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40 CFR Ch. I (7-1-04 Edition)

(5) *Memorandum of agreement.* The Memorandum of Agreement between EPA Region I and the New Hampshire Department of Environmental Services, 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.*

§ 282.80 [Reserved]

§ 282.81 **New Mexico State-Administered Program.**

(a) The State of New Mexico 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 Mexico Environmental Improvement Board, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this Chapter. EPA approved the New Mexico program on August 21, 1990 and it was effective on November 16, 1990.

(b) New Mexico 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.

(c) To retain program approval, New Mexico 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 New Mexico obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the FEDERAL REGISTER.

(d) New Mexico has final approval for the following elements submitted to EPA in New Mexico's program application for final approval and approved by EPA on August 21, 1990. Copies may be obtained from the Underground Stor-

age Tank Program, New Mexico Environmental Improvement Board, 1190 St. Francis Drive, Santa Fe, NM 87503.

(1) *State statutes and regulations.* (i) 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.*

(A) New Mexico Statutory Requirements Applicable to the Underground Storage Tank Program, 1995.

(B) New Mexico Regulatory Requirements Applicable to the Underground Storage Tank Program, 1995.

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

(A) The statutory provisions include:
(1) *New Mexico Statutes 1978 Annotated, Chapter 74, Environmental Improvement.*

- (i) Article 4: Hazardous Wastes.
 - 74-4-4.2 Permits; Issuance; Denial; Modification; Suspension; Revocation
 - 74-4-4.3 Entry; Availability of Records
 - 74-4-10 Enforcement; Compliance Orders; Civil Penalties
 - 74-4-11 Penalty; Criminal
 - 74-4-12 Penalty; Civil
 - 74-4-13 Imminent Hazards; Authority of Director; Penalties
 - 74-4-14 Administrative Actions; Judicial Review

- (ii) Article 6: Water Quality.
 - 74-6-7 Administrative Action; Judicial Review
 - 74-6-10 Penalties Enforcement; Compliance Orders; Penalties; Assurance of Discontinuance
 - 74-6-10.1 Civil Penalties
 - 74-6-10.2 Criminal Penalties
 - 74-6-11 Emergency; Powers of Delegated Constituent Agencies; Penalties

- (iii) Article 6B: Ground Water Protection.
 - 74-6B-5 Department's Right of Entry and Inspection

(B) The regulatory provisions include:

(1) *State of New Mexico Environmental Improvement Board Underground Storage Tank Regulations.*

- (i) Part X: Administrative Review.
 - § 1000 Informal Review
 - § 1001 Review By the Director on Written Memoranda

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§ 1002 Public Participation

(2) *New Mexico Rules Governing Appeals From Compliance Orders Under the Hazardous Waste Act and the Solid Waste Act.*

(i) Part I: General Provisions.

- § 101 Authority
- § 102 Scope of Rules; Applicability of Rules of Civil Procedure
- § 103 Definitions
- § 104 Use of Number and Gender
- § 105 Powers and Duties of the Director, Hearing Officer, and Hearing Clerk
- § 106 Computation and Extension of Time
- § 107 Ex Parte Discussions
- § 108 Examination of Documents Filed
- § 109 Settlement; Consent Agreement

(ii) Part II: Document Requirements.

- § 201 Filing, Service, and Form of Documents
- § 202 Filing and Service of Documents Issued by Hearing Officer
- § 203 Compliance Order
- § 204 Request for Hearing; Answer to Compliance Order
- § 205 Notice of Docketing; Notice of Hearing Officer Assignment
- § 206 Motions

(iii) Part III: Prehearing Procedures and Discovery.

- § 301 General Rules Regarding Discovery
- § 302 Identity of Witnesses
- § 303 Production of Documents
- § 304 Request for Admissions
- § 305 Subpoenas
- § 306 Other Discovery

(iv) Part IV: Hearing Procedures.

- § 401 Scheduling the Hearing
- § 402 Evidence
- § 403 Objections and Offers of Proof
- § 404 Burden of Presentation; Burden of Persuasion

(v) Part V: Post-Hearing Procedures.

- § 501 Filing the Transcript
- § 502 Proposed Findings, Conclusions and Orders
- § 503 Recommended Decision
- § 504 Final Order by Director
- § 505 Judicial Review

(vi) Part VI: Miscellaneous Provisions.

- § 601 Liberal Construction
- § 602 Severability
- § 603 Supersession of Prior Rules
- § 604 Savings Clause

(iii) The following statutory and regulatory provisions are broader in scope than the federal program, are not part

of the approved program, and are not incorporated by reference herein for enforcement purposes.

(A) New Mexico Statutes 1978 Annotated, Chapter 74, Environmental Improvement.

(1) 74-4-4.4 Underground Storage Tanks; Registration; Installer Certification; Fees [Insofar as it applies to individuals other than UST owners and operators.]

(B) State of New Mexico Environmental Improvement Board Underground Storage Tank Regulations.

(1) Part I: General Provisions.

§ 103 Applicability [Insofar as it does not exclude UST systems with *de minimis* concentrations of regulated substances; emergency spill or overflow containment UST systems expeditiously emptied after use; UST systems that are part of emergency generator systems at nuclear power generation facilities; airport hydrant fuel distribution systems; and UST systems with field-constructed tanks; and does not defer emergency power generator UST systems.]

(2) Part XIV: Certification of Tank Installers [Insofar as it applies to individuals other than UST owners and operators.]

- § 1400 Purpose
- § 1401 Legal Authority
- § 1402 Definitions
- § 1403 Applicability
- § 1404 General Requirements
- § 1405 Contractor Certification
- § 1406 Individual Certification
- § 1407 Experience Requirements
- § 1408 Written Examination
- § 1409 On-Site Examination
- § 1410 Approval of Comparable Certification Programs
- § 1411 Denial of Certificates
- § 1412 Renewal of Certificates
- § 1413 Installer Duties and Obligations
- § 1414 Division Approval of Training and Continuing Education
- § 1415 Complaints
- § 1416 Investigations, Enforcement, Penalties
- § 1417 Division Actions Against Certificates

(2) *Statement of legal authority.* (i) “Attorney General’s Statement for Final Approval”, signed by the Attorney General of New Mexico on June 25, 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.*

(ii) Letter from the Attorney General of New Mexico to EPA, June 25, 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 on September 25, 1989, 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 September 25, 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 6 and the New Mexico Environmental Improvement Board, signed by the EPA Regional Administrator on September 13, 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.*

[61 FR 1217, Jan. 18, 1996]

§ 282.82 [Reserved]

§ 282.83 North Carolina State-Administered Program.

(a) The State of North Carolina 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 North Carolina Department of Environment and Natural Resources, Division of Waste Management, UST Section, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. EPA approved the North Carolina program on April 26, 2001 with an effective date of August 14, 2001.

(b) North Carolina 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.

(c) To retain program approval, North Carolina 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 North Carolina obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the FEDERAL REGISTER.

(d) North Carolina has final approval for the following elements submitted to EPA in the State’s program application for final approval and approved by EPA on April 26, 2001. Copies may be obtained from the North Carolina Department of Environment and Natural Resources, Division of Waste Management, UST Section, 2728 Capital Blvd., Raleigh, NC 27604.

(1) *State statutes and regulations.* (i) 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.*

(A) North Carolina Statutory Requirements Applicable to the Underground Storage Tank Program, 1997.

(B) North Carolina Regulatory Requirements Applicable to the Underground Storage Tank Program, 1997 and 1998.

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

(A) The statutory provisions include:
(1) General Statutes of North Carolina, Chapter 143—State Departments, Institutions, and Commissions; Article 21, Water and Air Resources

§ 143-215.6A Enforcement procedures: civil penalties