

Environmental Protection Agency

§ 282.89

submitted as part of the original application on November 25, 2002, though not incorporated by reference, are referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 3 and the Pennsylvania Department of Environmental Protection, signed by the EPA Regional Administrator on August 22, 2003, though not incorporated by reference, is referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

[71 FR 13770, Mar. 17, 2006]

§ 282.89 Rhode Island State-Administered Program.

(a) The State of Rhode Island 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 Rhode Island Department of Environmental Management (RI DEM), was approved by EPA pursuant to 42 U.S.C. 6991c and 40 CFR part 281. EPA approved the Rhode Island program on February 3, 1993, which was effective on March 5, 1993.

(b) Rhode Island has primary responsibility for administering and enforcing its federally approved 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 any other applicable statutory and regulatory provisions.

(c) To retain program approval, Rhode Island must revise its approved program to adopt new changes to the Federal Subtitle I program which makes it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c and 40 CFR part 281, subpart E. If Rhode Island obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this

subpart and notification of any change will be published in the FEDERAL REGISTER.

(d) Rhode Island has final approval for the following elements of its program application originally submitted to EPA and approved effective March 5, 1993, and the program revision application approved by EPA, effective on February 9, 2021.

(1) *State statutes and regulations—(i) Incorporation by reference.* The material cited in this paragraph (d)(1)(i), and listed in appendix A to this part, is incorporated by reference as part of the underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* (See §282.2 for incorporation by reference approval and inspection information.) You may obtain copies of the Rhode Island regulations and statutes that are incorporated by reference in this paragraph (d)(1)(i) from Kevin Gillen, Rhode Island DEM, 235 Promenade Street, Providence, RI 02908-5767; Phone number: 401-222-2797; kevin.gillen@dem.ri.gov, Hours: Monday-Friday, 7:00 a.m. to 3:30 p.m.; link to statutes and regulations: State of Rhode Island General Laws: <https://webserver.rilin.state.ri.us/Statutes/>; <http://www.dem.ri.gov/programs/wastemanagement/ust/>. You may inspect all approved material at the EPA Region 1 Office, 5 Post Office Square, 1st floor, Boston, MA 02109-3912; Phone Number: (617) 918-1313; or the National Archives and Records Administration (NARA), Email: fedreg.legal@nara.gov, website: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(A) "EPA-Approved Rhode Island Statutory and Regulatory Requirements Applicable to the Underground Storage Tank Program, May 2020."

(B) [Reserved]

(ii) *Legal basis.* EPA evaluated the following statutes and regulations which are part of the approved program, but they are not being incorporated by reference for enforcement purposes, and do not replace Federal authorities:

(A) The statutory provisions include:

(1) *Rhode Island General Laws, Title 38: Public Records*; Chapter 38-1, Custody and Protection of Public Records; Chapter 38-2, Access to Public Records;

and 38–3, Administration of Public Records.

(2) *Rhode Island General Laws, Title 42—Affairs and Government*; Chapter 42–17.1–2(20), Department of Environmental Management, Powers and Duties to Enter, Examine or Survey for Criminal Investigations; Chapter 42–17.6, Administrative Penalties for Environmental Violations.

(3) *Rhode Island General Laws, Title 46—Waters and Navigation*; Chapter 46–12—Water Pollution, Section 12–3, Powers and Duties of the Director, except (21); Section 12–9, Notices of Violation and Compliance Orders; 12–10, Emergency Powers; 12–13, Civil Penalties; 12–14, Criminal Penalties; 12–15, Inspection Powers—Rules and Regulations; and Section 12–22. Access of Enforcement Officers to Premises.

(B) The regulatory provisions include:

(1) *Title 250—Department of Environmental Management, Chapter 140—Waste and Materials Management, Subchapter 25—Oil and Underground Tanks, Part 1—Rhode Island Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials*, adopted as 250–RICR–140–25–1, Section: 1.10(T) Delivery Prohibition; 1.16(F) Suspension or Revocation of License; 1.16(G) Procedure for Suspension and Revocation; 1.16(H) Requests for Hearings; 1.21 Appeals; 1.22 Penalties.

(2) *Title 250—Department of Environmental Management, Chapter 20—Legal Services, Subchapter 00—N/A, Part 1—Administrative Rules of Practice and Procedure for the Department of Environmental Management 20–00–1*, adopted as 250–RICR–20–00–1.

(3) *Title 250—Department of Environmental Management, Chapter 130—Compliance and Inspection, Subchapter 00—N/A, Part 1—Rules and Regulations for Assessment of Penalties*, adopted as 250–RICR–130–00–1.

(iii) *Provisions not incorporated by reference.* The following specifically identified statutory and regulatory provisions applicable to the Rhode Island’s UST program are broader in scope than the Federal program, are not part of the approved program, and are not incorporated by reference in this section for enforcement purposes:

(A) *Rhode Island Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials, 250–RICR–140–25–1*, Section: 1.4(E) Partial regulation of residential tanks storing heating oil at one, two, or three-unit dwellings and farm tanks storing heating oil for non-commercial purposes; 1.4(G) Partial regulation of holding tanks; 1.7(A) Registration applies to all farm and residential tanks containing heating or fuel oils consumed on-site and containing motor fuels for on-site use; 1.9 The Rhode Island UST Financial Responsibility Fund; 1.10 Minimum UST Operation and Maintenance Requirements, (C), (D), (F)(4) and (J); 1.11 New and Replacement UST System Requirements, (B)(1–3) and (5), (C)(1), (J)(1), and (L)(2); 1.12 Facility Modifications or Repairs, (A); 1.15 Closure, (D)(5); 1.16 Approval of Tank and/or Line Tightness Tests, Leak Detection Methods and Licensing Requirements, (B), (D), and (E); 1.19 Holding Tanks; 1.20 Variances.

(B) [Reserved]

(2) *Statement of legal authority.* The Attorney General’s Statements, signed by the Attorney General of Rhode Island on July 1, 1992, and January 23, 2020, 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.*

(3) *Demonstration of procedures for adequate enforcement.* The “Demonstration of Procedures for Adequate Enforcement” submitted as part of the original application on July 2, 1992, and as part of the program revision application for approval on February 4, 2020, 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 on July 2, 1992, and as part of the program revision application on February 4, 2020, 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 1 and the Rhode Island Department of Environmental Services, signed by the EPA Regional Administrator on February 12, 2019, 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.*

[85 FR 79878, Dec. 11, 2020]

§ 282.90 South Carolina State-Administered Program.

(a) *History of the approval of South Carolina's program*. The State of South Carolina (South Carolina or State) is approved to administer and enforce an underground storage tank (UST) program in lieu of the Federal program under subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA or Act), as amended, 42 U.S.C. 6991 *et seq.* The State's Underground Storage Tank Program (UST Program), as administered by the South Carolina Department of Health and Environmental Control (DHEC), was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. EPA approved the South Carolina UST Program on August 28, 2002 and it was effective on September 27, 2002. A subsequent program revision was approved by EPA and became effective May 24, 2021.

(b) *Enforcement authority*. South Carolina has primary responsibility for administering and enforcing its federally approved UST Program. However, EPA retains the authority to exercise its corrective action, inspection, and enforcement authorities under sections 9003(h), 9005, and 9006 of subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d, and 6991e, as well as under any other applicable statutory and regulatory provisions.

(c) *Retention of program approval*. To retain program approval, South Carolina must revise its approved UST 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 South Carolina obtains approval for revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions

will be added to this subpart and notice of any change will be published in the FEDERAL REGISTER.

(d) *Final approval*. South Carolina has final approval for the following elements of its UST Program submitted to EPA and approved effective September 27, 2002, and the program revisions approved by EPA effective on May 24, 2021:

(1) *State statutes and regulations—(i) Incorporation by reference*. The South Carolina materials cited in this paragraph (d)(1)(i), and listed in appendix A to this part, are incorporated by reference as part of the UST Program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may access copies of the South Carolina statutes and regulations that are incorporated by reference in this paragraph (d)(1)(i) from the South Carolina State Register, 223 Blatt Building, 1105 Pendleton Street, Columbia, South Carolina 29201; Phone number: (803) 212-4500; website: <https://www.scstatehouse.gov/>. You may inspect all approved material at EPA Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303; Phone number: (404) 562-9900; or the National Archives and Records Administration (NARA), email: fedreg.legal@nara.gov, website: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(A) “South Carolina Statutory Requirements Applicable to the Underground Storage Tank Program,” dated September 9, 2020.

(B) “South Carolina Regulatory Requirements Applicable to the Underground Storage Tank Program,” dated September 9, 2020.

(ii) *Legal basis*. EPA considered the following statutes and regulations which provide the legal basis for the State's implementation of the UST Program, but they are not being incorporated by reference and do not replace Federal authorities:

(A) *State Underground Petroleum Environmental Response Bank Act (SUPERB) of 1988, S.C. Code Ann. sections 44-2-10 to 44-2-150 (2010)*. (1) Section 44-2-50(A) and (C) Regulations to be promulgated.