown Sources.
  - Section 412.10 Site Investigation.
  - Section 412.11 Site Investigation Report.
  - Section 412.12 Remedial Action Plan.
  - Section 412.13 Public Notification.
  - Section 412.14 Waivers.

[FR Doc. 93-26409 Filed 11-01-93; 8:45 am

**Billing Code 6560-50-P**

## **APPENDIX B: Vermont Codification Rule ("Stand-Alone" Rule)**

**\*\*\* DRAFT \*\*\***

### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 282**

**(FRL - )**

#### **Underground Storage Tank Program: Approved State Program for Vermont**

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

**ACTION: Immediate final rule.**

**SUMMARY:** The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the U.S. Environmental Protection Agency (EPA) to grant approval to states to operate their underground storage tank programs in lieu of the federal program. 40 CFR part 282 codified EPA's decision to approve state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions. This rule codifies in part 282 the prior approval of Vermont's underground storage tank program and incorporates by reference appropriate provisions of state statutes and regulations.

**DATES:** This regulation is effective [insert date 60 days after publication], unless EPA publishes a prior Federal Register notice withdrawing this immediate final rule. All comments on the codification of Vermont's underground storage tank program must be received by the close of business [insert date 30 days after publication]. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of [insert date 60 days after publication], in accordance with 5 U.S.C. 552(a).

**ADDRESSES:** Comments may be mailed to the Docket Clerk (Docket no. ), Underground Storage Tank Program, HPU-CAN7, U.S. EPA Region 1, JFK Federal Building, Boston, MA 02203-2211. Comments received by EPA may be inspected in the public docket, located in the Waste Management Division Record Center, 90 Canal St., Boston, MA 02203 from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Joan Coyle, Underground Storage Tank Program, HPU-CAN7, U.S. EPA Region I, JFK Federal Building, Boston, MA 02203-2211. Phone: (617) 573-9667.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

Section 9004 of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6991c, allows the U.S. Environmental Protection Agency to approve state underground storage tank programs to operate in the state in lieu of the federal underground storage tank program. EPA published a Federal Register document announcing its decision to grant approval to Vermont. (57 FR 186, January 3, 1992). Approval was effective on February 3, 1992.

EPA Codifies its approval of State programs in 40 CFR part 282 and incorporates by reference therein the state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under 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 the Vermont underground storage tank program. This codification reflects the state program in effect at the time EPA granted Vermont approval under 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 Vermont program, and EPA is not now reopening that decision nor requesting comment on it.

This effort provides clear notice to the public of the scope of the approved program in each state. By codifying the approved Vermont program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in Vermont, the status of federally approved requirements of the Vermont program will be readily discernible. Only those provisions of the Vermont underground storage tank program for which approval has been granted by EPA will be incorporated by reference for enforcement purposes.

To codify EPA's approval of Vermont's underground storage tank program, EPA has added section 282.95 to title 40 of the CFR. Section 282.95 incorporates by reference for enforcement purposes the State's statutes and regulations. Section 282.95 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the underground storage tank program under subtitle I of RCRA.

The Agency retains the authority under 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, the Agency will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the state authorized analogs to these provisions. Therefore, the approved Vermont enforcement authorities will not be incorporated by reference. Section 282.95 lists those approved Vermont authorities that would fall into this category.

The public also needs to be aware that 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 enforcement in part 282. Section 282.95 of the codification simply lists for reference and clarity the Vermont 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.

### **Certification Under the Regulatory Flexibility Act**

This rule codified the decision already made (57 FR 186, Jan. 3, 1992) to approve the Vermont underground storage tank program and thus has no separate effect. Therefore, this rule does not require a regulatory flexibility analysis. Thus, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

### **Compliance With Executive Order 12866**

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

### **Paperwork Reduction Act**

#### **Approved State Program For Vermont--Page 6 of 15**

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed or final rule. This rule will not impose any information requirements upon the regulated community.

### **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:

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John DeVillars,  
Regional Administrator

For the reasons set forth in the preamble, 40 CFR Part 282 is proposed to be 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.

2. Subpart B is amended by adding § 282.95 to read as follows:

### **Subpart B - Approved State Programs**

#### **§ 282.95 - Vermont State-Administered Program.**

1. The State of Vermont is approved to administer and enforce an underground storage tank program in lieu of the federal program under 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 Vermont Department of Environmental Conservation, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this Chapter. EPA approved the Vermont program on January 3, 1992 and it was effective on February 3, 1992.
2. Vermont has primary responsibility for enforcing its underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, as well as under other statutory and regulatory provisions.
3. To retain program approval, Vermont 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 Vermont obtains approval for the revised requirements pursuant to section 9004 or 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.
4. Vermont has final approval for the following elements submitted to EPA in Vermont's program application for final approval and approved by EPA on January 3, 1992. Copies may be obtained from the Underground Storage Tank Program, Vermont Department of Environmental Conservation, 103 South Main Street, West Building, Waterbury, VT 05671-0404.

1. **State statutes and regulations.**

1. The provisions cited in this paragraph are incorporated by reference as part of the underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*
  1. Vermont Statutory Requirements Applicable to the Underground Storage Tank Program, 1994.
  2. Vermont Regulatory Requirements Applicable to the Underground Storage Tank Program, 1994.
2. The following statutes and regulations are part of the approved state program, although not incorporated by reference herein for enforcement purposes.
  1. The statutory provisions include: Title 10 Vermont Statutes Annotated, Chapter 59, Sections 1932 through 1935.
  2. The regulatory provisions include: Vermont Environmental Protection Rules, Chapter 8, Sections 104 through 106.
3. 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 herein for enforcement purposes.
  1. Title 10 Vermont Statutes Annotated, Chapter 59, Section 1929, insofar as it refers to registration requirements for tanks greater than 1,100 gallons containing heating oil consumed on the premises where stored.
  2. Vermont Environmental Protection Rules, Chapter 8, Section 301, registration requirements, and Section 605(2), permanent closure requirements, insofar as they refer to tanks greater than 1,100 gallons containing heating oil consumed on the premises where stored.

2. **Statement of Legal authority.**

1. "Attorney General's Statement for Final Approval", signed by the Attorney General of Vermont of April 11, 1991, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*
2. Letter from the Attorney General of Vermont to EPA, April 11, 1991, though not incorporated by reference, is referenced as part of the approved underground storage tank program under 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 in May 1991, though not incorporated by reference, is referenced as part of the approved underground storage tank program under 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 in May 1991, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*
5. **Memorandum of Agreement.** The Memorandum of Agreement between EPA Region I and the Vermont Department of Environmental Conservation, signed by the EPA Regional Administrator on March 2, 1992, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

1. Appendix A to Part 282 is amended by adding in alphabetical order "Vermont" and its listing.

## **APPENDIX A TO PART 282**

State Requirements Incorporated by Reference in part 282 of the Code of Federal Regulations

\* \* \* \* \*

### **Vermont**

1. The statutory provisions include Vermont Statutes Annotated, 1992, Chapter 59. Underground Liquid Storage Tanks:

- Section 1921 Purpose.
- Section 1922 Definitions.
- Section 1923 Notice of New or Existing Underground Storage Tank
- Section 1924 Integrity Report.
- Section 1925 Notice in Land Records.
- Section 1926 Unused and Abandoned Tanks.
- Section 1927 Regulation of Category One Tanks.
- Section 1928 Regulation of Large Farm and Residential Motor Fuel Tanks.
- Section 1930 Implementation; Coordination.
- Section 1931 Inspections; Right of Entry; Information.
- Section 1936 Licensure of Tank Inspectors.
- Section 1938 Underground Storage Tank Trust Fund.
- Section 1939 Risk Retention Pool.
- Section 1940 Underground Storage Tank Incentive Program.
- Section 1941 Petroleum Cleanup Fund.
- Section 1942 Petroleum Distributor Licensing Fee.
- Section 1943 Petroleum Tank Assessment.
- Section 1944 Underground Storage Tank Loan Assistance Program.

2. The regulatory provisions include State of Vermont, Agency of Natural Resources, Underground Storage Tank Regulations, February 1, 1991:

1. Subchapter 1: General.
  - Section 8-101 Purpose.
  - Section 8-102 Applicability.
  - Section 8-103 Severability.
2. Subchapter 2: Definitions.
  - Section 8-201 Definitions.
3. Subchapter 3: Notification and Permits.
  - Section 8-301 Notification, except for the following words in section 8- 301(1),  
"Notification is also required for any tank used exclusively for on-premises heating that is greater than 1100 gallons in size."
  - Section 8-302 Permits.
  - Section 8-303 Financial Responsibility Requirements.
  - Section 8-304 Petroleum Tank Assessment.
  - Section 8-305 Innovative Technology.
4. Subchapter 4: Minimum Standards for New and Replacements Tanks and Piping.
  - Section 8-401 General Requirements.
  - Section 8-402 Tanks - Design and Manufacturing Standards.
  - Section 8-403 Tanks - Secondary Containment.
  - Section 8-404 Tanks - Release Detection.
  - Section 8-405 Piping - Design and Construction.

- Section 8-406 Compatibility.
- Section 8-407 Spill and Overfill Prevention Equipment.
- Section 8-408 Installation.
- 5. Subchapter 5: Minimum Operating Standards for Existing Tanks and Piping.
  - Section 8-501 General Requirements.
  - Section 8-502 Spill and Overfill Prevention.
  - Section 8-503 Corrosion Protection of Metallic Components.
  - Section 8-504 Release Detection.
  - Section 8-505 Compatibility.
  - Section 8-506 Repairs.
- 6. Subchapter 6: Reporting, Investigation, Corrective Action and UST Closure.
  - Section 8-601 General Requirement, except for the following words, "Heating oil tanks greater than 1100 gallons capacity used exclusively for on-premise heating purposes are subject to the requirements for permanent closure in accordance with subsection 8-605(2)."
  - Section 8-602 Reporting.
  - Section 8-603 Release Investigation and Confirmation.
  - Section 8-604 Corrective Action.
  - Section 8-605 Closure of USTs.

Appendix A Groundwater Monitoring Requirements.

Appendix B Inventory Monitoring Procedures.

Appendix C Procedures for Manual Tank Gauging.

Appendix D Installation Requirements Applicable to New and Replacement UST Systems.

**BILLING CODE (insert billing code number)**

## APPENDIX C: Federal Register Document Requirements

MAY 17 1993

### MEMORANDUM

SUBJECT: Identifying Federal Register Documents for Signature

TO: Assistant Administrators  
General Counsel  
Inspector General  
Associate Administrators  
Regional Administrators  
Staff Office Directors

Recently a number of **Federal Register** documents have been submitted for signature with a signature page that displays only a signature block. Although the Office of Executive Secretariat (OEX) normally returns such documents for correction, there have been several that were so urgent that they bypassed the normal quality control channels. It is obviously not in the Agency's interest to have unidentified pages containing only the signature.

I am therefore implementing a new Agencywide policy that will solve this potentially serious problem. Effective immediately, **all Federal Register documents for signature** that will be transmitted to the Federal Register Office should contain the following information at the top of the signature page, regardless of whether the page has text in addition to the signature line:

IDENTIFICATION OF DOCUMENT: (Insert document title from the Rule/Notice or CIP/SIP, along with the page number)

EXAMPLE: **Environmental Protection Rule--Page 10 of 130**

Please be sure that the title is specific so that it adequately identifies the document to which it refers.

Both the Office of Policy, Planning and Evaluation (OPPE) and OEX will check each package to ensure the proper signature page identification. For delegated signatures, the Federal Register Liaison in OPPE will assure this information is in place. Documents without appropriate identification will be returned for revision.

If you have questions regarding this procedure, please contact Jane Stewart, Chief of the Regulatory Development Branch, OPPE, at (202) 260-6387.

Carol M. Browner

JAN 13 1993

MEMORANDUM

SUBJECT: Availability of **Federal Register** Typesetting Discount  
for Disk Submission

FROM: Jane Stewart, Chief  
Regulatoin  
TO: Steering Committee Representatives  
Regional Regulatory Contacts  
Funds Certifying Officers

Beginning January 1, 1993, the Government Printing Office (GPO) is offering a new cost saving opportunity to Federal Agencies. All Agency Federal Register documents submitted with disks to the office of the **Federal Register** prepared using either WordPerfect or ASCII formats will qualify of a 20% discount on the page rate for published text. This will reduce our cost from \$125 per column (\$375 per page) to \$100 per column (\$300 per page). This can amount to a substantial cost savings for a lengthy document.

In order to receive the discount, offices submitting a disk must provide the following information:

1. A disk (preferably a 3.5 high density) with a label including the Agency, Filename and Format, such as WordPerfect or ASCII. If you wish to have the disk returned to your office submit a self addressed EPA envelope and state on the disk label that the it should be returned to EPA.
2. To ensure a discount all documents must contain the appropriate Billing Code at the end of the document to read as follows:  
  
BILLING CODE 6560-50-P (WordPerfect disk)  
BILLING CODE 6560-50-U (Unformatted, ASCII)
3. The Federal Register Typesetting Request form should include, in the blank space at the bottom, the following information:  
  
"This document was submitted with a disk and is eligible for the 20% typesetting discount."
4. A memo (example attached) should be submitted with the disk verifying that the hard copy matches the disk. An original and three hard copies are still required by OFR. The memo verifying the disk should be from the person most familiar with the document, such as the program office contact. In most cases it is not the signing official who can verify the document.

If substantial formatting changes are necessary to ensure **Federal Register** requirements are met the disk will be returned to the program office contact for the revisions to be made to the disk. If minor changes are necessary these changes will be made by the Federal Register Liaison in OPPE's Regulatory Development Branch (RDB).

Additionally, the GPO will provide WordPerfect templates for common type of **Federal Register** documents. Offices which submit a disk using the template will increase their discount rate to 25% and a \$94 column rate (\$282 per page). The RDB is currently exploring the use of templates with GPO, and we will advise you on their availability and use as soon as we have clear guidance and instructions from GPO. In the meantime, you may take advantage of the 20% discount offered by simply submitting

documents on WordPerfect or ASCII.

If you have questions or want further information, please contact Vickie Reed in RDB at 202-260-7204.

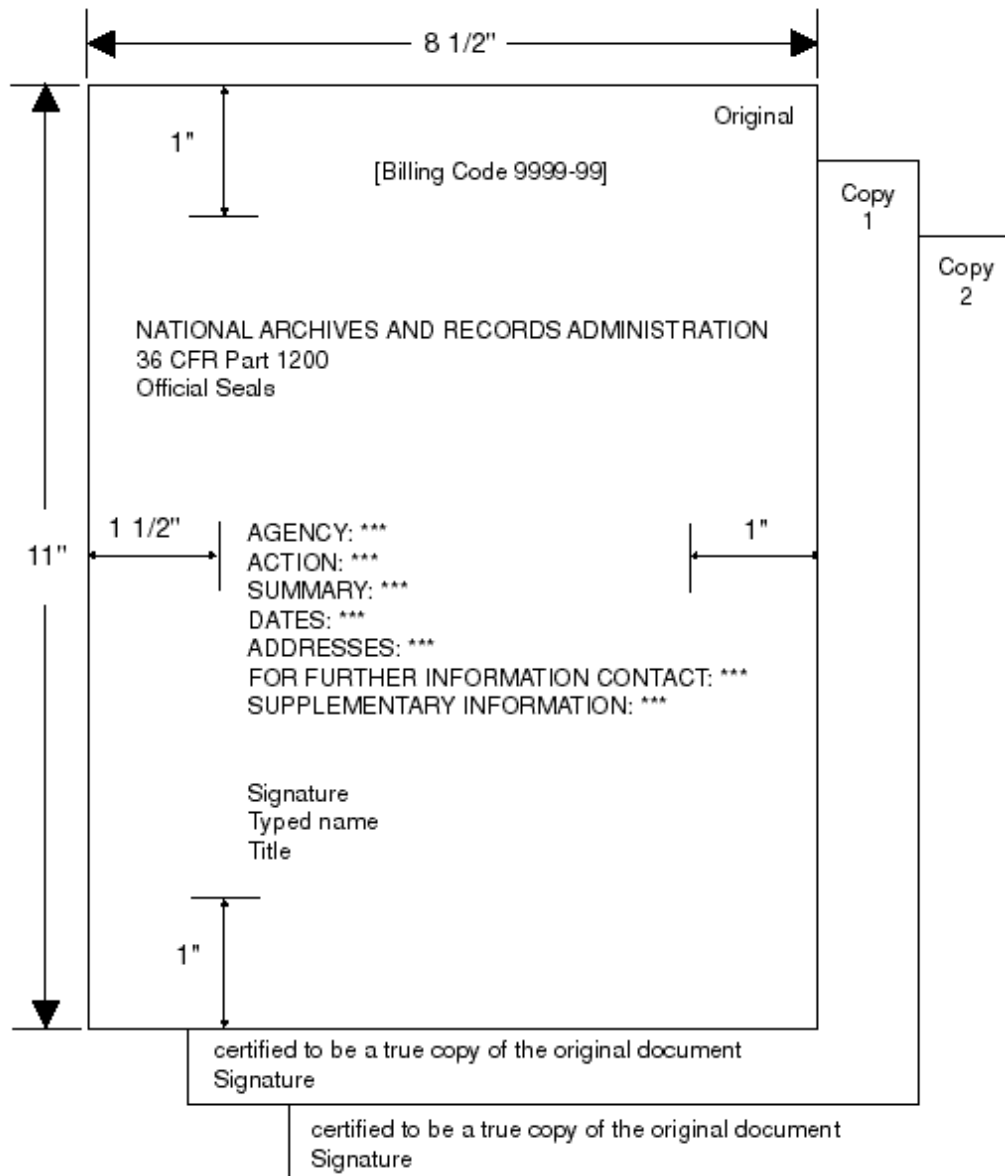
Attachment

cc: Regional OAR Division Directors  
Regional OSWER Division Directors  
Regional OW Division Directors

## Document Template

### THE DOCUMENT

- Bond paper or legible photocopy.
- Margins as shown.
- Typed name and title.
- Three originals or one original and two certified copies.
- 8 1/2" x 11"
- Double space text.
- Ink signature.





## APPENDIX D: Guidance on Preparing and Submitting Federal Register Documents

This appendix provides guidance on publishing a document in the **Federal Register**. In addition, the appendix contains model **Federal Register** notices for State program approval. These models have been prepared in **Federal Register** format for your convenience.

In preparing a document for publication in the **Federal Register**, the author(s) must observe several important formatting and editing specifications. The following sections outline and explain the most important of these document guidelines.

### 1. Federal Register Checklist

Each **Federal Register** package must include a completed **Federal Register** checklist. This two-page form consists of "yes" or "no" questions concerning the document's compliance with the following format and content requirements:

- Billing code information;
- Headings (e.g., Agency name, CFR Part, subject);
- Preamble requirements (e.g., summary of proposed action, addresses for public comment, supplementary analysis);
- Words of issuance;
- Regulatory text;
- Signature; and
- Consecutive page numbers.

**Federal Register** must also fulfill the following lay-out specifications:

- Bond paper or legible photocopy (8-1/2" x 11");
- Single-sided copies;
- One-inch margins from top, bottom, and right sides; 1-1/2-inch margin from left side;
- Double-spaced text;
- Typed name and title of signing official, in signature;
- Deliver three originals with ink signatures; the signature may not appear on a page by itself; and
- Page numbers must be consecutive and appear at the bottom of the page.

A sample **Federal Register** checklist is included in this appendix.

### 2. Typesetting Request

This one-page form (EPA Form 2340-15) includes the financial data and the approximate cost of typesetting a document submitted for publication in the Federal Register. The Management

Division Director may require certain signatures on this form. Data on the following items are also required:

- Title of rule;
- Number of manuscript page;
- Number of columns;
- Estimated cost; and
- Financial data.

The approximate cost is \$125.00 per column and \$375.00 per page in the **Federal Register**. A sample typesetting request form is included in this appendix along with instructions for completing the form.

### 3. Expedited Printing Request

If a document must be published promptly in order to meet statutory deadlines, the author(s) may submit an expedited printing request. This form is a letter requesting publication of the document at the earliest possible date or prior to a certain date, and must also justify the reason for the request. The workgroup chairman should submit the letter to the Director of the Executive Agencies Division at the Office of the Federal Register (Attn: Martha Girard; The Office of the Federal Register; National Archives and Records Services, GSA; Washington, D.C. 20408; (202) 523-5240).

## **FEDERAL REGISTER CHECKLIST FOR NOTICES, PROPOSED AND FINAL RULE DOCUMENTS**

[Attach to all documents that are to be published in the **Federal Register**. Only complete the section that applies to the document to be published. All of these questions can be answered through the Federal Register Document Drafting Handbook (DDH) ].

### **SECTION ONE: NOTICE DOCUMENTS**

(This section applies to Notice of public hearings, meetings and/or workshops, Correction Notices, Notices extending comment periods, and Notices of Availability)

Yes      No

1. Is your document classified correctly? If it is rule related, or a technical amendment it may be considered a proposed or final rule. (DDH 5-7)
2. Does your document include the required preamble elements (optional for notices): Agency Action; Summary; Dates; Addresses; For Further Information Contact; Supplementary Information? (DDH 51-55)
3. Does your summary answer the three required questions: What you're doing, Why you're doing it, and the Intended Effect of your action? (DDH 53)
4. Is the signer's name and title printed below the signature? (DDH 61)
5. Are the pages numbered consecutively?
6. Are the copies sharp, clear, and legible, especially illustrations?
7. Are you submitting the original plus 3 copies? Do your copies match? (DDH 62)

SIGNED \_\_\_\_\_

## SECTION TWO: PROPOSED AND FINAL RULES

Yes    No

1. Does your document include the required preamble elements: AGENCY, ACTION; SUMMARY, DATES, ADDRESSES, FOR FURTHER INFORMATION CONTACT, SUPPLEMENTARY INFORMATION? (DDH 12-18)
2. Does your Summary answer the three required questions: What you're doing, Why you're doing it, and the **Intended Effect** of your action? (DDH 14)
3. Have you included your **List of Subjects** (Thesaurus Terms) at the end of Supplementary Information? (DDH 18)
4. Is your Amendatory language clear and correctly worded? (DDH 25-26)
5. Is your Authority Citation your first amendment? (DDH 19)
6. Did you use the most recent version of the **CFR** and **LSA**? (DDH 26)
7. Have you included the **Table of Contents** for each entire CFR part or subpart that you are adding or amending? Do headings in the regulatory text match those in the table of contents? (DDH 36)
8. Are all CFR paragraphs given a letter or number in correct sequence? (a), (1), (i), (A) (DDH 30)
9. Is text of regulation displayed correctly (include all section headings, and place the asterisks appropriately)? (DDH 30)
10. Are the pages numbered consecutively?
11. Are your copies sharp, clear, and legible, especially illustrations?
12. Is there a new OMB control number? If so, is it mentioned in the amendatory language and set out correctly? (DDH 36)
13. Is the signer's name and title printed below the signature? (DDH 61)
14. Are you preparing a proposed and final rule? They cannot be prepared in the same document; they must be separate documents. (DDH 7)
15. Are you submitting the original plus 3 copies? Do your copies match? (DDH 62)

SIGNED \_\_\_\_\_

## TYPESETTING REQUEST FORM

Item 1 - Fill in the title of the **Federal Register** submission.

Item 2 - Include the type of submission (e.g., proposed rule, final rule).

Item 3 - Obtain number from the Agency Printing Officer. The number is supplied by the Government Printing Office.

Item 4 - To be completed by the Office of the Federal Register.

Item 5 - To be completed by the Office of the Federal Register.

Item 6 - To be completed by the Office of the Federal Register.

Item 7 - Fill in the number of pages of your regulatory document.

Item 8 - To estimate the columns: two pages of double spaced text yields one **Federal Register** column.

Item 9 - To estimate the cost: \$125.00 per **Federal Register** column; \$375.00 per **Federal Register** page; A table or graph is considered as one page.

Item 10 - Financial data should be supplied by the commitment clerk in OUST. This data must include the document control number; the account code; the object class code; and the dollar amount.

Item 11 - The program manger's signature.

Item 12 - The Federal Register designee's signature. The **Federal Register** designee is located in the Office of the Assistant Administrator for OSWER.

Item 13 - The commitment clerk for OUST (or the commitment clerk for the office paying for the publication) should sign here.

**OSWER Requirements:** The Office Director and the Assistant Administrator are also required to sign all **Federal Register** typesetting requests.

FEDERAL REGISTER TYPESETTING REQUEST																																												Requester Complete Items 8, 9, 10, 9, 10, 11, 12, and 13. Retain copy number 7 and submit the balance with manuscript copy to the Hq. Federal Register Office.																																																																			
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**EPA FORM 2340-1****PUBLICATION REVIEW RECORD AND PRINTING REQUEST**

This form has been replaced by EPA Form 2200-9

United States Environmental Protection Agency																										
PRINTING, DISTRIBUTION, AND INVENTORY			FORM CONTROL NUMBER <b>36499</b>	1. Product Number EPA-																						
2. Originator Name			Phone	Mail Code AA/Faship																						
3. Date Submitted	4. Date Required	5. Format	6. Length																							
7. Title																										
8. Issuance <input type="checkbox"/> Initial <input type="checkbox"/> Periodical—Frequency will be _____ Issues per _____ <input type="checkbox"/> Reprint—Date last printed _____ <input type="checkbox"/> Revision of existing product—Title: _____ Number: _____																										
9. Source <input type="checkbox"/> Program <input type="checkbox"/> NCEPI—Circular <input type="checkbox"/> Other (specify-38) <input type="checkbox"/> National Technical Information Service		10. Audience(s) <input type="checkbox"/> Personal <input type="checkbox"/> Students/Teachers <input type="checkbox"/> Interest Groups <input type="checkbox"/> Governmental <input type="checkbox"/> Business & Industry <input type="checkbox"/> Other _____ <input type="checkbox"/> Scientific/Technical																								
11. Catalog Description (narrative of topics covered and points made)																										
12. Size	14. Estimated Cost To Print	15. Is Overtime Authorized?	16. Pieces Submitted Camera Copy _____ Negatives _____ Other (specify-38) _____	17. Inspections <input type="checkbox"/> Blue Lines <input type="checkbox"/> Chromalins <input type="checkbox"/> Press Visit																						
13. Quantity	18. Paper Text _____ Cover _____	19. Ink Color Text _____ Cover _____	20. Run <input type="checkbox"/> One Sided <input type="checkbox"/> Head to Head <input type="checkbox"/> Other (specify-38)	21. Binding <input type="checkbox"/> Side <input type="checkbox"/> Corner <input type="checkbox"/> Saddle <input type="checkbox"/> Perfectbind <input type="checkbox"/> Other (specify-38)																						
23. Printing Completed	24. Number of Items per Mailing Piece	25. <input type="checkbox"/> Envelopes or <input type="checkbox"/> Self-mailer Envelope Size: _____ Permit Imprint? <input type="checkbox"/> Yes <input type="checkbox"/> No		26. Dist. Completed																						
27. Distribute To (name of mailing list, OR quantity of labels attached, OR source of labels)																										
28. Other Addressee/Quantity: Originator / _____ NCEPI / _____ PIC / _____ Other—_____																										
29. Mail Class: <input type="checkbox"/> First <input type="checkbox"/> Third <input type="checkbox"/> Fourth <input type="checkbox"/> Special Fourth <input type="checkbox"/> UPS <input type="checkbox"/> Bulk Rate <input type="checkbox"/> Overnight <input type="checkbox"/> Custom Design (pouch) <input type="checkbox"/> Internal																										
30. Est. Postage Cost	31. Distribution/Mail Plan Approved (Signature and Date)			32. Mailing Completed																						
33. Funding Numbers (Printing) <table border="1"><thead><tr><th>DCR (Max 8)</th><th>Budget FY (Max 4)</th><th>Appropriation Code (Max 6)</th><th>Budget Org Code (Max 7)</th><th>Program Element (Max 9)</th><th>Object Class (Max 4)</th></tr></thead><tbody><tr><td>Amount</td><td>(Dollars)</td><td>(Cents)</td><td>Elig Project (Max 8)</td><td>Cost Org Code (Max 7)</td><td></td></tr></tbody></table> <table border="1"><thead><tr><th>Amount</th><th>(Dollars)</th><th>(Cents)</th><th>Elig Project (Max 8)</th><th>Cost Org Code (Max 7)</th></tr></thead><tbody><tr><td></td><td></td><td></td><td></td><td></td></tr></tbody></table> <div style="float: right; border: 1px solid black; padding: 5px; margin-top: 10px;">SFO</div>					DCR (Max 8)	Budget FY (Max 4)	Appropriation Code (Max 6)	Budget Org Code (Max 7)	Program Element (Max 9)	Object Class (Max 4)	Amount	(Dollars)	(Cents)	Elig Project (Max 8)	Cost Org Code (Max 7)		Amount	(Dollars)	(Cents)	Elig Project (Max 8)	Cost Org Code (Max 7)					
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34. Commitment Clerk (Funds are available for printing.) Name: _____ Signature: _____ Date: _____																										
35. Additional Approval Name: _____ Signature: _____ Date: _____																										
36. Product Review Officer (Certification of compliance. See reverse.) Name: _____ Signature: _____ Date: _____																										
37. Inventory Control—PRC, OCEPA Signature: _____ Date: _____																										
OR, Exempt due to: <input type="checkbox"/> <1000 <input type="checkbox"/> < 6 months <input type="checkbox"/> Fed Reg <input type="checkbox"/> Press <input type="checkbox"/> Testimony <input type="checkbox"/> Memos <input type="checkbox"/> Internal AV <input type="checkbox"/> I.G./CERL																										
38. Comments & Special Instructions																										

EPA Form 2200-9 (4/95)

Replaces EPA Form 2200-5 and EPA Form 2340-1 which are obsolete

Copy 1 - Printing Management

## Guidance For Completing EPA Form 2200-9

This form serves three functions: (1) ordering printing for all EPA publications and other printed items; (2) ordering distribution services for all publications, software, videos, and audiovisual packages; and (3) to ensure that all public-information products--including software, videos, exhibits, posters, etc.--are listed in Agency catalogs and databases as appropriate. This form replaces EPA forms 2340-1 and 2200-5. For most publications, all unshaded blocks should be completed (shaded blocks will be completed by the units processing the form.) If all copies of the product are to be returned to the originator, so indicate in block 29 and do not fill in blocks 25 and 28. for non-print products, leave blocks 15 through 23 empty. If a product is exempt from the inventory system (see qualifications below) then blocks 9 through 12 and block 37 may be ignored. The qualifications for exemption to the inventory system are: (a) printing runs of less than 1000 copies; (b) items that will be out-of-date within six months; (c) Federal Register notices; (d) press releases from an authorized public affairs office; (e) Congressional and hearing testimony; (f) documents published by C.E.R.I.; (g) internal correspondence, memoranda, and audiovisual aids; and (h) products from the Office of Inspector General. Claims for exemptions under these qualifications should be made in block 38.

### What Goes in Each Block

1. Numbers for all EPA products are assigned by the EPA Publications and Information Center in Cincinnati. Call 513-569-7980.

4. The desired date for completion of distribution/mailing.

5. Use one of the following format terms. **"Flyer"** (a single sheet of paper with type placed without regard for any folds), **"Leaflet"** (a single, folded sheet with type placed in columns between the folds), **"Pamphlet"** (two or more bound-usually stapled-sheets without a separate cover), **"Booklet"** (any number of bound sheets with a cover made of paper different in weight, finish, or color from the inside pages), **"Poster"** (a single sheet intended for wall-mounting or similar public display), **"Slides"** (sets of mounted 35mm transparencies, with or without scripts and soundtracks), **"Vu-Graphs"** (sets of overhead transparencies), **"Videotape"** (used for tapes alone and for packages that include videotapes), **"Audiotape"** (may or may not be accompanied by a script or publication), **"Film"** (movies), **"CD-ROM"** (Compact Disk-Read Only Memory), **"CD-I"** (Interactive Compact Disk), **"Microfilm"**, **"Microfiche"**, **"Floppy Disk"**, or **"Exhibit"**. If none of these terms seems to fit, call 260-6663 for assistance.

6. For publications, length equals the number of pages. For tapes and film, length is time. for transparencies and microfilm/fiche this is number in package. For computer disks, give length in bytes. For exhibits, give width and depth.



9. The box(es) checked under source will tell your potential audience where to obtain your product. If your source isn't listed, give details in item 38.

10. Describe the intended audience in terms of educational level (i.e., children, average citizen, or college graduate), degree of subject knowledge (i.e. none, general, or skilled), and involvement (i.e. business/financial, special-interest group, governmental, or personal).

11. Describe the product in a concise paragraph using full sentences that clearly give a catalog reader enough information to decide whether to order or seek out the product.

12. four to six terms to help categorize the product.

13. for publications, size is the dimensions of the folded product. For leaflets, size typically will be 4" x 9". Pamphlets and booklets may be 4" x 9", 5-5/8" x 8-3/4", or 8-1/2" x 11". For videotapes, size is type: VHS, 3/4", 1", etc. For audiotapes size means cassette, reel, etc. For film: 16mm, 8mm, etc. for computer disks: 3-1/2" or 5-1/4". For an exhibit, size is either table-top or free-standing.

14. Number of individual units to be produced. For exhibits, indicate expected number of showings per year and useful life in years.

15 "Camera Copy" refers to the quantity of physically separate boards or pages of mechanicals. "Other" may include photographs or illustrations not attached to the mechanicals.

16. Do not include the color of the paper stock. For example, black ink on blue paper is a one-color process. If color photos are to be printed naturally, write "four-color" or "full-color".

17. Give the weight, color, and grade of the text paper and, if different, of the cover stock. "**Weight**" is a measure of paper's thickness or density expressed as the weight of 500 sheets. (Note: Since cover stock is manufactured in smaller sheets than text stock, 50-lb cover paper is thicker than 50-lb text paper.) The typical leaflet is printed on 40-lb, offset. If using in-house printing, simply specify "bond". The typical booklet cover is 50-lb vellum. Available Paper "**colors**" are limited by GPA specifications and contracts and exact matches are often impossible. Therefore, if an exact color is desired as a backdrop to a title, it must be ordered as an ink color painted over white paper. Otherwise, keep the orders simple, such as "light-blue". Paper "**grade**" is an indication of a paper's strength and finish (i.e., offset or vellum). A typical entry might be: "60lb/white/offset."

18. "Blue lines" are prints (blue color on white) made from the prepared negatives that can be returned run the printing plant for your inspection. "Chromal"(a.k.a. "Colorkeys") can be prepared to show an approximation of the color saturation and balance of photographs as they will be printed. "Press Inspections" require your presence at the printing plant when the first sheets come off the presses. Any of these steps might affect the time and cost to print.

19. The items under "Run" are not exclusive; check as many as apply. "Head-to-head" means both sides of the page are oriented in the same direction (as in almost all publications).

20. Stitching uses staples, either twice along the left edge ("side stitch"), once in the upper left ("corner stitch") or through the middle fold ("saddle stitch"). Thick publications are often "perfect bound" on the edge with glue.

21. Punches are self-explanatory. Perforations/scores must be carefully explained in block 38 or on a separate sheet.

22. For estimated cost, consult with Printing Management. No cost if job is printed in-house without overtime.

23. Overtime can as much as triple the printing cost.

28. If labels will be delivered separately, give source's name and telephone number.

29. Should account for all units (from #14) not listed in #28.

34 & 35. Funding information is not needed if the job will be printed in-house. Mailing is funded through a separate, charge-back system.

36. The Product Review Officer (PRO) is the person in each program/regional office who has been designated by the AA/RA to handle the EPA Product-Review process. By signing in this space, the PRO is certifying that the following are true:

- The content of the publication or other information product is accurate and conforms to Agency policy, and the expenditure of resources for its production has been approved by Program/Regional management.
- When appropriate, the item has undergone Product Review.
- The product is being produced in accordance with all applicable and pertinent Agency rules and guidelines.

Except for exempt cases (see first paragraph) this form (not the product) shall be sent by the Product Review Officer to the Publication Review Coordinator for signature prior to production. To speed the printing process, the PRC may establish a system that allows regional Printing Control Officers to accept this form from non-HQ PROs without PRC's signature.

## APPENDIX E: Sample Transmittal Letters to the Office of the Federal Register

Martha L. Girard, Director  
Office of the Federal Register  
National Archives and Records Administration  
Washington, DC 20408

Dear Ms. Girard:

Enclosed is a package containing a **Federal Register** notice to codify approval of the underground storage tank program of the State of Vermont. Also enclosed is a copy of the material to be incorporated by reference. Our office requests that the Director incorporate by reference the enclosed statutes and regulations of the State of Vermont into 40 CFR Section 282.95. This incorporation by reference will substantially reduce the volume of material that will need to be published in the **Federal Register**.

These materials are available to the public and copies may be inspected at the U.S. EPA Region I Library, 1 Congress Street, 11th floor, Boston, MA 02203, the EPA OUST Docket at 401 M Street, SW, Washington, DC 20460, the office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC, or at the Underground Storage Tank Program, Vermont Department of Environmental Conservation, 103 South Main Street, West Building, Waterbury, VT 05676.

Any questions or comments regarding this incorporation by reference should be addressed to Joan Coyle, U.S. EPA Region I, (617) 573-9667.

Sincerely yours,

[Insert Name]

Division Director  
Division of Solid Waste  
U. S. EPA Region I  
JFK Federal Building  
Boston, MA 02203-2211

Enclosures

Ms. Martha Girard, Director  
Office of the Federal Register  
National Archives and Records Administration  
Washington, DC 20408

Dear Ms. Girard:

This letter is to certify that the disk furnished with  
Underground Storage Tank Program; Approved State Program for New  
Hampshire, FRL- , is a true copy of the original  
signed document, and it should be used by GPO in preparing the  
document for publication.

Thank you,

Jerry Parker  
Environmental Protection Specialist  
Office of Underground Storage Tanks  
Phone (703) 603-7167

## **APPENDIX F: List of CFR Sections Reserved For Approved State Programs**

Alabama - § 282.50  
Alaska - § 282.51  
Arizona - § 282.52  
Arkansas - § 282.53  
California - § 282.54  
Colorado - § 282.55  
Connecticut - § 282.56  
Delaware - § 282.57  
District of Columbia - § 282.58  
Florida - § 282.59  
Georgia - § 282.60  
Hawaii - § 282.61  
Idaho - § 282.62  
Illinois - § 282.63  
Indiana - § 282.64  
Iowa - § 282.65  
Kansas - § 282.66  
Kentucky - § 282.67  
Louisiana - § 282.68  
Maine - § 282.69  
Maryland - § 282.70  
Massachusetts - § 282.71  
Michigan - § 282.72  
Minnesota - § 282.73  
Mississippi - § 282.74  
Missouri - § 282.75  
Montana - § 282.76  
Nebraska - § 282.77  
Nevada - § 282.78  
New Hampshire - § 282.79  
New Jersey - § 282.80  
New Mexico - § 282.81  
New York - § 282.82  
North Carolina - § 282.83  
North Dakota - § 282.84  
Ohio - § 282.85  
Oklahoma - § 282.86  
Oregon - § 282.87  
Pennsylvania - § 282.88  
Rhode Island - § 282.89  
South Carolina - § 282.90  
South Dakota - § 282.91  
Tennessee - § 282.92  
Texas - § 282.93  
Utah - § 282.94  
Vermont - § 282.95  
Virginia - § 282.96  
Washington - § 282.97

West Virginia - § 282.98  
Wisconsin - § 282.99  
Wyoming - § 282.100  
Guam - § 282.101  
Puerto Rico - § 282.102  
Virgin Islands - § 282.103  
American Samoa - § 282.104  
Commonwealth of the Northern Mariana Islands - § 282.105

## **APPENDIX G: Sample Incorporation By Reference Binders (New Hampshire)**

Appendix G-1: New Hampshire Statutory Requirements Applicable to the Underground Storage Tank Program, 1993 40 CFR 282.79 .....	G-2
Appendix G-2: New Hampshire Revised Statutes; Annotated Titles 10,11: Public Health to Hospitals and Sanitaria, Chapters 125 to 152, 1992, Cumulative Supplement (For Use Until Publication of 1993 Cumulative Supplement) .....	G-20
Appendix G-3: New Hampshire Regulatory Requirements Applicable to the Underground Storage Tank Program, 1993 40 CFR 282.79 .....	G-34
Appendix G-4: New Hampshire Code of Administrative Rules (Env-Ws 412): Reporting and Remediation of Oil Discharges .....	G-58

**APPENDIX G-1**

**SAMPLE INCORPORATION BY REFERENCE BINDERS  
(NEW HAMPSHIRE)**

**NEW HAMPSHIRE STATUTORY REQUIREMENTS  
APPLICABLE TO THE UNDERGROUND STORAGE TANK  
PROGRAM, 1993 40 CFR 282.79**



## **TABLE OF CONTENTS**

### **Statutory Provisions**

New Hampshire Revised Statutes Annotated 1955, 1990 Replacement Edition, and 1992 Cumulative Supplement, Chapter 146-C, Underground Storage Facilities

146-C:1 Definitions, except for the following words in 146-C:1. XII, "heating or"

146-C:2 Discharges Prohibited

146-C:3 Registration of Underground Storage Facilities

146-C:4 Underground Storage Facility Permit Required

146-C:5 Records Required; Inspections

146-C:6 Transfer of Ownership

146-C:6a Exemption

146-C:7 New Facilities

146-C:8 Prohibition Against Reusing Tanks

146-C:9 Rulemaking

146-C:11 Liability for Cleanup Costs; Municipal Regulations

146-C:12 Federal Assistance and Private Funds

**NEW HAMPSHIRE**  
**REVISED STATUTES**  
**ANNOTATED**  
**1955**

**1990 REPLACEMENT EDITION**  
**Titles 10, 11**  
**Chapters 125-152**

## **CHAPTER 146-C**

### **UNDERGROUND STORAGE FACILITIES**

146-C:1 Definitions.

146-C:2 Discharges Prohibited.

146-C:3 Registration of Underground Storage Facilities.

146-C:4 Underground Storage Facility Permit Required.

146-C:5 Records Required: Inspections.

146-C:6 Transfer of Ownership.

146-C:6-a Exemption.

146-C:7 New Facilities.

146-C:8 Prohibition Against Reusing Tanks.

146-C:9 Rulemaking.

146-C:9-a Orders: Injunctions.[NOT PROVIDED]

146-C:10 Penalty.[NOT PROVIDED]

146-C:10-a Administrative Fines.[NOT PROVIDED]

146-C:11 Liability for Cleanup Costs: Municipal Regulations.

146-C:12 Federal Assistance and Private Funds.

### **CROSS REFERENCES**

Oil discharge and disposal cleanup fund, see RSA 146-D.

Oil spillage in public waters, see RSA 146-A.

Petroleum inventories reporting, see RSA 339-D.

Sale of liquid fuels, see RSA 339-B.

### **LIBRARY REFERENCES**

New Hampshire Code of Administrative Rules

Rules of the Water Supply and Pollution Control Commission, Ws 411.01 et seq.,

New Hampshire Code of Administrative Rules Annotated.

West Key Number Health and Environment < = 25.5(5.5) CJS

Health and Environment § 131. ALR

Gasoline or other fuel storage tanks as nuisance. 50 ALR3d 209.

Liability for pollution of subterranean waters. 38 ALR2d 1265.

Maintainability in state court of class action for relief against air and water pollution, 47 ALR3d 769.

Right to maintain action to enjoin public nuisance as affected by existence of pollution control agency. 60 ALR3d

Standing to sue for violation of state environmental regulatory statute. 66 ALR4th 685.

Validity and construction of anti-water pollution statutes and ordinances. 32 ALR2d 215

**146-C:1 Definitions.** In this chapter:

- I. "Division" means the New Hampshire division of water supply and pollution control.
- II. "Discharge" means the release or addition of any liquid to land, groundwaters or surface waters.
- III. "Disposal" means deposit, discharge, injection, dumping, spilling, leaking, leaching, or placing of oil into or on any land, groundwater or surface water.
- IV. "Existing facility" means a facility the construction or installation of which began prior to September 17, 1985.
- V. "Facility" means a system of tanks, pipes, pumps, vaults, fixed containers, and appurtenant structures, singly or in any combination, which are used or designed to be used for the storage, transmission, or dispensing of oil or petroleum liquids, and which are within size, capacity, and other specifications prescribed by rules adopted by the division pursuant to RSA 146-C:9, VI.
- VI. "Failure" means a condition which may or does allow the uncontrolled passage of liquid into or out of a facility, and includes, but is not limited to, a discharge to the waters of the state without a permit issued pursuant to RSA 146-C:4.
- VII. "Groundwaters" means all areas below the top of the water table, including aquifers, wells, and other sources of groundwater.
- VIII. "Life expectancy" means the time period within which a failure is not expected to occur as determined by the division.
- IX. "Liquid" means oil and petroleum liquids.
- X. "New facility" means a facility the construction or installation of which begins on or after September 17, 1985, including, but not limited to, facilities which replace existing facilities, facilities which are moved from one location to another, and facilities which are substantially modified after September 17, 1985.
- XI. "Nonresidential", when referring to a facility, means a facility which serves any commercial, industrial, institutional, but not including non-commercial residential buildings.
- XII. "Oil" means petroleum products and their by-products of any kind and in any form, including, but not limited to, petroleum, fuel, sludge, crude, and all other liquid hydrocarbons regardless of specific gravity and which are used as motor fuel, lubricating oil, or any oil used for processing. The term "oil" shall not include natural gas, liquefied petroleum gas, or synthetic natural gas, regardless of derivation or source.
- XIII. "Operator" means the person who has responsibility for the care, custody, and control of the daily operation of a facility.
- XIV. "Owner" means the person in possession of or having legal ownership of a facility. In addition, for facilities no longer in use on November 8, 1984, "owner" includes the person having had legal ownership of such facility immediately prior to discontinuance of its use.
- XV. XIV-a. "Person" means any individual, trust firm, joint stock company, corporation (including a government corporation), partnership, association, state and agencies thereof, municipality, commission, political subdivision of a state, interstate body, consortium, joint venture, commercial entity, the United States government and agencies thereof, and any other legal entity. The term "person" shall not include a person who, without participating in the management or actual operation of the facility, and otherwise not engaged in petroleum production, refining, or marketing, holds indicia or ownership primarily to protect a mortgage on real property on which a facility is located or a security interest in personal property located at the facility.
- XVI. "Residential building" means any house, apartment, trailer, manufactured housing, or other structure occupied by individuals as a domicile.
- XVII. "Substantial modification" means the construction or installation of any addition to a facility or any restoration or renovation of a facility which: increases or decreases the on-site storage capacity of the facility; significantly alters the physical configuration of the facility; or impairs

or improves the physical integrity of the facility or its monitoring systems. On-site abandonment is specifically excluded as a "substantial modification" of a facility.

- XVIII. "Surface water" means streams, lakes, ponds, and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, watercourses, and other bodies of water natural or artificial.
- XIX. "Underground storage facility" means a facility or facility component that is 10 percent or more below the surface of the ground and is not fully visible for inspection.

## HISTORY

Source, 1986, 182:1. 1988, 249:1-3. eff. June 29, 1988.

**Amendments-1988.** Paragraph II: Substituted "release or addition" for "disposal, addition, or injection" preceding "of any liquid to", inserted "land" thereafter and deleted "from any designed conveyance system, including, but not limited to, pipe, ditch, channel, tunnel, conduit, well, fissure, container, or tank, as well as any designed leachate disposal system" following surface water". Paragraph III: Inserted "spilling, leaking, leaching" preceding "or placing" "groundwater" following "on any land", "surface" preceding "water" and deleted "so that such waste or any constituent hereof may enter surface or groundwater" thereafter. Paragraph XIII: Deleted "or political subdivision" preceding "who has responsibility". Paragraph XIV: Deleted "or political subdivision" preceding "in possession" in the first sentence and added the second sentence. Paragraph XIV-a: Added. Revision note. Substituted "division" for "commission" in pars. I and VIII and "division of water supply and pollution control commission" in par. I pursuant to 1986, 202-6, II.

**146-C:2 Discharges Prohibited.** No owner or operator shall discharge or dispose of any oil as defined in the chapter from any facility into or onto land, groundwaters, or surface waters of the state.

#### HISTORY

Source. 1986, 182:1. 1988, 249:4, eff. June 29, 1988. Amendments-1988. Inserted "into or onto land" following "from any facility", deleted "to the surface waters or" preceding "groundwaters" and inserted "or surface waters" thereafter.

#### CROSS REFERENCES

Liability for cleanup and restoration cost. section 146-C:11.

### **146-C:3 Registration of Underground Storage Facilities.**

- I. The owner of each existing underground storage facility shall register the facility with division on forms provided by the division and shall provide the following information:
  - a. Facility name, location, and mailing address.
  - b. Owner's name, mailing address, and telephone number.
  - c. Contact person for this facility.
  - d. Tank information: the size, age, type of tank material, location (on-site), and oil product stored.
  - e. Demonstration of financial responsibility pursuant to rules adopted under RSA 146-C:9, VII. Proof of eligibility for financial assistance under RSA 146-D shall satisfy the requirement of demonstration of financial responsibility under this subparagraph.
- II. The owner of each existing underground storage facility shall register the facility with the division on forms provided by the division, and shall provide the following information to the extent that it may reasonably be available to the owner:
  - a. Results of previous tank testings conducted in accordance with division rules, including documentation of test result.
  - b. All previous owners and lessees with names and current addresses.
  - c. A detailed description of the facility; the size of tanks (physical dimensions), number of fill boxes, number and type of fittings attached to tanks, complete description of underground piping system, type of cathodic protection, date each tank was manufactured, installed, relined, and inspected, and tank manufacturer, and the date and results of the latest tightness test of all underground tanks.
  - d. The estimated life expectancy of all inground tanks and appurtenances.
  - e. Description and date of past discharges or disposal of petroleum based products, remedial actions, ground and surface water monitoring results, and closure plans.
  - f. Detailed site plan and layout.
  - g. Existing groundwater protection monitoring programs, if any.
- III. The owner of a registered underground storage facility shall report any changes in the information provided under paragraph I or II within 10 days of the change.
- IV. The registration required under this section shall be renewed every 5 years. A registration need not be renewed if the division has received written notice that the registered underground storage facility has been closed by approved procedures according to rules adopted pursuant to RSA 146-C:9, II(i). Any notice of closure shall include to date of such closure.
- V. The division shall forward information compiled under this section to the federal Environmental Protection Agency pursuant to 42 U.S.C. 6991a(c).

#### **HISTORY**

Source. 1986, 182:1. 1988, 249:5, 6. eff. June 29, 1988. Amendments-1988, Paragraph I(e): Added. Paragraph V: Added. Revision note. In the introductory clauses of pars. I and II, in par. II(a) and in the second sentence of par. IV, substituted "division" for commission pursuant to 1986. 202:6, II.

Contingent 1988 amendment. 1988. 249:19 provided for amendment of this section. However, under the terms of 1988. 249:21, eff. June 29, 1988, the amendment did not take effect.

#### **CROSS REFERENCES**

Exempt facilities, see RSA 146-C:6-a.



#### **146-C:4 Underground Storage Facility Permit Required.**

- I. No person shall own or operate an underground storage facility in this state without a permit issued by the division. The division may revoke or modify any permit following a hearing, upon a finding the just cause exists for such action.
- II. The division shall issue or deny a permit to all facilities registered under RSA 146-C:3 within 90 days of the receipt of the complete registration information. A permit issued under this section shall be displayed on the premises of the underground storage facility at all times. Permits shall be valid for a period of 5 years.

#### **HISTORY**

Source. 1986, 182:1, eff. May 28, 1986.

Revision note. References to "water supply and pollution control commission" in the first sentence of par. I and to "commission" in the second sentence of that paragraph and in the first sentence of par. II changed to "division" pursuant to 1986, 202:6, II.

#### **CROSS REFERENCES**

Exempt facilities, see RSA 146-C:6-a.

Penalty for operation of facility without permit see RSA 146-C:10.

Transfer of ownership, see RSA 146-C:6.

#### **146-C:5 Records Required; Inspections.**

- I. The operator of an underground storage facility shall keep and reconcile accurate stock inventory records for the purpose of detecting leaks. The records shall be maintained and made available for division inspection and copying for a period of not less than 3 years.
  - II. For the purpose of developing or assisting in the development of any rule, conducting any study, instituting any corrective measures, or enforcing the provisions of this chapter, any owner or operator of a facility subject to regulation under this chapter shall, upon request of any employee or authorized representative of the division, furnish information relating to such facility or its contents, conduct monitoring or testing, permit such employee or authorized representative at all reasonable times to have access to and to copy all records relating to such facility, and permit such employee or authorized representative to have access to the facility for corrective measures.
  - III. For the purpose of developing or assisting in the development of any rule, conducting any study, instituting corrective measures, or enforcing the provisions of this chapter, division employees or authorized representatives may, upon the presentation of appropriate credentials:
    - a. Enter at reasonable times any site where a facility regulated under this chapter is located.
    - b. Inspect and obtain samples from any person of any regulated substances in such facility.
    - c. Conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water or groundwater.
    - d. Institute corrective measures.
- Information obtained by the division under this chapter which, in the judgment of federal Environmental Protection Agency or the division, constitutes a trade secret shall not be disclosed to the public without notice to the owner of the trade secret and an opportunity for hearing. The division may provide information relating to trade secrets to the Environmental Protection Agency, provided that the Environmental Protection Agency guarantees the same degree of confidentiality as does the division.

#### **HISTORY**

Source. 1986, 182:1. 1988, 249:7, 8, eff. June 29, 1988. Amendments-1988. Paragraph II: Amended generally. Paragraph III: Added. Paragraph IV: Added. Revision note. In the second sentence of par. I and the first sentence of par. II, substituted "division" for "commission" pursuant to 1986, 202-6, II.

#### **CROSS REFERENCE**

Exempt facilities, see RSA 146-C:6-a

Liability of owner for recordkeeping, see RSA 146-C:10.

**146-C:6 Transfer of Ownership.** Prior to the transfer of ownership of an underground storage facility, the transferor shall notify the transferee of the transferor's compliance with the rules of the division relative to tank testing and replacement. When a transfer of ownership takes place, the new owner shall notify the division of the transfer and shall assume the permit issued to the previous owner.

#### HISTORY

Source. 1986, 182:1, eff. May 28, 1986.

Revision note. Reference to "commission" preceding "relative" in the first sentence and following "notify the" in the second sentence changed to "division".

#### CROSS REFERENCES

Exempt facilities, see RSA 146-C:6-a.

**146-C:6-a Exemption.** The provision of RSA 146-C:3, 4, 5, I and 6 shall not apply to facilities no longer in use on January 1, 1974. The provisions of RSA 146-C:4, 5, I and 6 shall not apply to facilities taken out of use on or after January 1, 1974, and closed according to rules adopted under RSA 146-C:9, II(I).

#### HISTORY

Source. 1988, 249:9, eff. June 29, 1988.

## **146-C:7 New Facilities**

- I. Prior to commencing construction or installation of a new facility or substantial modification of an existing facility, an owner shall submit plans and specifications to the division and obtain written approval of those plans. Such plans shall be approved by an engineer licensed to practice in the state of New Hampshire on forms provided by the division. Within 90 days of submission of completed plans, the division shall send the owner written notice of approval or disapproval. Failure to send a notice shall be deemed to be approval of the plans.
- II. An owner shall not cause or allow any act which is not in accordance with the approved plans and all terms and conditions of the division's approval of those plans.
- III. An owner shall demonstrate financial responsibility pursuant to rules adopted under RSA 146-C:9, VII. Proof of eligibility for financial assistance under RSA 146-D shall satisfy the requirement of demonstration of financial responsibility under this paragraph.

### **HISTORY**

Source. 1986, 182:1. 1988, 249:10 eff. June 29, 1988. Amendments-1988. Paragraph III: Added. Revision note. Reference to "commission throughout par. I and to "commission's" in par. II changed to "division" and "division's", respectively, pursuant 1986, 202:6, II.

Contingent 1988 amendment. 1988, 249:20 provided for amendment of this section. However, under the terms of 1988, 249:21 eff. June 29, 1988, the amendment did not take effect.

### **CROSS REFERENCES**

Issuance of permits, see RSA 146-C:4.

**146-C:8 Prohibition Against Reusing Tanks.** Tanks which are removed and do not meet the standards for new tanks shall not be reinstalled for the purpose of petroleum storage. If a tank meets the standards, it may be reinstalled for petroleum storage if after thorough cleaning and inspection, internally and externally, it is found to be structurally sound and free of pinholes, cracks, structural damage, or excessive corrosion, Such tanks shall be reinstalled in accordance with requirements of this chapter, A tank once used for petroleum shall not be reused for a food product. If a tank is to be disposed of as junk, it must be retested or petroleum vapors, rendered vapor free if necessary, and punched with holes to make it unfit for further use.

#### HISTORY

Source. 1986, 182:1, eff. May 28, 1986.

**146-C:9 Rulemaking.** The division shall adopt rules, under RSA 541-A, relative to:

- I. Procedures, forms, and information required to registration of underground storage facilities, as authorized by RSA 146-C:3.
- II. Procedures, forms, and criteria for issuing and renewing permits, as authorized by RSA 146-C:4. Criteria for permits shall include, but not be limited to:
  - a. Minimum standards for repairing an underground steel tank.
  - b. Tank replacement schedules.
  - c. Tank testing schedules.
  - d. Minimum standards for new underground tanks.
  - e. Standards for fiberglass, fiberglass clad, and steel tanks.
  - f. Standards for leak monitoring at underground storage facilities.
  - g. Minimum standards for secondary containment for underground storage facilities.
  - h. Minimum standards for piping systems at underground storage facilities.
  - i. Procedures for the temporary and permanent closure of underground storage facilities.
  - j. Technical and procedural alternatives and exemptions.
- III. Requirements for recordkeeping, as authorized by RSA 146-C:5, I.
- IV. Procedures for conducting inspections, as authorized by RSA 146-C:5, II.
- V. Procedures, forms, and criteria for approving plans for new underground storage facility construction and installation, as authorized by RSA 146-C:7.
- VI. Criteria for determining what constitutes a facility under this chapter including, but not limited to, tank size and capacity.
- VII. Criteria for demonstrating financial responsibility for ownership and operation of underground storage facilities.
- VIII. Acceptance and distribution of funds from the leaking underground storage tank trust fund established pursuant to 26 U.S.C. section 9508.

#### HISTORY

Source. 1986, 182:1. 1988, 249:11, eff. June 29, 1988. Amendments-1988. Paragraph VII: Added. Paragraph VIII: Added. Revision note. In the introductory clause, substituted "division" for "commission" pursuant to 1986, 202:6, II. Adoption of rules relative to financial responsibility and federal funds. 1988, 249:17, eff. June 29, 1988, provided: "Notwithstanding any section of this act, the division of water supply and pollution control shall not issue rules pursuant to RSA 146-C:9, VII as inserted by section 11 of this act until the U.S. Environmental Protection Agency has issued its final rules relative to financial responsibility for ownership and operation of underground storage facilities. The division shall adopt such rules not later than 90 days after the issuance of such final federal rules. The rules adopted by the division pursuant to RSA 149-C:9, VII and VIII shall not be more stringent than the federal rules.

#### CROSS REFERENCES

Adoption of rules relating to administrative fines, see RSA 146-C:10-a. 146-C:12

#### LIBRARY REFERENCES

West Key Number Health and Environment < = 25.5  
CJS Health and Environment § 137.

#### **146-C:11 Liability for Cleanup Costs; Municipal Regulations.**

- I. Any owner or operator or other person who directly or indirectly causes or suffers the discharge or disposal of oil into or onto any surface water or groundwater of this state, or in a land area where oil has seeped or may or will ultimately seep into any surface water or ground water of the state in violation of this chapter, or rules adopted under this chapter, shall be strictly liable for the costs directly or indirectly resulting from the violation relating to:
  - a. Containment of the discharged oil;
  - b. Cleanup and restoration of the site and surrounding environment, and corrective measures as defined under RSA 146-A:11-a, III(a) and (b); and
  - c. Removal of the oil.

I-a. The owner of operator of a facility shall immediately inform the division of any discharge or disposal in violation of this chapter. Such person shall take immediate action to mitigate damages from such discharge consistent with any applicable rules of the division. If the owner is not the operator of the facility, the operator shall immediately inform the owner of any discharge or disposal in violation of this chapter.

- II. Nothing in this chapter shall be construed to prevent the party strictly liable from instituting a legal action against any party responsible for causing the spillage for costs incurred by the strictly liable party in complying with this chapter.
- III. Nothing in this chapter shall be construed to pre-empt local zoning or other regulations, properly enacted under other statutes, which reasonably regulate to location of underground storage facilities.
- IV. The division shall immediately notify the governing body of a municipality of any leaking underground storage tanks either within the municipality or near the local water supply.
- V. [Repealed.]

#### **HISTORY**

Source. 1986, 182:1. 1987, 377:4, 6. 1988. 249:14. 15, eff. June 29, 1988; 271:9. VII, eff. July 1, 1988.

Amendments-1988. Paragraph I: Chapter 249 inserted "or disposal" following "discharge" in the introductory paragraph. Paragraph I-a: Added by ch. 249. Paragraph V: Repealed by ch. 271. 202:6, II. - 1987. Paragraph I(b): Inserted "and corrective measures as defined under RSA146-A:11-a, III(a) and (b) "following" environment". Paragraph V: Added. Revision not. In par. I, substituted "surface water or groundwater" for "surface or ground water" to conform terminology to proper grammatical usage. At the beginning of par. IV, substituted "division" for "commission" pursuant to

#### **CROSS REFERENCES**

Liability for contamination by hazardous materials or toxic wastes of police, fire, emergency preparedness or emergency response equipment, see RSA 154:8-a.



**146-C:12 Federal Assistance and Private Funds.** To implement this chapter, the division is authorized on behalf of the state, with the approval of the governor and council, to apply for and accept any federal assistance which may become available for the purpose of this chapter, whether in the form of loan or grant or otherwise, to accept the provision of any federal legislation for such assistance, to enter into, act, and implement contracts in connection with such assistance, or to act as agent for the federal government in connection with such assistance. The division shall adopt rules pursuant to RSA 541-A for accepting and distributing funds from the leaking underground storage tank trust fund established by 26 U.S.C. section 9508. Pending adoption of such rules, where federal assistance is made available, the project shall be implemented in accordance with applicable federal law, the regulations adopted under such law, and the contract or contracts providing for federal assistance, notwithstanding any contrary provision of state law. The division may also utilize any private funds which may be made available for the purposes of this chapter.

#### HISTORY

Source, 1986, 182:1. 1988, 249:16, eff. June 29, 1988.

""""""""""Amendments-1988. Rewrote the first sentence, added the second sentence and inserted "pending adoption of such rules" preceding "where federal" and substituted "implemented" for "carried out" preceding "in accordance" and "adopted under such law" for "thereunder" following "the regulations" in the third sentence. Revision note. In the first and third sentences, substituted "division" for "commission" pursuant to 1986, 202-6, II.

## **APPENDIX G-2**

### **SAMPLE INCORPORATION BY REFERENCE BINDERS (NEW HAMPSHIRE)**

**NEW HAMPSHIRE REVISED STATUTES; ANNOTATED TITLES 10,11: Public Health to Hospitals and Sanitaria, Chapters 125 to 152, 1992, Cumulative Supplement (For Use Until Publication of 1993 Cumulative Supplement)**

**NEW HAMPSHIRE REVISED STATUTES ANNOTATED  
TITLES 10, 11 PUBLIC HEALTH TO  
HOSPITALS AND SANITARIA Chapters 125 to 152  
1992**

**CUMULATIVE SUPPLEMENT**

**For Use Until Publication of 1993 Cumulative Supplement**

**Cite Supplement as RSA, with chapter and section,  
followed by (supp), thus:  
RSA 21:3 (supp)**

## **CHAPTER 146-C**

### **UNDERGROUND STORAGE FACILITIES**

[New Sections]

146-C:13 Penalty; Persons Strictly Liable. CROSS REFERENCES

Groundwater Protection Act, see RSA 485-C.

**146-C:1 Definitions.** In this chapter:

1. [No change in paragraph I.]
  - I-a. "Council" means the water supply and pollution control council established under RSA 21-O:7. [Added 1991, 92:22, eff. May 13, 1991.]
2. "Discharge" means the release or addition of any oil or hazardous substance to land, groundwater or surface water. [Amended 1990, 208:1. 1991, 92:23, eff. May 13, 1991.]
3. "Disposal" means deposit, discharge, injection, dumping, spilling, leaking, leaching, or placing of oil or hazardous substance into or on any land, groundwater or surface water. [Amended 1990, 208:1, eff. June 26, 1990.]
4. [No change in paragraph IV.]
5. "Facility" means an assemblage of tanks, pipes, pumps, vaults, fixed containers, and appurtenant structures, singly or in any combination, which are used or designed to be used for the storage, transmission, or dispensing of oil or a hazardous substance, and which are within the size, capacity, and other specifications prescribed by rules adopted by the division pursuant to RSA 146-C:9, VI. { Amended 1990, 208:2. 1991, 92:25, eff. May 13, 1991.}
6. "Failure" means a condition which may or does allow the uncontrolled passage of oil or a hazardous substance into or out of a facility, and includes, but is not limited to, a discharge to the groundwater or surface water of the state without a permit issued pursuant to FSA 146-C:4. [Amended 1990, 208:2. 1991, 92:24, eff. May 13, 1991.]
7. "Groundwater" means subsurface water that occurs beneath the water table in soils and geologic formations. [Amended 1991, 92:26, eff. May 13, 1991.]

VII-a. "Hazardous substance" means material defined as a regulated substance under 42 U.S.C. 6991(2)(A) in addition to any material designated as a hazardous substance pursuant to RSA 146-C:9, VI-a. [Added 1990, 208:3, eff. June 26, 1990.]

8. [No change in paragraph VIII.]
9. [Repealed 1990, 208:14, eff. June 26, 1990.]
10. [No change in paragraph X.]
11. "Nonresidential," when referring to a facility, means a facility which serves any commercial industrial, institutional, municipal, public, or other building, including, but not limited to, service stations, hotels, and motels, hospitals, nursing homes, and correctional institutions, but not including residential buildings. [Amended 1991, 92:27, eff. May 13, 1991.]
12. "Oil" means "oil" as defined in RSA 146-A:2. [Amended 1991, 92:28, eff. May 13, 1991.]
13. [No change in paragraph XIII.]
14. "Owner" means the person in possession of or having legal ownership of a facility. In addition, for facilities no longer in use, "owner" includes the person having had legal ownership of such facility immediately prior to discontinuance of its use. [Amended 1991, 92:29, eff. May 13, 1991.]

[No changes in paragraphs XIV-a-XVIII.]

## HISTORY

Source. 1986, 182:1. 1988, 249:1-3. 1990, 208:1-3, 14. 1991, 92:22-29, eff. May 13, 1991.

Amendments-1990. Paragraph II: Substituted "oil or hazardous substance" for "liquid" preceding "to land".

Paragraph III: Inserted "or hazardous substance" following "oil"

Paragraph V: Substituted "a hazardous substance" for "petroleum liquids" following "oil or".

Paragraph VI: Substituted "oil or a hazardous substance" for "liquid" following "passage of".

Paragraph VII-a: Added.

Paragraph IX: Repealed.

-1991. Paragraph I-a: Added.

Paragraph II: Substituted "groundwater or surface water" for "groundwaters or surface waters".

Paragraph V: Substituted "an assemblage" for "a system" preceding "of tanks".

Paragraph VI: Substituted "groundwater or surface water" for "waters" preceding "of the state."

Paragraph VII: Amended generally.

Paragraph XI: Deleted "non-commercial" preceding "residential buildings".

Paragraph XII: Amended generally.

Paragraph XIV: Deleted "on November 8, 1984" following "in use" in the second sentence.

**146-C:2 Discharges Prohibited.** No owner or operator or other person responsible for the operation of a facility shall discharge or dispose of any oil or hazardous substance as defined in this chapter from any facility into or onto any land, groundwater, or surface water of the state.

#### HISTORY

Source. 1986, 182:1. 1988, 249:4. 1990, 208:4. 1991, 92:30, eff. May 13, 1991.

Amendments-1990. Inserted "or hazardous substance" following "oil".

-1991. Inserted "or other person responsible for the operation of a facility" following "operator" and "any" preceding "land" and substituted "groundwater, or surface water" for "groundwaters, or surface waters" thereafter.

#### ANNOTATIONS

Cited -- Cited in *Mesiti v. Microdot, Inc.* 783 F. Supp. 57(D.N.H. 1990).

### **146-C:3 Registration of Underground Storage Facilities.**

1. The owner of each existing underground storage facility shall register the facility with the division on forms provided by the division and shall provide the following information:  
[No changes in subparagraphs (a)-(c).]  
(d) Tank information: the size, age, type of tank material, location (on-site), and product stored.  
[Amended 1990, 208:5, eff. June 26, 1990.]  
[No change in subparagraph (e).]
2. The owner of each existing underground storage facility shall register the facility with the division on forms provided by the division, and shall provide the following information to the extent that it may reasonably be available to the owner:  
[No changes in subparagraphs (a)-(d).]  
(e) Description and date of past discharges or disposal, remedial actions, ground and surface water monitoring results, and closure plans.  
[Amended 1990, 208:6 eff. June 26, 1990.]  
[No changes in subparagraphs (f) and (g).]
3. [No change in paragraph III.]
4. The registration required under this section shall be maintained for the life of the facility. A registration need not be maintained if the division has received written notice that the registered underground storage facility has been closed by approved procedures according to rules adopted pursuant to RSA 146-C:9, II(i). Any notice of closure shall include the date of such closure.  
[Amended 1991, 92:31, eff. May 13, 1991.]
5. [No change in paragraph V.]

### **HISTORY**

Source. 1986, 182:1. 1988, 249:5, 6. 1990, 208:5, 6. 1991, 92:31, eff. May 13, 1991.

Amendments-1990. Deleted "oil" preceding "product" in par. I(d) and deleted "of petroleum based products" following "disposal" in par. II(e).

-1991. Paragraph IV: Substituted "maintained for the life of the facility" for "renewed every 5 years" following "shall be" in the first sentence and "maintained" for "renewed" following "need not be" in the second sentence.



#### **146-C:4 Underground Storage Facility Permit Required.**

1. No person shall own or operate an underground storage facility in this state without a permit issued by the division. The permit to operate may be revoked for just cause, including, but not limited to, the operation or ownership of an underground storage facility in violation of the division's rules. To revoke a permit, the division shall issue a show cause order to an owner or operator in violation of this chapter, or rules adopted under this chapter, but said show cause order shall not take effect until the owner or operator has had an opportunity to be heard by the council, provided such request is made within 20 days of the issuance of the show cause order. Appeal of an order revoking a permit to operate shall be governed by RSA 21-O:7, IV. Any appeal brought pursuant to RSA 541 shall not stay an order by the council which revokes a permit. [Amended 1991, 92:32, eff. May 13, 1991.]
2. The division shall issue or deny a permit to all facilities registered under RSA 146-C:3 within 90 days of the receipt of the complete registration information. A permit issued under this section shall be displayed on the premises of the underground storage facility at all times. Permits shall be valid for a period of 5 years, except as provided in paragraph III. [Amended 1990, 3:73, eff. Feb 20, 1990.]
3. A permit fee of \$70 per year shall be paid to the division by the owner or operator of each permitted facility, except for facilities owned by state and local governments, including counties, and school districts, in the manner described below. All fees shall be deposited with the state treasurer as unrestricted revenue. Permit fees shall be calculated as follows:
  1. Facilities with existing permits in Hillsborough county shall have a permit expiration date of April 30, 1991. A fee of \$70 for 1990 shall be paid to the division on or before September 30, 1990.
  2. Facilities with existing permits in Merrimack and Belknap counties shall have a permit expiration date of April 30, 1992. A fee of \$140 for 1990 and 1991 shall be paid to the division on or before April 30, 1991.
  3. Facilities with existing permits in Rockingham county shall have a permit expiration date of April 30, 1993. A fee of \$210 for 1990-1992 shall be paid to the division on or before September 30, 1991.
  4. Facilities with existing permits in Coos, Carroll, and Grafton counties shall have a permit expiration date of April 30, 1994. A fee of \$280 for 1990-1993 shall be paid to the division on or before April 30, 1992.
  5. Facilities with existing permits in Cheshire, Sullivan, and Strafford counties shall have a permit expiration date of September 30, 1995. A fee of \$350 for 1990-1994 shall be paid to the division on or before September 30, 1993.
  6. For new facilities, the permit shall expire 5 years from the last day of the month in which the permit was issued. A fee of \$350 shall be paid upon submission of the permit application. If for any reason the permit is denied, the fee shall be returned or refunded.
  7. The fee for permit renewals shall be the same as the fee for new permits. [Added 1990, 3:73, eff. Feb. 20, 1990.]

#### **HISTORY**

Source. 1986, 182:1. 1990, 3:73. 1991, 92:32, eff. May 13, 1991.

Amendments-1990. Paragraph II: Added "except as provided in paragraph III" at the end of the third sentence.

Paragraph III: Added.

-1991. Paragraph I: Rewrote the second sentence and added the third, fourth and fifth sentences.

#### **146-C:5 Records Required; Inspections.**

1. [No change in paragraph I.]
2. For the purpose of developing or assisting in the development of any rule, conducting any study or investigation, instituting any corrective or remedial measures, or enforcing the provisions of this chapter, any owner or operator of a facility subject to regulation under this chapter shall, upon request of any employee or authorized representative of the division, furnish information relating to such facility or its contents, conduct monitoring or testing, permit such employee or authorized representative at all reasonable times to have access to and to copy all records relating to such facility, and permit such employee or authorized representative to have access to the facility for corrective or remedial measures. [Amended 1991, 92:33, eff. May 13, 1991.]
3. For the purpose of developing or assisting in the development of any rule, conducting any study or investigation, instituting corrective or remedial measures, or enforcing the provisions of this chapter, division employees or authorized representatives may, upon the presentation of appropriate credentials: [Amended 1991, 92:34, eff. May 13, 1991.]  
(No changes in subparagraphs (a)-(c).)  
(d) Institute corrective or remedial measures. [Amended 1991, 92:35, eff. May 13, 1991.]

#### **HISTORY**

Source. 1986, 182:1. 1988, 249:7, 8. 1991, 92:33-35, eff. May 13, 1991.

Amendments-1991. Paragraph II: Inserted "or investigation" preceding "instituting any corrective" and "or remedial" preceding "measures" in two places.

Paragraph III: Inserted "or investigation" preceding "instituting corrective" and "or remedial" thereafter in the introductory paragraph, and inserted "or remedial" in subpar. (d).

**146-C:6 Transfer of Ownership.** Prior to the transfer of ownership of an underground storage facility, the transferor shall notify the transferee of the transferor's compliance with the rules of the division under this chapter. When a transfer of ownership takes place, the new owner shall notify the division of the transfer and shall assume the permit issued to the previous owner.

#### HISTORY

Source. 1986, 182:1. 1991, 92:36, eff. May 13, 1991.

Amendment-1991. Substituted "under this chapter" for "relative to tank testing and replacement" following "division" in the first sentence.

## **146-C:7 New Facilities.**

### **1. [No change in paragraph I.]**

I-a. Any person, except state and local governments, including counties, and school districts, submitting plans and specifications for a new facility shall pay to the division a fee of \$100. Such fee shall be for reviewing such plans and specifications and for making inspections during installation. The fees shall be deposited with the state treasurer as unrestricted revenues. [Added 1990, 3:74, eff. Feb 20, 1990.]

### **2. An owner shall not cause or allow any construction or other activity which is not in accordance with the approved plans and all terms and conditions of the division's approval of those plans. [Amended 1991, 92:37, eff. May 13, 1991.]**

### **3. [No change in paragraph III.]**

## **HISTORY**

Source. 1986, 182:1, 1988, 249:10. 1990, 3:74. 1991, 92:37, eff. May 13, 1991.

Amendments-1990. Paragraph I-a: Added.

-1991. Paragraph II: Substituted "construction or other activity" for "act" following "allow any".

**146-C:8 Prohibition Against Reusing Tanks.** Tanks which are removed and do not meet the standards for new tanks shall not be reinstalled for the purpose of oil or hazardous substance storage. If a tank meets the standards, it may be reinstalled for oil or hazardous substance storage if after thorough cleaning and inspection, internally and externally, it is found to be structurally sound and free of pinholes, cracks, structural damage, or excessive corrosion. Such tanks shall be reinstalled in accordance with requirements of this chapter. A tank once used for oil or hazardous substance shall not be reused for a food product. If a tank is to be disposed of as junk, it must be retested for oil or hazardous substance vapors, rendered vapor free if necessary, and punched with holes to make it unfit for further use.

## HISTORY

Source. 1986, 182:1. 1990, 208:7, eff. June 26, 1990.

Amendments-1990. Substituted "oil or hazardous substance" for "petroleum" preceding "storage" in the first and second sentences, preceding "shall" in the third sentence and preceding "vapors" in the fourth sentence.

**146-C:9 Rulemaking.** The division shall adopt rules, under RSA 541-A, relative to: [No changes in paragraphs I-III.]

1. Procedures for conducting inspections or investigations, as authorized by RSA 146-C:5, II.  
[Amended 1991, 92:38, eff. May 13, 1991.]
2. [No changes in paragraph V.]
3. [No changes in paragraph VI.]  
VI-a. Criteria for determining whether any material is a hazardous substance as defined in this chapter and procedures for such designation. [Added 1990, 208:8, eff. June 26, 1990.]
4. [No changes in paragraph VII.]
5. [No changes in paragraph VIII.]
6. Procedures for collection of fees under RSA 146-C:4, III. [Added 1990, 3:75, eff. Feb. 20, 1990.]
7. Procedures and criteria for mitigation and prevention of damage due to a discharge from an underground storage facility. [Added 1991, 92:39, eff. May 13, 1991.]
8. Procedures and criteria for responding to and reporting a discharge from an underground storage facility. [Added 1991, 92:39, eff. May 13, 1991.]
9. Procedures for conducting tank testing, including qualifications of persons conducting tank testing. [Added 1991, 92:39, eff. May 13, 1991.]

## HISTORY

Source. 1986, 182:1. 1988, 249:11. 1990, 3:75; 208:8. 1991, 92:38, 39, eff. May 13, 1991.

Amendments--1990. Paragraph VI-a: Added by ch. 208.

Paragraph IX: Added by ch.3.

--1991. Inserted "or investigations" following "inspections" in par. IV and added pars. X-XII.

## **146-C:11 Liability for Cleanup Costs; Municipal Regulations.**

1. Any person who, without regard to fault, directly or indirectly causes or suffers the discharge or disposal of oil or a hazardous substance into or onto any surface water or groundwater of this state, or in a land area where it has seeped or may or will ultimately seep into any surface water or groundwater of the state in violation of this chapter, or rules adopted under this chapter, shall be strictly liable for costs directly or indirectly resulting from the violation relating to:

[Amended 1990, 208:10. 1991, 92:43, eff. May 13, 1991.]

[No change in subparagraph (a).]

(b) Cleanup and restoration of the site and surrounding environment and corrective or remedial measures as defined under RSA 146-A:11-a, III(a) and (b); and [Amended 1991, 92:43, eff. May 13, 1991.]

[No change in subparagraph (c).]

[No changes in paragraphs I-a--V.]

### **HISTORY**

Source. 1986. 182:1 1987, 377:4,6. 1988, 249:14, 15; 271:9, VII. 1990, 208:10. 1991, 92:43, eff. May 13, 1991.

Amendments--1990. Paragraph I: Inserted "or a hazardous substance" following "disposal of oil" and substituted "it" for "oil" preceding "has seeped".

--1991. Paragraph I: Deleted "owner or operator or other" preceding "person who", and inserted "without regard to fault" thereafter and "water" following "surface" in two places in the introductory paragraph and inserted "or remedial" following "corrective" in subpar. (b).

### **CROSS REFERENCES**

Double recovery allowed, see RSA 146-C:13.

XII Procedures for conducting tank testing, including qualifications of persons conducting tank testing.  
[Added 1991, 92:39, eff. May 13, 1991.]

### **HISTORY**

Source. 1986, 182:1. 1988, 249:11. 1990, 3:75; 208:8. 1991, 92:38, eff. May 13, 1991.

Amendments--1990. Paragraph VI-a: Added by ch. 208.

Paragraph IX: Added by ch. 3.

--1991. Paragraph I: Inserted "or investigations" following "inspections" in par. IV and added pars. X-XII.

**APPENDIX G-3**

**SAMPLE INCORPORATION BY REFERENCE BINDERS  
(NEW HAMPSHIRE)**

**NEW HAMPSHIRE REGULATORY REQUIREMENTS  
APPLICABLE TO THE  
UNDERGROUND STORAGE TANK PROGRAM  
1993 40 CFR 282.79**



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**New Hampshire Code of Administrative Rules Env-Ws411**

**Control of Underground Storage Facilities**

**November 1990**

*N.H. Department of Environmental Services*

## **PART ENV-WS 411 UNDERGROUND STORAGE AND HANDLING OF OIL PETROLEUM LIQUIDS**

Statutory Authority: RSA 146-C:9 and RSA 146-A:11-c

**Env-Ws 411.01 Purpose.** The purpose of these rules is to set forth the requirements for underground storage facilities under RSA 146-C, and to minimize contamination of the waters of the State due to the storage and handling of motor fuels, lubricating oils, other petroleum and petroleum contaminated liquids, and hazardous substances, by establishing standards and criteria for the registration, permitting, design, installation, operation, maintenance, and monitoring of such facilities. Source. #3116, eff 9-17-85; ss by #4965, eff 11-2-90

**Env-Ws 411.02 Applicability.** These rules apply to all underground storage facilities having a total storage capacity of more than 110 gallons which are used for the storage of regulated substances, with the following exclusions:

1. Oil-transmission pipelines subject to the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979;
2. Wastewater treatment facilities including oil/water separators regulated by the Clean Water Act Section 402 or 307(b), and oil/water separators at oil and gas production facilities;
3. Underground storage facilities which are used solely for residential or domestic heating use;
4. [deleted];
5. Septic tank systems or floor drain collection tank systems that collect waste for the purpose of segregating such waste from septic systems;
6. Storm-water systems;
7. Flow-through process systems which form an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process systems shall not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.
8. Any system which is located in an underground room or vault if the system is totally above or upon the surface of the floor, and no portion of any tank is covered, surrounded, or buried with soil or stone or other material, and all system components can be visually inspected;
9. Systems where less than 10% of the total volume of the tank(s) and associated piping is below the surface of the ground.
10. Facilities containing radioactive material regulated under the Atomic Energy Act of 1954;
11. Emergency spill or overflow containment systems that are immediately emptied after introduction of a regulated substance;
12. Underground storage facilities which are used for the storage of products containing concentrations of regulated substances which are less than the allowable drinking water standard for the regulated substances or hazardous constituents thereof; and
13. Equipment or machinery that contains regulated substances for operational purpose such as hydraulic lift tanks and electrical equipment tanks.

Source. #3116, eff 9-17-85; ss by #4965, eff 11-2-90

### **Env-Ws 411.03 Definitions.**

1. "API 1615" means American Petroleum Institute publication "Installation of Underground Storage Tanks 1979"
2. "Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the underground storage system.
3. "Connected piping" means all piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank or system through which regulated substances flow.
4. "Corrosion specialist" means an individual who is either certified by the National Association of Corrosion Engineers or who is a registered professional engineer with education and experience in corrosion control of buried metal piping systems and tanks.
5. "Division" means the Water Supply and Pollution Control Division of the Department of Environmental Services.
6. "Free product" means an oil or petroleum liquid that is present as a non-aqueous phase liquid on groundwater, or surface water, or in soil or bedrock.
7. "Heating oil" means petroleum that is No. 1, No. 2, No. 4--light, No. 4--heavy, No. 5--light, No. 5--heavy, and No. 6 technical grades of fuel oil, other residual fuel oils, including Navy Special Fuel Oil and Bunker C, and other fuels when used as substitutes for one of these fuel oils.
8. "Leak monitoring" means measurement for the presence of a regulated substance before a release to the environment has occurred.
9. "Lining" means a coating of a non-corrosive material bonded to the interior surface of a tank.
10. "Monthly" means at least once every 30 days.
11. "Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and which is typically used in the operation of a motor engine.
12. "NFPA 30" means National Fire Protection Association publication number 30 entitled, "Flammable and Combustible Liquids Code", dated 1987.
13. "NFPA 329" means National Fire Protection Association publication number 329 entitled, "Underground Leakage of Flammable and Combustible Liquids", dated 1987.
14. "PEI/RP100-87" means Petroleum Equipment Institute Recommended Practices for Installation of Underground Liquid Storage Systems, dated 1987.
15. "Pipe" means an impermeable hollow cylinder or tubular conduit that conveys or transports oil or liquid, or is used for venting, filling, or removal of oil or liquids.
16. "Reconcile" means to compare volume of stored regulated substance at the beginning of an inventory period with receipts, sales, and other uses during the inventory period, and with volume stored at the end of the inventory period, to determine whether there is any unexplained gain or loss of regulated substance.
17. "Regulated substance" means oil or a hazardous substance.
18. "Release detection" means measurement for the presence of a regulated substance which has been released to the environment.
19. "System" means an underground storage tank(s) and all connected piping, pumps, containment structures, monitors, or other equipment serving the tank(s).
20. "Tank" means a stationary device constructed of impermeable materials and designed to contain or hold oil or liquids, which is a component of an underground storage system.

**Source.** #3116, eff 9-17-85; ss by #4965, eff 11-2-90

**Env-Ws 411.04 Registration.**

1. The owner of an underground storage facility shall register the facility by providing the information required by Env-Ws 411.06.
2. Owners shall report in writing any change in information on the form within 10 days of the change.
3. If facility ownership is disputed, the owner of the property on which the facility is located shall register the facility by providing the information required by Env-Ws 411.06.
4. Any tank of unknown size shall be assumed to be of regulated capacity, unless it can be determined by records or measurement that the tank is not of regulated capacity.
5. For new systems, or substantial modifications of existing systems, a new or amended registration form, respectively, shall be filed with the Division at the time of final inspection of the system.
6. The facility registration shall be automatically renewed by the Division every 5 years until all systems have been permanently closed in accordance with the Division's rules.
7. No person shall operate an underground storage facility which is not registered with the Division.

**Source.** #3116, eff 9-17-85; ss by #4965, eff 11-2-90

**Env-Ws 411.05 Change in Use.** The owner of any facility which would become subject to regulation due to a change in the use of any system shall register the facility at least 30 days prior to changing the use of the system and shall comply with all applicable regulatory requirements before instituting the changed use. **Source.** #3116, eff 9-17-85; amd by #3160, eff 12-16-85; ss by #4965, eff 11-2-90

**Env-Ws 411.06 Information Required for Registration.**

1. Registration of each underground storage facility shall contain a complete and detailed description of each system of the underground storage facility.
2. Registration shall be completed in accordance with federal regulations 40 CFR PART 280.22.

**Source.** #3116, eff 9-17-85; amd by #3160, eff 12-16-85; ss by #4965, eff 11-2-90

**Env-Ws 411.07 Permit to Operate.**

1. No person shall operate an underground storage facility without a permit issued by the Division.
2. The owner of an underground storage facility shall apply to the Division for a permit to operate, by providing the following information:
  1. The name, mailing address, and telephone number of the facility.
  2. The name, mailing address and telephone number of the owner.
  3. A certification, signed by the owner, that the facility is in compliance with all applicable statutory and regulatory requirements.
3. The Division shall issue a permit to the owner of a new facility upon approval of the facility plan in accordance with Env-Ws 411.20, and to the owner of an existing facility pursuant to paragraph (j) below.
4. A permit issued under this section shall be displayed on the facility premises at all times.
5. Unless otherwise specified in RSA 146-C:4, the permit shall be valid for a period of 5 years.
6. The permit shall apply to all underground storage systems at the facility.

7. If the Division determines that a facility is not in compliance with applicable statutory and regulatory requirements, the Division shall issue a notice of non-compliance and permit revocation to the owner, which shall include:
  1. A listing of compliance deficiencies;
  2. A requirement for achieving compliance within 90 days of receipt of the notice; and
  3. The date of permit revocation upon failure of the owner to achieve compliance or request an opportunity for hearing.
8. At least 180 days prior to the permit expiration date, the owner shall apply for permit renewal by providing the information required by Env-Ws 411.07(b).
9. If any system is not in compliance with these rules at the time of application for permit renewal, the system shall be brought into compliance no later than the permit expiration date.
10. When a permit renewal application is received the Division shall determine the compliance status of the systems at the facility and shall not issue the renewal permit if all systems are not in compliance. If the Division has not determined the compliance status of the facility's systems by the permit expiration date and if the owner has applied to the Division in accordance with Env-Ws 411.07(h), a renewal permit shall be issued.
11. If a permit renewal is not requested, the operator shall cease operating the facility no later than the permit expiration date, and the owner shall close all systems at the facility under Env-Ws 411.17 or Env-Ws 411.18.
12. A permit issued before the adoption of these rules shall remain valid until its expiration date as provided in RSA 146-C:4. When permits issued before the adoption of these rules are renewed, the permit renewal shall be subject to the requirements of these rules.

**Source.** #3116, eff 9-17-85; amd by #3160, eff 12-16-85; ss by #4965, eff 11-2-90

#### **Env-Ws 411.08 Transfer of Facility Ownership.**

1. When a transfer of ownership of any underground storage tank, facility, or system takes place, the new owner shall file an amended registration form with the Division within 10 days of the transfer.
2. The seller shall deliver to the buyer all documents and information related to the tanks, facility, or system regarding:
  1. Inventory;
  2. New installations;
  3. Testing;
  4. Closure or removals;
  5. Lining;
  6. Monitoring;
  7. Sampling and analysis;
  8. Site assessments;
  9. Equipment maintenance;
  10. Repairs; and
  11. Any other records required to be maintained by these rules.

**Source.** #3116, eff 9-17-85; amd by #3160 eff 12-16-85; ss by #4965, eff 11-2-90

**Env-Ws 411.09 RESERVED.** **Source.** #3116, eff 9-17-85; amd by #3160, eff 12-16-85; ss by #4965, eff 11-2-90

#### **Env-Ws 411.10 Financial Responsibility.**

1. Owners of underground storage facilities for oil shall maintain financial responsibility for costs associated with the cleanup of releases from systems, the implementation of corrective measures, and compensation for third party damages in the minimum amount of \$1,000,000 per occurrence.
2. The amount of financial responsibility required shall not limit an owner's or operator's liability for damages caused by a release.
3. The requirement for financial responsibility may be satisfied by strict compliance with all terms of these rules, so that the owner of a facility is eligible for reimbursement of costs associated with cleanup of releases from systems, under RSA 146-D.

**Sources.** #3116, eff 9-17-85; ss by #4965, eff 11-2-90

#### **Env-Ws 411.11 Inventory Monitoring.**

1. The operator of an underground storage facility shall conduct inventory monitoring of each underground storage tank, and shall maintain separate records for each tank or interconnected system. The operator shall certify the accuracy of the records by signing the records no less than monthly. As an alternative to inventory monitoring, operators of on premise use heating oil systems may perform annual tank gauging in accordance with paragraph (k), below.
2. Operators of facilities not required to conduct inventory monitoring under rules previously in effect shall begin conducting inventory monitoring no later than October 1, 1991.
3. The data maintained for inventory monitoring shall include:
  1. Tank registration number(s) of each system;
  2. Description of the type of substance being stored in each tank;
  3. All bulk liquid receipts;
  4. All bulk liquid sales or uses for each operating day;
  5. Measurement of liquid stored as follows:
    1. For systems without secondary containment and leak monitoring, measurement of liquid stored for each operating day; or
    2. For systems with secondary containment and leak monitoring, monthly measurement of liquid stored; and
  6. Monthly measurement of water level in each tank.
4. All records relating to inventory monitoring, including sales receipts, shall be maintained for a period of 3 years.
5. Measurement of liquid stored shall be taken by a gauge stick which shall be capable of measuring the level of liquid in the tank to nearest 1/8 inch or by an automatic tank gauging device of equivalent or better measuring accuracy.
6. The tank contents shall be measured and recorded before and after each bulk liquid delivery to the tank
7. The operator shall reconcile the inventory data by comparing the sales or uses, receipts, and quantities of stored liquid as follows:
  1. For systems without secondary containment and leak monitoring, daily reconciliation shall be performed; or
  2. For systems with secondary containment and leak monitoring, monthly reconciliation shall be performed.

8. If there is a change in water level of 2 inches or more in any 30-day period or less or a total water depth of 3 inches or more or if reconciliation shows that, for any 30-day period or less, there is an unexplained gain or loss of regulated substance greater than 1.0 percent of sales or uses plus 130 gallons, the operator shall notify the Division within 7 days and submit all system inventory records for the period and the previous year to the Division within 5 days thereafter.
9. A tightness test shall be performed, pursuant to Env-Ws 411.13, on any system with an unexplained gain or loss of regulated substance greater than 1.0 percent of sales or uses plus 130 gallons in any 30 day period, or with an unexplained change in water level of 2 inches or more, or total water depth of 3 inches or more.
10. An owner shall perform tank tightness testing of any underground tank for which inventory monitoring is not performed in accordance with Env-Ws 411.11(b), or for which records have not been maintained in accordance with these rules.
11. Operators of on premise use heating oil systems may perform annual tank gauging in accordance with the following requirements:
  1. The tank shall be filled;
  2. Tank oil and bottom water level measurements shall be recorded at the beginning and ending of an idle period of at least 30 days, during which no oil is added to or removed from the tank;
  3. All level measurements shall be based on an average of 2 consecutive level readings; and
  4. The equipment used shall be capable of measuring the level of oil over the full range of the tank's height to the nearest 1/8 of an inch.
  5. If the results of the manual tank gauging indicate a change in water level of 2 inches or more, or a loss or gain of oil, the division shall be notified within 7 days.
  6. Records of oil and water measurement data shall be maintained for a period of 3 years.
  7. A tightness test shall be performed on any system with an unexplained gain or loss of oil, or with an unexplained change in water level of 2 inches or more.
  8. Underground storage systems which meet the requirements of these rules for new systems shall not be subject to annual tank gauging requirements.

**Source.** #3116, eff 9-17-85; ss by #4965, eff 11-2-90

#### **Env-Ws 411.12 Regulated Substance Transfers.**

1. No transfer of regulated substances shall be made to facilities which are not registered or for which there is not a valid permit to operate.
2. Before that transfer of regulated substances into a tank, the operator shall determine that the tank has sufficient receiving capacity to hold the volume to be transferred.
3. No transfer shall be made to a tank which is not equipped with spill and overfill protection devices, as required under Env-Ws 411.25.

**Source.** #3116, eff 9-17-85; amd by #3160, eff 12-16-85; ss by #4965, eff 11-2-90

#### **Env-Ws 411.13 Tightness Testing.**

1. All underground storage systems without secondary containment and leak monitoring which were required to be tightness tested under rules previously in effect shall be tightness tested, if at least 1 test has not been performed.



2. Underground storage systems without secondary containment and leak monitoring which were not required to be tightness tested under rules previously in effect shall be tightness tested by October 1, 1991.
3. The tank tightness testing protocol or method shall be tested and certified by an independent testing laboratory and shall be certified by the laboratory to meet the leak rate detection criteria of Env-Ws 411.13(g). A complete description of the method or protocol and a copy of the certification shall be filed with the owner. The owner shall retain the description and certification for the life of the facility.
4. When a tightness test is conducted, the person conducting the test shall send a tightness test report to the owner, the operator, and the Division no later than 30 days after the date of the test.
5. The tightness test report shall include:
  1. The facility and tank registration number;
  2. Location;
  3. Owner;
  4. Tank capacity;
  5. Age;
  6. Product stored;
  7. Location of each system tested;
  8. Copies of field records;
  9. Any other information to accurately identify each system;
  10. A statement specifying that the piping was also tested;
  11. A description of any piping, fittings, or connections that were tightened or repaired;
  12. Waiting periods after product delivery, topping, or vapor space disturbances;
  13. Temperature measurement equipment and method;
  14. Releveling procedure;
  15. Date of last calibration and maintenance of equipment;
  16. Test duration time; and
  17. Vapor pocket measurement and elimination procedure.
6. The technician performing the test shall sign a test report which certifies the validity, method, and accuracy of the test and certifies that the test complies with requirements of these rules and that he or she is qualified to perform the test.
7. The tightness test shall be capable of detecting a system leak rate of 0.05 gallon per hour for tanks of less than 20,000 gallons capacity, or 0.10 gallon per hour for tanks of 20,000 gallons capacity or larger with a probability of detection of 0.95 and a probability of false alarm of .05, accounting for all variables including vapor pockets, thermal expansion of product, temperature stratification, evaporation, pressure, end deflection, water table, and tidal action.
8. A leak or failure shall be indicated by a test result of 0.05 gallon per hour or greater for tanks of less than 20,000 gallons capacity, or 0.10 gallon per hour or greater for tanks of 20,000 gallons or more.
9. Volumetric tightness tests shall conform to the following requirements:
  1. There shall be a minimum waiting period of 8 hours after a product delivery before a tightness test is started;
  2. There shall be a minimum waiting period of 4 hours after the test equipment is set up and topped before the tightness test is started;
  3. There shall be a minimum of 4 hours after the vapor space is disturbed before the tightness test is started on a partially-filled tank;
  4. At least 5 temperature sensors or an averaging sensor over the same vertical range shall be used to measure product temperature, or the product shall be circulated;
  5. The hydrostatic head during a precision tightness test shall be held constant throughout the test;

6. The level within a standpipe shall be adjusted by the addition of very small product amounts at a time, the product shall be at the same temperature as the product in the tank, and the product shall be added at a location that will not affect the temperature sensors;
7. Precision tightness testing equipment shall be regularly and accurately calibrated, and properly maintained and installed in accordance with manufacturers specifications;
8. The duration of a precision tightness test from actual commencement of measurements and readings shall be at least 4 hours; and
9. The tester shall experimentally determine the height to volume conversion factor, shall determine if a volume of trapped vapor exists which will interfere with test accuracy and shall take steps to reduce any such volume as much as possible.
10. The test report and other documents describing the type of test, contractor, date, materials, all field data and any other information pertinent to the work performed under this section shall be kept by the owner for the life of the system.
11. If information submitted to the Division causes the Division to question the accuracy of the test, the person conducting tank tightness tests shall provide the Division with information on all testing equipment and protocols which have the potential to affect the accuracy of the test.

**Source.** #3116, eff 9-17-85; ss by #4965, eff 11-2-90

#### **Env-Ws 411.14 Certification of Technicians Performing Tightness Tests.**

1. Any person conducting tank tightness tests shall have an understanding of the variables which affect the test, be trained in the performance of the test, and be certified as qualified by the manufacturer of the equipment used in the testing protocol or method. The technician shall register with the Division by submitting a manufacturer's training certificate.
2. Any person conducting tank tightness tests shall keep the manufacturer's certification and registration with the Division current and shall notify the Division of any change in employment status. Manufacturer's certification of qualification shall be valid for 2 years from the date of certification.
3. No person shall conduct a tank tightness test to fulfill the requirements of these rules who is not certified and registered under (a) and (b) above.

**Source.** #3116, eff 9-17-85

#### **Env-Ws 411.15 Tightness Test Failures.**

1. The person conducting the tightness test shall notify the Division and the facility owner and operator immediately of a system tightness test failure.
2. A tightness test failure shall be addressed as follows:
  1. The owner and operator of an underground storage system shall report any failure to the Division within 24 hours of receiving notice of the failure;
  2. The owner or operator shall perform an investigation into the cause of the failure to determine if the system is leaking;
  3. The investigation into the cause of an initial test failure shall be completed within 7 days and shall include the performance of a second confirming tank tightness test;
  4. The owner shall submit a written report to the Division within 30 days of the failure which describes the work performed, the repairs made, and any other actions taken in response to the test failure;

5. Any underground storage system which fails a second, confirming test for tightness shall be completely emptied of regulated substance within 24 hours of the second failure and shall be repaired or closed within 30 days; and
6. The owner may at any time elect to permanently close the system instead of conducting an investigation into the cause of the failure.
3. Any system which has been repaired after a second tightness test failure shall be retested for tightness to confirm the effectiveness of the repairs.

**Source.** #3116, eff 9-17-85; ss by #4965, eff 11-2-90

#### **Env-Ws 411.16 Unusual Operating Conditions.**

1. The operator shall report any unusual system operating conditions to the Division within 24 hours, unless the cause is immediately determined and corrected, and the operator determines that the unusual operating condition did not result in a release of a regulated substance.
2. Unusual system operating conditions which require reporting shall include:
  1. Erratic behavior of dispensing equipment;
  2. Unexplained loss of regulated substance or the presence of regulated substance on the ground surface, surface water or groundwater at or near the facility;
  3. An increase of 2 inches or more of water in a tank over any 30 day or shorter period or a total water depth of 3 inches or more;
  4. Recorded substance losses indicated by inventory control records on 18 operating days or more in any 30 day period;
  5. An indication by a leak monitor of a possible leak; and
  6. The presence near the facility of petroleum vapors or vapors of a hazardous substance.
3. The operator shall initiate an investigation into the cause of any unusual system operating conditions within 7 days of the occurrence of the condition and shall submit a written report to the Division delineating the investigation and its conclusions. The investigation shall confirm any suspected release of a regulated substance.
4. If the Division determines, based on the written report, that a release of a regulated substance could have occurred, the operator shall conduct a tightness test of the affected system(s).

**Source.** #3116, eff 9-17-85; ss by #4965, eff 11-2-90

#### **Env-Ws 411.17 Temporary Closure.**

1. Temporary closure of underground storage systems shall be accomplished by removing all liquid regulated substances and tank bottoms, without excavation of the system. All substances removed shall be disposed of in accordance with applicable local, state, and federal rules.
2. Within 30 days of temporary closure, the owner shall notify the Division in writing that the system has been temporarily closed.
3. An underground storage system which has been temporarily closed for 1 year shall be permanently closed in accordance with Env-Ws 411.18 unless the system meets all requirements of these rules for a new system or a system with release detection.
4. An underground storage system which is temporarily closed shall not be placed back in service, nor shall any regulated substance be introduced into the system until the operator certifies to the Division that the system is in compliance with applicable statutory and regulatory requirements.

**Source.** #3116, eff 9-17-85; ss by #4965, eff 11-2-90

#### **Env-Ws 411.18 Permanent Closure.**

1. Steel underground storage systems without corrosion protection shall be permanently closed on or before 25 years after the year of installation. When the year of installation is unknown, the system shall be permanently closed by October 1, 1995.
2. Steel underground storage systems without corrosion protection for which groundwater or soil vapor monitoring devices were installed as an alternative to permanent closure under rules previously in effect, shall be permanently closed by October 1, 1995.
3. The owner shall notify the Division at least 30 days prior to any scheduled system removal or closure. The Division shall be notified of emergency removals or closures as far in advance of the work as possible.
4. Permanent closure shall be accomplished as follows:
  1. All product, liquid and sludge shall be removed from the system(s) and disposed of in accordance with applicable state and federal rules;
  2. All piping shall be disconnected and removed to the greatest extent possible or permanently capped or plugged;
  3. The tank(s) shall be tested for hazardous or explosive vapors and rendered free of vapors;
  4. The tank(s) shall be either removed or closed in-place by filling the tank(s) to capacity with a solid inert material and filling all voids within the tank(s);
  5. An assessment shall be performed to determine if any contamination is present using one of the following sampling methods for the assessment:
    1. Test pits shall be excavated in the immediate vicinity of the system, and representative soil or groundwater samples shall be obtained; or
    2. Soil or groundwater samples shall be obtained from the excavation(s) resulting from the removal of the tank(s); or
    3. Existing release detection devices or subsurface monitoring locations shall be sampled; or
    4. For tanks which will be closed in-place, soil samples shall be obtained at representative locations from beneath the tank, by cutting sampling access points through the tank wall.
    5. Soil or groundwater samples shall also be taken at locations adjacent to the system piping.
  6. The soil or groundwater samples shall be screened for the presence of contamination in the field, and submitted to an EPA certified laboratory for analysis, as follows:
    1. Field screening of samples shall include visual and olfactory observation and headspace analysis performed with a portable organic vapor meter (OVM) or portable gas chromatograph (GC);
    2. Laboratory analysis of samples shall include tests for volatile organic compounds (VOC) and total petroleum hydrocarbons (TPH) if the system stored motor fuel, or test for total petroleum hydrocarbons (TPH) if the system stored heating oil or waste oil, or the appropriate EPA test method for hazardous substances; and
  7. Results of the assessment performed under (5) above and the laboratory analysis of samples performed under (6) above shall be submitted to the Division within 30 days of the closure.
5. If soil or groundwater contamination from the regulated substance is detected by observation or analysis during closure of an underground storage system, the Division shall be notified immediately. All requirements of Part Env-Ws 412 shall be complied with.

6. The excavation shall not be backfilled, nor shall the closed tank be removed from the site until the Division has inspected the site and approved the closure. If the Division is unable to inspect the site within 7 days, the Division shall grant permission for a consultant or other person knowledgeable in site assessments for contamination to inspect the site. When such permission is granted, the person inspecting the site shall submit a report to the Division. The report shall contain a detailed account of inspection of soil and groundwater in the vicinity of the tank, and of an inspection of the closed tank(s) for evidence of corrosion and leakage.
7. Underground storage systems which have not been temporarily or permanently closed shall be subject to all requirements of these rules.
8. Documents pertaining to the closure of the tanks or system, including contractor's invoices, manifests for disposal of materials, testing and analytical reports, and any other documents generated from the closure shall be kept by the owner for 10 years. These documents shall be transferred to the new owner at the time of a transfer of facility ownership.

**Source.** #3116, eff 9-17-85; ss by #4965, eff 11-2-90

#### **Env-Ws 411.19 Prohibition Against Reusing Tanks.**

1. Underground storage tanks which have been removed that do not meet the standards for new tanks shall not be reused as underground storage tanks for regulated substances.
2. A tank once used for regulated substances shall not be reused to store food products or potable water.

**Source.** #3116, eff 9-17-85; ss by #4965, eff 11-2-90

#### **Env-Ws 411.20 Requirements for Approval of Underground Storage Systems.**

1. At least 90 days prior to commencing construction or installation of a new or replacement underground storage system or of a substantial modification of an underground storage system, the owner shall submit plans and specifications to the Division. The plans shall be prepared and stamped by a registered professional engineer, licensed to practice in the state of New Hampshire.
2. Within 90 days of submission of plans and specifications, the Division shall approve plans which demonstrate compliance with the requirements of these rules, or issue a notice of incompleteness or disapproval for plans which do not demonstrate compliance with these rules.
3. An owner shall not cause or allow a change which is not in accordance with the approved plans and all terms and conditions of the Division's approval.
4. An approval shall be valid for 1 year from the date of issuance. If construction of the installation is not completed within 1 year, the approval shall be void.

**Source.** #3116, eff 9-17-85; ss by #4965, eff 11-2-90

#### **Env-Ws 411.21 Tank Standards for New Underground Storage Systems.**

1. All glass fiber reinforced plastic underground storage tanks designed for storing regulated substances shall be manufactured in accordance with standards of Underwriters Laboratories, Inc., UL 1316, or Underwriters Laboratories of Canada, CANA-S615-M83.

2. All double-walled steel underground storage tanks designed for storing regulated substances shall be manufactured with outer jackets of a minimum of 10 gauge in thickness.
3. All composite underground storage tanks designed for storing regulated substances shall be manufactured in accordance with Underwriters Laboratories Standard 1746, or the Association for Composite Tanks ACT-100.
4. All underground storage tanks designed for storing regulated substances and constructed of steel clad with fiberglass reinforced plastic shall be manufactured in accordance with one of the following standards:
  1. Underwriters Laboratories of Canada, Inc. ULC-603, Standard for Protected Steel Underground Tanks for Flammable and Combustible Liquids; or
  2. Underwriters Laboratories, Inc., USA, UL 58, Steel Underground Tanks for Flammable and Combustible Liquids; or
  3. Code for Unfired Pressure Vessels; Section VIII, Division I of the ASME Boiler and Pressure Vessel Code.
5. All tanks shall provide secondary containment unless enclosed in a vault. Secondary containment shall enclose at least the lower 300 degrees of the inner tank.
6. The secondary containment wall or envelope shall not be in contact with the inner wall, such that a leak of the inner tank would not be detected due to restriction of product flow to the monitoring sump.
7. There shall be no penetrations of any kind through the jacket to the tank except top entry fittings required for filling, venting, and monitoring of the interstitial space.
8. All new tanks shall have a wear plate constructed of steel or glass fiber reinforced plastic installed under each tank opening covering an area of at least 144 square inches, for purposes of protecting the tank wall from abrasion or puncture.
9. New underground storage tanks shall bear a stencil, label or plate which contains the following information:
  1. The standard of design by which the tank was manufactured;
  2. The year in which the tank was manufactured;
  3. The dimensions and capacity of the tank; and
  4. The name of the manufacturer.
10. A certificate which shows all of the information required above and which also shows the date of installation and the regulated substances and percentages by volume of any additives which may be stored permanently and compatibly within, shall be conspicuously displayed and permanently affixed at the facility premises.
11. Documents or copies of documents describing manufacturer's warranties, equipment items, contractor, equipment maintenance, repairs or testing, and all other information pertinent to the tank installation and system components shall be kept at the facility for the life of the system(s). These records shall be transferred to the new owner(s) at the time of a transfer of facility ownership.
12. Owners and operators shall maintain records which show that new tanks and their welds, seams, and connecting fittings were factory tested for tightness using standard engineering practices. Records shall certify that each tank is guaranteed by the manufacturer against leakage for a period of 10 years.
13. The regulated substance stored shall be compatible with the interior lining or wall of the tank, piping system, and all components, gaskets, sealants, that will be in contact with the stored substance. If the regulated substance stored is changed, and it is not listed as a substance that is compatible with the tank, a written confirmation from the manufacturer shall be obtained certifying the compatibility of the liquid with the system, prior to the change.

**Source.** #3116, eff 9-17-85; ss by #4965, eff 11-2-90

### **Env-Ws 411.22 Piping Standards for New Underground Storage Systems.**

1. All new underground pipes, fittings, and connections shall be constructed of fiberglass reinforced epoxy, galvanized steel, black iron, stainless steel, or copper.
2. Fiberglass reinforced epoxy piping shall meet ASTM Specification D-2996-71, Standard Specification for Filament Wound RTRP, Underwriters Laboratory Subject 971 "Listed non-metal pipe" or Underwriters Laboratories of Canada Guide ULC-107 "Glass Fiber Reinforced Plastic Pipe Fittings for Flammable Liquids". Ultimate sheer strength of adhesive and curing agent shall be in compliance with ASTM d-2517-66T, as approved and supplied by manufacturer.
3. Steel or iron piping shall be Schedule 40 or heavier and shall have protective wrapping or di-electric coating and be cathodically protected by impressed current or sacrificial anodes. Galvanized Steel shall meet standards as in American Petroleum Institute Publication 1615 "Installation of Underground Petroleum System";
4. Copper tubing shall be contained in a non-metallic sleeve to protect it from damage and corrosion.
5. Underground metal piping and components routinely containing regulated substances and in contact with the soil or other backfill material shall have a cathodic protection system designed under the supervision of a corrosion specialist accredited by the National Association of Corrosion Engineers and the design shall be submitted as part of the plans required under Env-Ws 411.20.
6. Except when cathodic protection is provided by impressed current, underground metal piping systems shall have di-electric bushings installed to electrically isolate the piping system from the tank and the dispenser, or other end use point, and at any change in the metal type, such as at flexible connectors.
7. If metal pipe is totally isolated from the soil via secondary containment, cathodic protection of the piping shall not be required.
8. Steel or iron fittings used with fiberglass piping shall be thoroughly wrapped and sealed with a dielectric material or shall be cathodically protected.
9. Stainless steel flexible connectors shall be thoroughly wrapped or coated to completely isolate them from the soil and from metal piping to the pump, or shall be cathodically protected.
10. All new underground piping systems shall be designed, constructed, and installed with access and isolation points to permit independent pressure testing of the tank and piping without the need for extensive excavation.
11. With the exception of heating oil systems for on-premises use, suction pump systems shall have only 1 check valve, placed as close to the pump as possible.
12. Pressure and Temperature Limitations shall meet ANSI B31, American National Standard Code for Pressure Piping.

**Source.** #3116, eff 9-17-85; ss by #4965; eff 11-2-90

### **Env-Ws 411.23 Secondary Containment for New Tanks.**

1. Secondary containment shall be provided for all new tanks.
2. A double-walled tank constructed in accordance with Env-Ws 411.21 shall satisfy the requirements of this section for tank secondary containment.
3. A concrete vault may be used for secondary containment of a single wall tank and shall meet the following requirements:
  1. It shall be watertight, impervious to leakage of regulated substances;

2. It shall be able to withstand chemical deterioration and structural stresses from internal and external causes;
3. It shall be a continuous structure;
4. It shall have no drain connections or other entries or openings through the vault;
5. It shall be constructed of continuously poured reinforced concrete with chemical resistant water stops at any construction joint;
6. Top slabs shall be reinforced;
7. The interior shall be sealed with a material compatible with the stored product, or otherwise designed to make it impervious to leakage of the stored liquid or intrusion of groundwater;
8. It shall have only top openings, solely for tank entry manholes, piping, or for monitoring and pumping of liquid from the vault;
9. All penetrations shall be sealed or otherwise designed to prevent Intrusion of precipitation or surface runoff.
4. The tank shall be encased or bedded in the vault in accordance with the manufacturer's requirements.
5. All secondary containment access ports shall be conspicuously marked or labeled and shall be secured.

#### **Env-Ws 411.24 Secondary Containment for New Pressurized Piping.**

1. All new underground storage pressurized piping and heating oil system return piping shall have secondary containment by utilizing double wall piping or a piping trench liner system.
2. Piping systems with secondary containment shall continuously slope to direct any leakage from the primary piping to a collection sump monitor. The collection sump(s) shall be physically located at the tank(s).
3. Piping trench liner systems for single wall piping shall include monitoring sumps installed in accordance with the manufacturer's requirements.
4. The submersible pump head of all new pressurized piping systems shall be surrounded by a containment structure.

**Source.** #4965, eff 11-2-90

#### **Env-Ws 411.25 Spill Containment and Overfill Protection.**

1. All new underground storage tanks shall be equipped with spill containment and overfill protection devices at installation.
2. All underground storage tanks required to be equipped with spill containment and overfill protection under rules previously in effect, shall comply with this section by October 1, 1991.
3. All underground storage tanks not subject to rules previously in effect, shall be equipped with spill containment and overfill protection by October 1, 1992.
4. Spill containment equipment shall prevent the release of product to the environment when the transfer hose is detached from the fill pipe, and shall have a minimum capacity of 5 gallons.
5. The overfill protection equipment shall alert the transfer operator when the tank is no more than 90% full by restricting the flow into the tank or by triggering a high level audible alarm, or shall automatically shut off flow into the tank when the tank is no more than 95% full.



6. All gauges, alarms, or automatic or mechanical devices associated with spill containment and overfill protection shall be maintained in good working order to perform their original design function.

**Source.** #4965, eff 11-2-90

#### **Env-Ws 411.26 Leak Monitoring for New Tanks.**

1. Leak monitoring shall be installed and continuously operated for all new tanks.
2. Double-walled tanks shall have continuous monitoring of the interstitial space for both the regulated substance and water.
3. Single wall tanks shall have continuous monitoring of the annular space between the tank and the secondary containment structure for both the regulated substance and water.
4. The leak monitoring device shall be able to detect the regulated substance stored and its vapors if the substance is volatile, as well as the presence of water.

**Source.** #4965, eff 11-2-90

#### **Env-Ws 411.27 Leak Monitoring for New Underground Piping Systems.**

1. New underground piping systems which operate under pressure shall be equipped with leak monitoring.
2. A UL-approved line leak detector shall be employed which shall be capable of detecting a line leakage rate of at least 3 gallons per hour at 10 pounds per square inch, and shall shut-off, restrict product flow or otherwise notify the operator if the leakage rate is exceeded.
3. The interstitial space of the double wall piping or the annular space between the primary piping and the secondary containment system shall be continuously monitored to detect the presence of the regulated substance or the vapors of the regulated substance.
4. The piping collection sump and the submersible pump head containment structure shall employ a leak monitor activated by liquid or by vapors of the regulated substance.

**Source.** #4965, eff 11-2-90

#### **Env-Ws 411.28 Installation of New Underground Storage Systems.**

1. Tank and individual system component installations shall be performed according to the manufacturer's requirements and national and industry codes. Installation items not included in the manufacturer's requirements shall be performed according to PEI RP 100-87, API 1615, and API 1632. Safety and testing requirements according to NFPA 30 and NFPA 329, shall be complied with.
2. For steel tanks, the tank coating shall be thoroughly inspected, and any scratches, gouges, voids, or other discontinuities found in the coating shall be repaired according to the manufacturer's requirements prior to installation.
3. Whenever an existing tank is removed prior to the installation of a new tank, all the requirements of Env-Ws 411.18 shall be met. If evidence of a discharge of regulated substance is discovered, the Division shall be notified immediately. All requirements of Part Env-Ws 412 shall be followed.

4. Whenever an existing tank is removed prior to the installation of a new tank all system piping that does not meet the standards for new underground storage systems as specified in Env-Ws 411.22 shall be removed.
5. Systems shall not be installed in areas subject to flooding over the top of the tank unless provisions are made to ensure that the tank shall not float and its contents shall not escape during a flood. For areas where the ground surface is below the 100 year flood elevation, special provisions for tank anchoring and product containment shall be provided to the Division with the plan required by Env-Ws 411.20.
6. All new underground piping shall be laid out so as to minimize crossovers and, within construction limits, shall run in a compact trench to the point of use.
7. Piping shall slope continuously towards the tank at a minimum of 1/8 inch per foot.
8. The owner shall notify the Division of the completion of the installation of a new system at least 7 days prior to final backfilling, to arrange for an inspection.
9. The Division shall inspect the system prior to backfilling, and owners shall correct any discrepancies discovered by the Division between the completed installation and approved plans, within 30 days and shall notify the Division to arrange a follow-up inspection.
10. The installer shall certify that the installation has been completed in accordance with approved plans and specifications and manufacturer's requirements, in accordance with 40 CFR PART 280.22(f).
11. The new system shall not be backfilled or placed into service until final inspection has been performed by the Division.

**Source.** #4965, eff 11-2-90

#### **Env-Ws 411.29 Release Detection for Tanks Without Secondary Containment and Leak Monitoring.**

1. Underground storage tanks without secondary containment and leak monitoring shall be equipped with release detection and/or be monitored for releases according to the following schedule:

<b>Installation Year</b>	<b>Deadline</b>
Before 1966 or unknown	Immediately
1966 - 1969	Dec. 22, 1990
1970 - 1974	Dec. 22, 1991
1975 - 1979	Dec. 22, 1992
1980 or after	Dec. 22, 1993

2. Owners of underground storage facilities without secondary containment and leak monitoring shall conduct annual tightness testing, automatic tank gauging, groundwater monitoring, or soil gas vapor monitoring for release detection. Prior to initiating release detection, owners shall submit a plan to the division which demonstrates that the release detection method chosen meets the requirements of this section.
3. When tightness testing is used for release detection, the system shall be tested at least annually. Tightness testing shall not be used as a release detection method after December 22, 1998.
4. When automatic tank gauging is used for release detection, the gauge shall provide at least one monthly test for tank leakage with a detection limit of at least 0.2 gallons per hour. In-tank monitoring shall operate in a leak detection mode for at least 2 hours during each 24 hour period.

5. When groundwater monitoring is used for release detection, the release detection method shall conform to the following requirements:
  1. The stored substance shall be immiscible in water and have a specific gravity of less than 1;
  2. The groundwater table shall be within 20 feet of the ground surface;
  3. Monitoring wells shall be installed to intercept the tank excavation zone which is the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit or trenches into which the underground storage tank system is placed at the time for Installation;
  4. If the requirements of paragraph (e)(3) above cannot be met, monitoring wells shall be placed as close to the tank(s) as technically feasible and the well screen of the monitoring well shall completely intercept seasonal fluctuations in the water table;
  5. The hydraulic conductivity of the soil surrounding a monitoring well and between a monitoring well and the tank shall be greater than 0.01 centimeters per second;
  6. The slotted portion of the monitoring well casing shall be designed to prevent migration of natural soils or filter pack into the well but to allow entry of regulated substance on the water table into the well under both high and low grade-water conditions;
  7. Monitoring wells shall be seal from the ground surface to the top of the filter pack;
  8. Monitoring wells shall be clearly marked and secured to avoid unauthorized access and tampering; and
  9. The device(s) or method(s) for monitoring shall provide at least 1 monthly test of the groundwater for the presence of the regulated substance stored in the system, and shall be able to detect the presence of 1/8 inch or more free product on the groundwater.
6. When soil gas vapor monitoring is used for release detection, the release detection method shall conform to the following requirements:
  1. The device(s) or method(s) for monitoring shall provide at least 1 monthly test for the presence of the regulated substance stored in the tank;
  2. The stored liquid or approved tracer additive shall be sufficiently volatile to provide a vapor level that is detectable by the monitoring device(s) utilized;
  3. The measurement of vapors by the monitoring device shall not be rendered inoperative by the groundwater, rainfall, or soil moisture or other known interferences such that a release could go undetected for more than 30 days.
  4. The monitoring device(s) shall be installed to intercept the tank excavation zone, or shall be placed as close to the tank(s) as possible;
  5. The subsurface materials and conditions surrounding the monitoring device(s) and between the device(s) and tank, shall be sufficiently porous in their in-situ condition to readily allow diffusion of vapors from the tank to the device(s);
  6. The vapor monitors shall be designed and operated to detect any increase in concentration above background concentrations; and
  7. Monitoring wells installed for soil gas vapor monitoring shall meet the same requirements as wells installed for groundwater monitoring, except the screened interval need not intercept groundwater.

**Source.** #4965, eff 11-2-90

#### **Env-Ws 411.30 Release Detection for Piping.**

1. Release detection for pressurized piping without secondary containment and leak monitoring shall be installed and operational by December 22, 1990. Prior to initiating release detection,

owners shall submit a plan to the division which demonstrates that the release detection method chosen meets the requirements of this section.

2. Release detection for systems with pressurized piping shall be equipped with an automatic line leak detector which shall restrict or stop the flow of the stored substance, and which shall trigger an audible or visual alarm upon detecting a leak at a rate of 3 gallons per hour at a pressure of 10 pounds per square inch within 1 hour. Automatic line leak detectors shall be tested annually to confirm that they are in good working order.
3. Release detection for systems with pressurized piping shall utilize one of the following:
  1. Groundwater monitoring in accordance with Ws 411.29(e); or
  2. Soil vapor monitoring in accordance with Ws 411.29(f).
  3. Annual line tightness testing.
4. When annual line tightness testing is utilized, test results shall be submitted to the Division. Pipe pressure tightness tests shall have a detection limit of 0.1 gallon per hour at 1.5 times operating pressure.
5. Release detection for system piping at facilities utilizing suction piping or atmospheric piping shall be required on the same schedule as release detection is required for tanks under Env-Ws 411.29(a).
6. Release detection for systems with suction or atmospheric piping shall be one of the following:
  1. Performance of a line tightness test once every 3 years;
  2. Groundwater monitoring in accordance with Env-Ws 411.29(e);
  3. Soil vapor monitoring in accordance with Env-Ws 411.29(f).
7. Release detection shall not be required for suction or atmospheric piping that is demonstrated, by division inspection or by plans submitted by the owner, to be designed and constructed to meet the following standards;
  1. The below grade piping operates at less than atmospheric pressure;
  2. The below grade piping is sloped so that the contents of the piping will drain back into the storage tank if the suction is released;
  3. Only one check valve is included in each suction line; and
  4. The check valve is located directly below and as close as practical to the suction pump.

**Source.** #4965, eff 11-2-90

#### **Env-Ws 411.31 Operation of Leak Monitoring Equipment.**

1. Leak monitoring equipment and devices shall be maintained in good working order at all times to continuously perform their original design function and shall be tested annually for proper operation in accordance with the manufacturer's requirements. All records pertaining to the equipment manufacturer, warranties, maintenance requirements, repairs, maintenance, and testing shall be maintained for the life of the system and shall be stored on the facility premises.
2. Leak monitoring devices shall not be shut off or deactivated at any time. Any malfunction shall be repaired within 15 working days. If the device(s) cannot be repaired within 15 days, the affected system(s) shall be temporarily closed until satisfactory repairs are made. Any deactivation of a monitor shall be immediately reported to the Division by the operator.
3. Leak monitors shall employ an audible alarm and visual indicator, and shall be so located as to be readily heard and seen by the operator or other personnel during normal working hours.
4. All monitoring devices shall be conspicuously marked or labeled as being monitoring devices and shall be secured against vandalism and incidental damage.

**Source.** #4965, eff 11-2-90

**Env-Ws 411.32 Corrosion Protection for Steel Tanks.**

1. All new underground storage tanks shall be protected from corrosion. Corrosion protection for new tanks shall comply with 40 CFR PART 280.20(a).
2. All existing steel underground storage tanks shall be protected from corrosion no later than December 22, 1998. Corrosion protection for existing steel tanks shall comply with 40 CFR PART 280.21(b)(2) or 40 CFR PART 280.21(b)(3).
3. All new and existing cathodic protection systems shall be equipped with an accessible test connection or monitor. Sacrificial anode systems shall be tested within 6 months of installation and every 3 years thereafter, by a qualified cathodic protection tester who has an understanding of the principles and measurements of all common types of techniques used to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell as applied to buried or submerged metal piping and tank systems. Monitors for impressed current systems shall be checked monthly.

**Source.** #4965, eff 11-2-90

**Env-Ws 411.33 Corrosion Protection for Piping.**

1. All new piping that routinely contains regulated substances and is in contact with the ground shall be protected from corrosion. Corrosion protection for new piping shall comply with 40 CFR PART 280.20(b).
2. All existing metal piping that routinely contains regulated substances and is in contact with the ground shall be protected from corrosion no later than December 22, 1998. Corrosion protection for existing metal piping shall comply with 40 CFR PART 280.21(c).

**Source.** #4965, eff 11-2-90

**Env-Ws 411.34 Submission of Corrosion Protection Plan.** At least 90 days prior to retrofitting or field installing corrosion protection measures for underground storage systems existing prior to October 1, 1990 an owner of an underground storage system shall submit a corrosion protection plan to the Division in accordance with Env-Ws 411.20.**Source.** #4965, eff 11-2-90

**Env-Ws 411.35 Relining Steel Tanks.**

1. A steel underground storage tank may be repaired by installing an interior liner no more than once during the life of the tank, subject to the following conditions:
  1. The tank has passed a tightness test conducted in accordance with Env-Ws 411.13;
  2. Inventory records have been maintained for the preceding three years and do not show a loss of liquid, or an assessment is performed which indicates that no contamination is present; and
  3. The liner material is compatible with the regulated substance stored.
2. Steel tank relining shall be accomplished in accordance with American Petroleum Institute Publication 1631, "Recommended Practices for the Interior Lining of Existing Steel Underground Storage Tanks".
3. Plans and specifications shall be submitted to the Division in accordance with Env-Ws 411.20.
4. The system shall be tightness test in accordance with Env-Ws 411.13 after relining of the tank is completed.

5. The relining shall not be considered to affect any of the requirements of these rules relative to the age of a tank.
6. The lining shall be tested after 10 years, then every 5 years thereafter for structural soundness, voids, detachment from the metal tank, or other defects. If at any time the lining is determined not to be functioning as originally intended and installed, the tank shall be permanently closed.
7. Documents shall be retained for the life of the tank which describe the lining manufacturer, contractor, date, warranties, procedure, materials, and any other information pertinent to the work.

**Source.** #4965, eff 11-2-90

#### **Env-Ws 411.36 Repair of Fiberglass-Reinforced Plastic Tanks.**

1. An underground fiberglass-reinforced plastic tanks shall be repaired only once during the life of the tank and such repairs shall be subject to the following conditions:
  1. The tank has passed a precision tightness test conducted in accordance with Env-Ws 411.13 and inventory records for the preceding three years indicate no loss of stored liquid, or an assessment is performed which indicates that no contamination is present; and
  2. The repairs shall not be considered as affecting the age of the tank for the purpose of these rules.
2. Plans and specifications shall be submitted to the Division in accordance with Env-Ws 411.20.
3. Repairs shall be conducted in accordance with manufacturer's requirements or nationally recognized codes and standards.
4. Following completion of the repair of the tank, and before backfilling, the system shall be tightness tested in accordance with Env-Ws 411.13.
5. Documents shall be maintained for the life of the tank which describe the material(s) manufacturer(s), contractor, date of repair, warranties, procedures, materials, and other information pertinent to the work.

**Source.** #4965, eff 11-2-90

#### **Env-Ws 411.37 Repair and Replacement of Piping Systems.**

1. Piping systems which discharge or release liquid shall be replaced by systems meeting the requirements of Env-Ws 411.22.
2. When a tank is removed and replaced, all piping shall also be replaced, unless it meets the requirements of these rules for new piping.

**Source.** #4965, eff 11-2-90

#### **Env-Ws 411.38 Field-Fabricated Tanks.**

1. Field-fabricated underground storage tanks shall not be used unless the complete system is designed by a registered structural engineer.
2. New field-fabricated tanks shall meet all requirements of these rules for new installations.

3. The design engineer shall certify that a field fabricated tank is necessary because installation of a factory fabricated tank is not feasible, and that the design plans and specifications meet all requirements of these rules.

**Source.** #4965, eff 11-2-90

#### **Env-Ws 411.39 Secondary Containment for Hazardous Substance Systems.**

1. All hazardous substance underground storage systems without secondary containment and leak monitoring shall be closed by December 22, 1998.
2. Approval of secondary containment system installations shall be in accordance with Env-Ws 411.20.

**Source.** #4965, eff 11-2-90

#### **Env-Ws 411.40 Waivers.**

1. An owner may request a waiver of specific rules in this Part in accordance with paragraph (b) below.
2. All requests for waivers shall be submitted in writing to the Division and shall include the following information:
  1. A description of the facility to which the waiver request relates, including the name, address, and registration number of the facility.
  2. A specific reference to the section of the rule for which a waiver is being sought;
  3. A full explanation of why a waiver is necessary;
  4. A full explanation of the alternatives for which a waiver is sought, with backup calculations and data for support; and
  5. A full explanation of how the grant of the waiver is consistent with the intent of RSA 146-C.
3. The Division shall approve a request for waiver upon finding that:
  1. The alternatives proposed are at least equivalent to the specific requirements contained in the rule; or
  2. If the alternatives proposed are not equivalent to the requirements contained in the rule, they are adequate to ensure that the intent of RSA 146-C is met.
4. No waiver shall be granted which, in the judgment of the Division, contravenes the intent of any rule.
5. The Division shall issue a written response to a request for a waiver within 60 days of receipt of the request.

**Source.** #4965, eff 11-2-90

**APPENDIX G-4**

**SAMPLE INCORPORATION BY REFERENCE BINDERS  
(NEW HAMPSHIRE)**

**NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES  
ENV-WS 412  
REPORTING AND REMEDIATION OF OIL DISCHARGES  
November 1990**



**New Hampshire Code of Administrative Rules**  
**Env-Ws 412**  
**Reporting and Remediation of Oil Discharges**  
**November 1990**

*N.H. Department of Environmental Services*

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## **PART Env-Ws 412 REPORTING AND REMEDIATION OF OIL DISCHARGES** Statutory

Authority: RSA 146-A:11-C

**Env-Ws 412.01 Purpose.** The purpose of these rules is to establish procedures and requirements for notification, reporting, response actions, and investigations for sites where discharges of oil have occurred. **Source.** #4966, eff 11-2-90

**Env-Ws 412.02 Applicability.** Any responsible party or other person having knowledge of a discharge of oil shall report such discharge to the Division immediately, unless all of the following conditions are met:

1. The discharge is less than 25 gallons;
2. The discharge is immediately contained;
3. The discharge and/or contamination is completely removed within 24 hours; and
4. There is no impact or potential impact to groundwater or surface water.

**Source.** #4966, eff 11-2-90

### **Env-Ws 412.03 Definitions.**

1. "Discharge" means a leak, spill, or release of oil to the environment.
2. "Contamination" or "contaminated" means the results of discharge of oil into groundwater, surface water or soil.
3. "Free Product" means oil which exists as a separate phase or layer of greater than 1/8" thickness on water.
4. "Responsible Party" means an operator or other person who is strictly liable for a discharge of oil under RSA 146-A:3-a.
5. "Receptor" means a living organism or an environmental medium which is exposed to contamination from discharge.
6. "Site" means the place or location where a discharge is known or suspected to have occurred.

**Source.** #4966, eff 11-2-90

### **Env-Ws 412.04 Notification.**

1. Persons notifying the Division of confirmed or suspected discharges of oil shall provide the following information:
  1. The name and phone number of the person notifying the Division;
  2. The location of the discharge site;
  3. The date and time of the discharge; and
  4. The type and amount of oil discharged; and
  5. The name and phone number of the party potentially responsible for the discharge.
2. If the spill occurs during normal working hours, notification shall be directly to the Division. If the reporting party is unable to contact the Division, notification shall be to the State Police.

**Source.** #4966, eff 11-2-90

**Env-Ws 412.05 Initial Response Action.** When a discharge occurs any responsible party shall take the following actions immediately:

1. Assess the situation and evaluate fire, health and safety hazards;
2. Stop the discharge;
3. Contact the local fire department if a fire or safety hazard exists;
4. Notify the Division or State Police as required under Section Env-Ws 412.04;
5. Contain and remove all discharged oil and oil-contaminated debris;
6. Dispose of discharged oil and oil-contaminated debris in accordance with all applicable local, state and federal rules;
7. Monitor and mitigate fire, health and safety hazards posed by vapors or free product; and
8. Take any action necessary to prevent environmental damage from the discharge.

**Source.** #4966, eff 11-2-90

**Env-Ws 412.06 Abatement Measures.** After initial response action, responsible parties shall perform the following abatement measures:

1. Ensure that fire, health and safety hazards posed by free product or vapors continue to be monitored and mitigated;
2. Remediate hazards posed by contaminated soils that have been excavated or exposed as a result of the initial response action or site characterization. In undertaking remediation, all applicable local, state, and federal laws and regulations shall be complied with;
3. Investigate to determine the possible presence of free product; and
4. If free product is present, begin free product removal as soon as practicable in accordance with Env-Ws 412.07.

**Source.** #4966, eff 11-2-90

**Env-Ws 412.07 Free Product Removal.**

1. At sites where free product is present, responsible parties shall remove the free product in a manner that minimizes the spread of contamination.
2. Discharges and by-products from free product recovery and disposal operations shall be treated or disposed of in compliance with applicable local, state and federal regulations;
3. Free product removal systems shall be designed to completely remove free product;
4. Flammable products shall be handled in a safe and competent manner to prevent fires or explosions; and
5. Documentation of free product removal measures shall be submitted to the Division with the initial site characterization report required under Env-Ws 412.08 and shall contain the following information:
  1. The names of the person(s) responsible for implementing the free product removal measures;
  2. The estimated quantity, type, and thickness of free product observed or measured;
  3. The type of free product recovery system used;
  4. Whether any discharge of treated water takes place on-site or off-site during the recovery operation and where this discharge is located;
  5. The type of treatment applied to any contaminated water pumped or extracted to effect free product removal;

6. The steps that have been or are being taken to obtain necessary permits for any discharge of treated water; and
7. The disposition of the recovered free product.

**Source.** #4966, eff 11-2-90

#### **Env-Ws 412.08 Initial Site Characterization.**

1. Responsible parties shall conduct an initial site characterization unless they conclusively demonstrate to the Division that the discharge has not resulted in any contamination. The purpose of the initial site characterization shall be to obtain information about the hydrogeology of the site and the nature of the discharge, and identify any receptors and potential receptors.
2. Responsible parties shall conduct field investigations to assess the discharge in areas where contamination is most likely to be present at the site. In selecting sample types, sample locations, and measurement methods, responsible parties shall consider the nature of the discharged substance, the type of initial alarm or cause for suspicion, the types of backfill around any underground storage tanks, the distance to surface water and the depth to groundwater.
3. Responsible parties shall sample the environment most likely to be contaminated by a confirmed or suspected discharge. Analysis of soil gas, groundwater, surface water, or soils shall be used.
4. Environmental samples collected at the site may be field screened with an organic vapor analyzer and shall be analyzed at an EPA certified laboratory.
5. Within 30 days of the notification to the Division of a discharge, responsible parties shall submit a Site Characterization Report to the Division which shall include the following:
  1. Data on the nature, location, and estimated quantity of the discharge;
  2. Data from available sources or other investigations concerning:
    1. Surrounding populations;
    2. Water quality;
    3. Use and approximate locations of drinking water supplies potentially affected by the discharge;
    4. Subsurface soil conditions;
    5. Locations of underground utilities, drains, sewers; and
    6. Land use.
  3. Documentation of free product removal;
  4. Information gained while conducting the abatement measures In Env-Ws 412.06; and
  5. A preliminary assessment of receptors and potential receptors.

**Source.** #4966, eff 11-2-90

**Env-Ws 412.09 Investigation Due to Discovery of Discharges from Unknown Sources.** When a discharge from an unknown source is discovered, the owners and operators of facilities near the location of the discovery shall conduct an initial site characterization in accordance with Env-Ws 412.08 unless the owner or operator can conclusively demonstrate that a discharge has not occurred at the facility. The initial site characterization shall determine if a discharge has occurred at the facility. **Source.** #4966, eff 11-2-90

**Env-Ws 412.10 Site Investigation.**

1. Upon completion of an initial site characterization, responsible parties shall investigate the discharge, the discharge site, and the off-site surrounding area possibly affected by the discharge unless the initial site characterization establishes that no free product is present, no contaminated soils are present, and there is no present or potential groundwater or surface water impact from the discharge.
2. The site investigation shall determine the location and full extent of contamination and identify receptors and potential receptors.
3. Free product identified at any stage of the investigation shall be reported to the Division immediately and removed as expeditiously as possible. The presence of vapors which pose an imminent threat to public safety shall also be reported immediately and corrective action implemented without delay.
4. A recoverable bench mark shall be established at the site and if a USGS bench mark is within 1,000 feet of the site, elevations at the site shall be recorded using National Geodetic Vertical Datum (NGVD).
5. Responsible parties shall submit a site investigation report in accordance with Env-Ws 412.11 to the Division within 120 days of notification to the Division of a discharge.

**Source.** #4966, eff 11-2-90

**Env-Ws 412.11 Site Investigation Report.**

1. A site investigation report shall define the nature, extent, and magnitude of contamination and identify threats to public health, welfare and to the environment.
2. The site investigation report shall include the following information:
  1. Location of the site, including address, phone number at the site, tax map and lot number;
  2. History of site ownership and operation for at least the last 50 years or since initial development, including the name, current address and telephone number of all current owners and operators;
  3. A locus plan which is a photocopy of USGS topographic maps;
  4. A copy of the local tax map showing the property on which the site is located in relation to surrounding properties;
  5. A plot plan which meets the requirements of Env-Ws 412.11(c);
  6. A groundwater contour map, consisting of the plot plan overlaid with the groundwater contours and showing measured water level elevations in piezometers and monitoring wells;
  7. A potential receptors map using the tax map as a base showing:
    1. Street names;
    2. Adjacent properties;
    3. Adjacent and nearby buildings;
    4. Residences with basements;
    5. Surface water bodies; and
    6. Water supply wells within 1,000 feet of the site location.
  8. Underground storage tank information, including:
    1. Date of installation of all tanks on site, and date of removal of all tanks previously located on the site;
    2. Size and construction material of all tanks on site;
    3. Substances presently and previously stored in all tanks;

4. Tank tightness test dates, methods, testers, and results, including data and worksheets or calculations;
5. Type and location of release detection and corrosion protection for tanks and lines; and
6. Type or textural class of fill under and around tanks and lines.
9. A description of all known discharges of oil and other contaminants on the site including:
  1. Date and description of the discharge, including the quantities lost and recovered, and the location of the discharge;
  2. Date the discharge was reported to the division; and
  3. Cleanup action taken and assessment of offsite impacts, if any.
10. Results of on-site inspection during any tank removal, Including:
  1. Description and location of any corrosion, visible leaks, or loose fittings;
  2. The name, organization, address and telephone number of the official observer such as the fire marshal, fire department or division representative, present when tank(s) were removed;
  3. A description of conditions in area of the tank excavation including contaminated soil volumes, odors, sheens, visible product, bedrock, or tank anchors;
  4. A description of sampling methodology and analytical field screening measurements;
  5. Photographs of moved tanks; and
  6. Ultimate disposal of the tank(s) and contaminated soil.
11. A list of previously completed investigations and reports pertinent to the site.
12. A summary of all governmental files reviewed.
13. A description of the geology of the site, including:
  1. Soil types, thickness, classification, grain size, and texture;
  2. Test pit and boring log data including textural description, drilling methods, odors observed, blow counts, and water table observation; and
  3. Bedrock description, depth and characteristics.
14. Groundwater elevation information including a table of water level measurements, top of casing elevations relative to an assumed datum depth of water table, and free product thickness, if present.
15. Groundwater quality sampling information, including locations, dates, sampling methodologies, and analytical results for all groundwater quality samples obtained.
16. Surface water information, including locations of points or seeps within 500 feet of the site where the groundwater discharge to surface water, and locations, dates, sampling methodologies, and analytical results for any samples of surface water suspected to be impacted.
17. Conclusions and recommendations, including:
  1. A summary description of the source or potential source(s) of the contamination;
  2. A description of the current extent of contamination in the soil, surface water, groundwater, and the presence of vapors;
  3. Identification of potential receptors due to the presence or potential migration of contaminants; and
  4. Recommendations for further investigation and remediative measures.
3. The plot plan required by Env-Ws 412.11(b)(5) shall be prepared in accordance with the following:
  1. The plan shall be drawn to scale and the scale shall be noted on the plan, including a graphic scale bar;
  2. A north arrow shall be included;
  3. At least one bench mark shall be shown and its elevation, whether assumed datum or NGVD, and a brief identification description shall be included; and

4. Surface contours and any spot elevations obtained shall be shown.
4. The plot plan required by Env-Ws 412.11(b)(5) shall show the following features and attributes if applicable:
  1. Buildings;
  2. Paved areas;
  3. Property lines;
  4. Above ground tanks and other structures;
  5. Surface water bodies;
  6. Drainage swales;
  7. Flood plains;
  8. Areas of identified releases;
  9. Areas of stressed or dead vegetation;
  10. Areas of stained or discolored soil;
  11. Underground tanks and associated piping;
  12. Former locations of underground storage tanks;
  13. Underground utilities;
  14. Subsurface drains;
  15. Septic systems and dry wells;
  16. Soil borings and test pits;
  17. Water supply wells; and
  18. Piezometers and monitoring wells.
5. Maps and plans shall be printed on 8 1/2 X 11 inch or 11 X 17 inch sheets.

**Sources.** #4966, eff 11-2-90

#### **Env-Ws 412.12 Remedial Action Plan.**

1. Responsible parties required to conduct a site investigation under Env-Ws 412.10 shall submit a remedial action plan for responding to and remediating contamination.
2. The plan shall provide for protection of human health and the environment.
3. The Division shall approve or disapprove the plan, based upon a determination of conformance with the following remedial action plan criteria:
  1. The plan shall identify known technologies and alternative remedial options which have the potential to achieve contamination removal;
  2. The plan shall provide a time schedule for achieving contamination removal;
  3. The plan shall identify any special requirements necessary to prove the technical feasibility of the proposed remedial action(s);
  4. The plan shall recommend a method(s) for off-site disposal of contaminated soils and/or water, if removal of contaminated materials from the site is inclusive in the plan;
  5. The plan shall recommend short and long term site monitoring requirements; and
  6. The plan shall recommend remediation alternatives, which incorporate risk-based exposure assessments as applicable, to mitigate contamination impacts to receptors.
4. Upon approval of the remedial action plan by the division, based on the criteria in paragraph (c) above, the responsible party shall implement the plan.
5. The results of implementing the plan, including an evaluation of the effectiveness of the remediation, shall be submitted to the Division.
6. Responsible parties may, in the interest of minimizing contamination and promoting more effective remediation, begin remediation of soil, groundwater and surface water before the remedial action plan is approved by the Division, provided they:
  1. Notify the Division in writing of their intent to begin remediation;

2. Comply with any conditions imposed by the Division including halting remediation or mitigating adverse consequences from remediation activities;
3. Incorporate these self-initiated remediation measures into the plan that is submitted to the Division for approval; and
4. Comply with the requirements of all applicable local, state, and federal rules and statutes.

**Source.** #4966, eff 11-2-90

#### **Env-Ws 412.13 Public Notification.**

1. Responsible parties shall notify all owners of property within 100 feet of the property on which the site is located, all owners of drinking water wells within 500 feet of the site, and the local selectmen or mayor as appropriate, regarding the nature, extent, and magnitude of contamination and the existence of threats to public health, welfare and the environment, if any, and proposed remedial action.
2. Public notification shall be provided upon completion of a site investigation report and/or remedial action plan, completed in accordance with these rules.
3. Responsible parties shall report public notification to the Division including copies of notices sent to abutters and local officials which indicate the manner of delivery.
4. If public notification is not made by responsible parties, the Division shall do so and all costs of public notification shall be paid by responsible parties.

**Source.** #4966, eff 11-2-90

#### **Env-Ws 412.14 Waivers.**

1. The rules contained in this Part are intended to apply to a variety of conditions and circumstances. It is recognized that strict compliance with all rules prescribed herein may not fit every conceivable situation. Responsible parties may request a waiver of specific rules outlined in this Part in accordance with paragraph (b) below.
2. All requests for waivers shall be submitted in writing to the Division and shall include the following information:
  1. A description of the facility or site to which the waiver request relates, including the name, address, and identification number of the facility or site;
  2. A specific reference to the section of the rule for which a waiver is being sought;
  3. A full explanation of why a waiver is necessary and demonstration of hardship caused if the rule is adhered to;
  4. A full explanation of the alternatives for which a waiver is sought, with backup data for support; and
  5. A full explanation of how the alternatives for which a waiver sought is consistent with the intent of RSA 146-A, would have a just result, and would adequately protect human health and the environment.
3. The Division shall approve a request for a waiver upon finding that the alternatives proposed are at least equivalent to the requirements contained in this rule, they are adequate to ensure that the provisions of RSA 146-A are met, and human health and the environment are protected.
4. No waiver shall be granted which, in the judgment of the Division, contravenes the intent of any rule.
5. The Division shall issue a written response to a request for a waiver within 60 days of receipt of the request.



**Source.** #4966, eff 11-2-90