

US EPA ARCHIVE DOCUMENT

use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget, an explanation when the Agency decides not to use available and applicable voluntary consensus standards. This final rule does not involve technical standards. It merely approves regulations adopted by the State of Alabama. Therefore, EPA did not consider the use of any voluntary consensus standards.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified Section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's final rule would not significantly or uniquely affect Alabama's communities of Indian tribal governments, since the rule does not apply to them. Accordingly, the requirements of Section 3(b) of Executive Order 13084 do not apply to this rule.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804 (2). This rule will be effective January 19, 2000.

List of Subjects in 40 CFR Part 147

Environmental protection, Incorporation by reference, Intergovernmental relations, Water supply.

Dated: December 22, 1999.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, 40 CFR part 147 is amended as follows:

PART 147—[AMENDED]

1. The authority citation for part 147 continues to read as follows:

Authority: 42 U.S.C. 300h; and 42 U.S.C. 6901 *et seq.*

Subpart B—Alabama

2. Section 147.52 is added to Subpart B to read as follows:

§ 147.52 State-administered program—Hydraulic Fracturing of Coal Beds.

The UIC program for hydraulic fracturing of coal beds in the State of Alabama, except those on Indian lands, is the program administered by the State Oil and Gas Board of Alabama, approved by EPA pursuant to Section 1425 of the SDWA on December 22, 1999 and effective on January 19, 2000. The Alabama program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in State Oil and Gas Board of Alabama Rule 400-4-1-.02, Definitions, and Rule 400-4-5-.04, Protection of Underground Sources of Drinking Water during the Hydraulic Fracturing of Coal Beds, are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Alabama. This incorporation by reference was approved by the Director of the Federal Register on January 19,

2000 in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained at the State Oil and Gas Board of Alabama, 420 Hackberry Lane, Tuscaloosa, AL 35489-9780. Copies may be inspected at the Environmental Protection Agency, Region 4, Water Management Division, Ground Water/Drinking Water Branch, Ground Water & UIC Section, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Room 15-T53, Atlanta, GA 30303-8960, or at the Office of the Federal Register, 800 N. Capitol Street NW, Suite 700, Washington, DC.

(b) Addendum One, Underground Injection Control Program, Memorandum of Agreement Between the State of Alabama and the USEPA Region 4, signed by the Supervisor, Alabama State Oil and Gas Board on December 10, 1999, and the Regional Administrator, U.S. Environmental Protection Agency Region 4, on December 13, 1999.

(c) *Statement of Legal Authority.* "I hereby certify, pursuant to my authority as Attorney General for the State of Alabama and for reasons set forth in this statement, that in my opinion, the laws of the State of Alabama provide the State Oil and Gas Board (hereinafter referred to as "the Board") adequate authority to carry out an Underground Injection Program for the control of underground injection activity related to the hydraulic fracturing of coal beds." Opinion by Alabama's Attorney General Office, extracted from Letter from R. Craig Kneisel, Chief, Environmental Division, Office of the Attorney General, dated October 8, 1999, to Dr. Donald F. Oltz, Supervisor, State Oil and Gas Board of Alabama, Subject: Attorney General's Statement for Final Authorization of Alabama Class II Underground injection Control Program.

(d) The Program Description for the Regulation of Hydraulic Fracturing of Coal Beds As required by 40 CFR 145.23—State Oil and Gas Board of Alabama, including Appendices A through F.

[FR Doc. 00-622 Filed 1-18-00; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-6525-5]

North Dakota: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: North Dakota has applied to EPA for Final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements for Final authorization, and is authorizing the State's changes through this immediate Final action. EPA is publishing this rule to authorize the changes without a prior proposed rule because we believe this action is not controversial. Unless we get written comments opposing this authorization during the comment period, the decision to authorize North Dakota's changes to their hazardous waste program will take effect as provided below. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect. A separate document in the proposed rules section of this **Federal Register** will serve as the proposal to authorize the State's changes.

DATES: This immediate final rule will become effective March 20, 2000 unless EPA receives significant adverse or critical comments by February 18, 2000. If written significant adverse or critical comments are received, EPA will publish a timely withdrawal of the rule in the **Federal Register**, informing the public that the rule will not take effect.

ADDRESSES: Send written comments to Kris Shurr, 8P-HW, U.S. EPA, Region VIII, 999 18th St, Ste 500, Denver, Colorado 80202-2466, phone number: (303) 312-6139. You can view and copy North Dakota's application at the following addresses: NDDH from 9:00 AM to 4:00 PM, 1200 Missouri Ave, Bismarck, ND, 58504-5264, contact: Curt Erickson, phone number (701) 328-5166 and EPA Region VIII, from 8:00 AM to 3:00 PM, 999 18th Street, Suite 500, Denver, Colorado 80202-2466, contact: Kris Shurr, phone number: (303) 312-6139.

FOR FURTHER INFORMATION CONTACT: Kris Shurr, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2466, phone number: (303) 312-6139.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions To State Programs Necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask

EPA to authorize their changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made In This Rule?

We conclude that North Dakota's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant North Dakota Final authorization to operate its hazardous waste program with the changes described in the authorization application. North Dakota has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders, except in Indian Country, and for carrying out those portions of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by EPA under the authority of HSWA take effect immediately and will be implemented by EPA until the State is granted authorization.

C. What is The Effect of Today's Authorization Decision?

The effect of this decision is that a facility in North Dakota subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements. North Dakota has primary enforcement responsibilities under its state hazardous waste program for violations of the program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- conduct inspections, and require monitoring, tests, analyses, or reports; and
- enforce RCRA requirements and suspend or revoke permits.

This action does not impose additional requirements on the regulated community because the regulations for which North Dakota is being authorized are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments opposing this

approval. We are providing an opportunity for public comment at this time. In addition, in the proposed rules section of today's **Federal Register**, there is a separate document that proposes to authorize the State program changes. If we receive comments opposing this authorization, that document will serve as a proposal to authorize the changes.

E. What Happens if EPA Receives Comments Opposing This Action?

If EPA receives comments opposing this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. We then will address all public comments in a later **Federal Register**. You may not have another opportunity to comment. If you want to comment on this action, you must do so at this time.

If we receive comments opposing authorization of only a particular change to the State hazardous waste program, we will withdraw that part of the rule. However, the authorization of program changes that are not opposed by any comments will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective and which part is being withdrawn.

F. What Has North Dakota Previously Been Authorized For?

North Dakota initially received Final authorization on October 5, 1984, effective October 19, 1984 (49 FR 39328) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on June 25, 1990, effective August 24, 1990 (55 FR 25836), May 4, 1992, effective July 6, 1992 (57 FR 19087), and April 7, 1994, effective June 6, 1994 (59 FR 16566).

G. What Changes Are We Authorizing With Today's Action?

In October 1994, North Dakota submitted a final revision application, seeking authorization of program changes in accordance with 40 CFR 271.21. At EPA's request, North Dakota amended its application in July 1995, July 1997, August 1998, and September 1999.

We have determined that the manner in which the North Dakota incorporates Federal regulations by reference may cause confusion within the regulated community. During State rulemaking, North Dakota publishes a Public Notice setting forth which Federal rules are adopted by reference, including the date of those Federal rules. However,

publications of State rules after the Public Notice do not include the date of applicable Federal rules. As a result, the regulated community may need to read the North Dakota Public Notice to know which Federal rule applies. With North Dakota's agreement, EPA is approving

the current application with the understanding that the State will include Federal regulation dates in the next and all future incorporation-by-reference rulemaking.

We now make an immediate final decision, subject to receipt of written

comments opposing this action, that North Dakota's hazardous waste program revision satisfies all of the requirements necessary for Final authorization. Therefore, we grant North Dakota Final authorization for the following program changes:

Description of Federal requirement	Analogous State authority and effective date
Exceptions to the Burning & Blending of Hazardous Waste [HWSA 3004(q)(2)(A) & 3004 (r)(2) & (3)] (Non-checklist BB).	NDCC 23-20.3-04/1987, NDAC 33-24-02-04; NDAC 33-24-02-06.
Hazardous & Used Oil Fuel Criminal Penalties [HWSA 3006(h), 3008(d), & 3014] (Non-checklist CP).	NDCC 23-20.3-09/1987 NDAC 33-24-05-600 thru 689.
Sharing of Information With the Agency for Toxic Substances & Disease Registry [HWSA 3019, 07/15/85] (Non-checklist SI).	NDCC 44-04-18/1987.
Surface Impoundment Requirements [HWSA 3005 (j)(1) & (6)] (Non-checklist SR1).	NDCC 23-20.3-04; 23-20.3-05/1987, NDAC 33-24-06-16.
Surface Impoundment Requirements [HWSA 3005 (j)(2)-(9) & (13)] (Non-checklist SR2).	NDCC 23-20.3-04/1987, NDAC 33-24-06-16.
Permit Modifications for Hazardous Waste Management Facilities [53 FR 37912-37942, 09/28/88 & 53 FR 41649, 10/24/88] (Checklist 54 & 54.1).	33-24-07-03; 33-24-05-29; 33-24-05-61; 33-24-05-67; 33-24-06-16; 33-24-01-04; 33-24-06-10; 33-24-06-04; 33-24-06-11; 33-24-06-12; 33-24-06-14; 33-24-06-19.
Identification & Listing of Hazardous Waste; Removal of Iron Dextran from the list of Hazardous Wastes [53 FR 43878-43881, 10/31/88] (Checklist 56).	33-24-02-18; 33-24-02, Appendix V.
Identification & Listing of Hazardous Waste; Removal of Strontium Sulfide from the list of Hazardous Wastes [53 FR 43881-43884, 10/31/88] (Checklist 57).	33-24-02-18; 33-24-02, Appendix V.
Changes to Interim Status Facilities for Hazardous Waste Management Permits; Procedures for Post-Closure Permitting [54 FR 9596-9609, 03/07/89] (Checklist 61).	33-24-07-01; 33-24-07-11; 33-24-07-14; 33-24-06-01; 33-24-06-13; 33-24-06-14; 33-24-06-16.
Land Disposal Restrictions; Amendments to First Third Scheduled Wastes [54 FR 18836-18838, 05/02/89] (Checklist 62).	33-24-05-283.
Land Disposal Restrictions; Corrections to the First Third Scheduled Wastes [54 FR 36967, 09/06/89 & 55 FR 23935, 06/13/90] (Checklist 66 & 66.1).	33-24-05-250; 33-24-05-254; 33-24-05-254; 33-24-05-255; 33-24-05-256; 33-24-05-257; 33-24-05-272; 33-24-05-273; 33-24-05-284; 33-24-05-290.
Modification of F019 Listing [55 FR 5340-5342, 02/14/90] (Checklist 72).	33-24-02-16.
Listing of 1,1-Dimethylhydrazine Production Wastes [55 FR 18496-18506, 05/02/90] (Checklist 75).	33-24-02-17; 33-24-02.
Land Disposal Restrictions for Third Third Scheduled Wastes [55 FR 22520-22720, 06/01/90] (Checklist 78H & N).	33-24-02, App IV; 33-24-02-10 thru 14; 33-24-02-16; 33-24-02-18; 33-24-03-02; 33-24-03-12; 33-24-05, Appendices VIII thru XI; 33-24-05, Appendix XIII 33-24-05-04; 33-24-05-120; 33-24-05-133; 33-24-05-168; 33-24-05-181; 33-24-05-185; 33-24-05-250 thru 252; 33-24-05-256; 33-24-05-258; 33-24-05-275; 33-24-05-280 thru 283; 33-24-06-14; 33-24-06-16.
Toxicity Characteristic; Hydrocarbon Recovery Operations [55 FR 40834-40837, 10/05/90; 56 FR 3978, 02/01/91; 56 FR 13406-13411, 04/02/91] (Checklist 80, 80.1, & 80.2).	33-24-02-04.
Petroleum Refinery Primary & Secondary Oil/Water/Solids Separation Sludge Listings (F037 & F038) [55 FR 46354-46397, 11/02/90; 55 FR 51707, 12/17/90] (Checklist 81 & 81.1).	33-24-02, Appendix IV; 33-24-02-16.
Wood Preserving Listings [55 FR 50450-50490, 12/6/90] (Checklist 82)	33-24-02, Table 1, Appendix III; 33-24-02, Appendices IV & V; 33-24-01-04; 33-24-02-04; 33-24-02-16; 33-24-02-19; 33-24-03-12; 33-24-05-103; 33-24-05-501 thru 506; 33-24-06-16; 33-24-06-17.
Land Disposal Restrictions for Third Third Scheduled Wastes; Technical Amendments [56 FR 3864-3928, 01/31/91] (Checklist 83).	33-24-02-03; 33-24-02-10; 33-24-02-16; 33-24-03-02; 33-24-03-12; 33-24-05-251; 33-24-05-256; 33-24-05-258; 33-24-05-273; 33-24-05-275; 33-24-05-280 thru 283; 33-24-05, Appendices I, V, VIII, IX, XI, & XIII.
Toxicity Characteristic; Chlorofluorocarbon Refrigerants [56 FR 5910-5915, 02/13/91] (Checklist 84).	33-24-02-04.
Removal of Strontium Sulfide from the List of Hazardous Wastes; Technical Amendment [56 FR 7567-7568, 02/25/91] (Checklist 86).	33-24-02, Appendix V; 33-24-02-18.
Organic Air Emission Standards for Process Vents & Equipment Leaks; Technical Amendment [56 FR 19290, 04/26/91] (Checklist 87).	33-24-05-400; 33-24-05-403; 33-24-05-405; 33-24-05-422; 33-24-06-16; 33-24-06-17.
Administrative Stay for K069 Listing [56 FR 19951, 05/01/91] (Checklist 88).	33-24-02-17.
Revision to the Petroleum Refining Primary & Secondary Oil/Water/Solids Separation Sludge Listings (F037 & F038) [56 FR 21955-21960, 05/13/91] (Checklist 89).	33-24-02-16.
Mining Waste Exclusion III [56 FR 27300-27330, 06/13/91] (Checklist 90).	33-24-02-04.

Description of Federal requirement	Analogous State authority and effective date
Wood Preserving Listings [56 FR 27332–27336, 06/13/91] (Checklist 91).	33–24–02–16; 33–24–05–504; 33–24–06–16.
Wood Preserving Listings; Technical Corrections [56 FR 30192–30198, 7/1/91] (Checklist 92).	33–24–02–04; 33–24–02–19; 33–24–03–12; 33–24–05–501; 33–24–05–502 thru 506; 33–24–06–16; 33–24–06–17.
Land Disposal Restrictions for Electric Arc Furnace Dust (K061) [56 FR 41164–41178, 8/19/91] (Checklist 95).	33–24–02–03; 33–24–02–04; 33–24–05–281; 33–24–05–282.
Exports of Hazardous Waste; Technical Correction [56 FR 43704–43705] (Checklist 97).	33–24–03–20; 33–24–03–23.
Amendments to Interim Status Standards for Down-gradient Ground-Water Monitoring Well Locations [56 FR 66365–66369, 12/23/91] (Checklist 99).	33–24–01–04; 33–24–06–16.
Liners & Leak Detection Systems for Hazardous Waste Land Disposal Units [57 FR 3462–3497, 1/29/92] (Checklist 100).	33–24–01–04; 33–24–05–06; 33–24–05–10; 33–24–05–40; 33–24–05–119; 33–24–05–120; 33–24–05–122; 33–24–05–126; 33–24–05–127; 33–24–05–131; 33–24–05–132; 33–24–05–137; 33–24–05–138; 33–24–05–177; 33–24–05–178; 33–24–05–180; 33–24–05–187; 33–24–05–188; 33–24–06–10; 33–24–06–14; 33–24–06–16; 33–24–06–17.
Administrative Stay for the Requirement that Existing Drip Pads Be Impregnable [57 FR 5859–5861, 2/18/92] (Checklist 101).	33–24–06–16.
Second Correction to the Third Third Land Disposal Restrictions [57 FR 8086–8089, 3/6/92] (Checklist 102).	33–24–05–04; 33–24–05–252; 33–24–05–281; 33–24–05–282; 33–24–06–16
Hazardous Debris Case-by-Case Capacity Variance [57 FR 20766–20770, 5/15/92] (Checklist 103).	
33–24–05–275..	
Used Oil Filter Exclusion [57 FR 21524–21534, 5/29/92] (Checklist 104).	33–24–02–04
Lead-bearing Hazardous Materials Case-by-Case Capacity Variance [57 FR 28628–28632, 6/26/92] (Checklist 106).	33–24–05–275.
Used Oil Filter Exclusion: Technical Corrections [57 FR 29220, 7/1/92] (Checklist 107).	33–24–02–04.
Toxicity Characteristics Revisions: Technical Corrections [57 FR 30657–30658, 07/10/92] (Checklist 108).	33–24–02–04; 33–24–06–16.
Land Disposal Restrictions for Newly Listed Wastes & Hazardous Debris [57 FR 37194–37282] (Checklist 109).	33–24–01–04; 33–24–02–03; 33–24–03–12; 33–24–05, Appendix VI; 33–24–05–59 thru 61; 33–24–05–74; 33–24–05–76; 33–24–05–251; 33–24–05–254; 33–24–05–256; 33–24–05–258; 33–24–05–265; 33–24–05–276; 33–24–05–280 thru 283; 33–24–05–285; 33–24–05–286; 33–24–05–290; 33–24–05–475 thru 500; 33–24–06–14; 33–24–06–16; 33–24–06–17.
Consolidated Liability Requirements [53 FR 33938–33960, 9/1/88; 56 FR 30200, 7/1/91; 57 FR 42832–42844, 9/16/92] (Checklist 113).	33–24–05–75; 33–24–05–77; 33–24–05–79; 33–24–05–81; 33–24–06–16.
Chlorinated Toluene Production Waste Listing [57 FR 47376–47386, 10/15/92] (Checklist 115).	33–24–02, Appendix IV; 33–24–02–17.
Hazardous Soil Case-By-Case Capacity Variance [57 FR 47772–47776, 10/20/92] (Checklist 116).	33–24–05–275.
Toxicity Characteristic Amendment [57 FR 23062–23063, 06/01/92] (Checklist 117B).	33–24–02–03.
Liquids in Landfills II [57 FR 54452–54461, 11/18/92] (Checklist 118) ...	33–24–05–04; 33–24–05–183; 33–24–05–185; 33–24–06–16.
Toxicity Characteristic Revision; TCLP Correction [57 FR 55114–55117, 11/24/92] (Checklist 119).	33–24–02, Appendix II.
Wood Preserving: Revisions to Listings & Technical Requirements [57 FR 61492–61505, 12/24/92] (Checklist 120).	33–24–02–16; 33–24–05–501 thru 504; 33–24–06–16.
Corrective Action Management Units & Temporary Units [58 FR 8658–8685, 2/16/93] (Checklist 121).	33–24–01–04; 33–24–05–01; 33–24–05–58; 33–24–05–251; 33–24–05–552; 33–24–05–553; 33–24–06–14; 33–24–06–16.
Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case-By-Case Capacity Variance [58 FR 28506–28511, 5/14/93] (Checklist 123).	33–24–05–275.
Land Disposal Restrictions for Ignitable & Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated [58 FR 29860–29887, 5/24/93] (Checklist 124).	33–24–05–01; 33–24–05–250; 33–24–05–251; 33–24–05–256; 33–24–05–258; 33–24–05–277; 33–24–05–280 thru 283; 33–24–06–14; 33–24–06–16.

¹ North Dakota Administrative Code (NDAC), Article 33–24, as amended through January 1, 1994, unless otherwise indicated.

H. Where Are the Revised State Rules Different From the Federal Rules?

We consider the following State requirements to be more stringent than the Federal requirements: 33–24–01–04.27, because the State does not allow a closed or closing unit to be designated as a corrective action management unit; 33–24–02–04.2.i, because the State

excludes only discarded wood or wood products that fail for the Toxic Characteristic Leaching Procedure for arsenic while Federal rules exclude discarded wood or wood products that fail for Hazardous Waste Codes D004 through D017; 33–24–03–12.1.a(1), because North Dakota subjects containers to full status rather than

interim status standards; 33–24–03–12.1.a(2), because North Dakota subjects tanks to full status rather than interim status standards; 33–24–03–12.1.a(1), because North Dakota subjects containment buildings to full status rather than interim status standards; 33–24–05–01.2, because the State does not allow for interim status facilities; 33–

24-05-04.1.a, because the State does not allow owners/operators of closed landfills to accept non-hazardous waste under certain conditions; 33-24-05-256.2.e.(3), because the State does not allow a treatment facility with interim status units to treat hazardous waste; 33-24-05-281.2, because the State does not differentiate between high and low zinc non-wastewater (K061 wastes); 33-24-05-282.1.b and 33-24-05-282.1, Table 1, because the State does not allow a treatment facility with interim status units to treat hazardous waste; 33-24-05-282.3.a, because the State does not allow a treatment facility with interim status units to treat hazardous waste; 33-24-05-282.3.c, because the State does not allow lab packs eligible for land disposal to be disposed at interim status landfills; 33-24-05-283.3.a, because the State does not allow a treatment facility with interim status units to treat hazardous waste; 33-24-05-552.2.a.1 & 2.b, because the State does not have an analog to 40 CFR 265.113 for interim facilities; North Dakota does not have an equivalent to 40 CFR 265.145(f)(9) making the State more stringent. Nevertheless, these requirements are part of North Dakota's authorized program and are Federally enforceable.

We also consider the following State requirements to go beyond the scope of the Federal program: 33-24-06-14(7)(a)(3), because the State has requirements for newly regulated wastes and units that are not required by Federal rules. Broader-in-scope requirements are not part of the authorized program and EPA cannot enforce them. Although a facility must comply with these requirements in accordance with State law, they are not RCRA requirements.

EPA cannot delegate the Federal requirements at 40 CFR 268.5, 268.6, 268.42(b), and 268.44. EPA will continue to implement these requirements.

I. Who Handles Permits After This Authorization Takes Effect?

North Dakota will issue and administer permits for all the provisions for which it is authorized. EPA will continue to administer any RCRA hazardous waste permits or portions of permits that we issued prior to the effective date of this authorization. EPA will transfer any pending permit applications, completed permits, or pertinent file information to North Dakota within 30 days of this approval. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this

authorization. EPA and North Dakota have agreed to joint permitting and enforcement for those HSWA requirements for which North Dakota is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in North Dakota?

North Dakota is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. This includes:

1. Lands within the exterior boundaries of the following Indian Reservations located within or abutting the State of North Dakota:
 - a. Fort Totten Indian Reservation
 - b. Fort Berthold Indian Reservation
 - c. Standing Rock Indian Reservation
 - d. Turtle Mountain Indian Reservation
2. Any land held in trust by the U.S. for an Indian tribe, and
3. Any other land, whether on or off a reservation that qualifies as Indian country.

Therefore, this action has no effect in Indian country where EPA will continue to implement and administer the RCRA program in these lands.

In excluding Indian country from the scope of this program revision, we are not making a determination that the State either has adequate jurisdiction or lacks jurisdiction over sources in Indian country. Should the State of North Dakota choose to seek program authorization within Indian country, it may do so without prejudice. Before EPA would approve the State's program for any portion of Indian Country, we must be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval and that such approval would constitute sound administrative practice.

K. What is Codification and is EPA Codifying North Dakota's Hazardous Waste Program as Authorized in this Rule?

Codification is the process of placing the State's authorized hazardous waste program statutes and regulations into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart JJ for this authorization of North Dakota's program until a later date.

L. Regulatory Analysis and Notices

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of \$100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the State program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because

UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as: (1) A small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this authorization on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that are hazardous waste generators, transporters, or that own and/or operate TSDFs are already subject to the regulatory requirements under the State laws which EPA is now authorizing. This action merely authorizes for the purpose of RCRA section 3006 those existing State requirements.

Compliance With Executive Order 12866

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

Compliance With Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This authorization does not have federalism implications. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because this rule affects only one State. This action simply approves the State's proposal to be authorized for updated requirements of the hazardous waste program that the State has voluntarily chosen to operate. Further, as a result of this action, newly authorized provisions of the State's program now apply in lieu of the equivalent Federal program provisions implemented by EPA under HSWA. Affected parties are subject only to those authorized State program provisions, as opposed to being subject to both Federal and State regulatory requirements. Thus, the requirements of section 6 of the Executive Order do not apply.

Compliance With Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) the Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions based on environmental health or safety risks.

Compliance With Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule is not subject to Executive Order 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments. North Dakota is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the

hazardous waste program that EPA implements in the Indian country within the State.

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 rule or a final rule. This rule will not impose any information requirements upon the regulated community.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: January 5, 2000.

Jack W. McGraw,

Acting Regional Administrator, Region 8.
[FR Doc. 00-1067 Filed 1-18-00; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-6525-3]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final deletion of the Renora, Inc., Superfund Site from the National Priorities List.

SUMMARY: The United States Environmental Protection Agency (EPA) Region II Office announces the deletion of the Renora, Inc., Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended. EPA and the New Jersey Department of Environmental Protection (NJDEP) have determined that all appropriate response actions under CERCLA have been implemented at the Site to protect human health and the environment.

DATES: This "direct final" action will be effective March 20, 2000 unless EPA receives significant adverse or critical comments by February 18, 2000. If written significant adverse or critical comments are received, EPA will publish a timely withdrawal of the rule in the **Federal Register**, informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to: Grisell Diaz-Cotto, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway-19th Floor, New York, NY 10007-1866.

Comprehensive information on this Site is available for viewing at the Renora, Inc., Site information repositories at the following locations: Edison Township Public Library, 340 Plainfield Avenue, Edison, New Jersey 08817, (732) 287-2298; and U.S. EPA Records Center, 290 Broadway-18th Floor, New York, New York 10007-1866, Hours: 9:00 am to 5:00 pm—Monday through Friday, Contact: Superfund Records Center (212) 637-4308.

FOR FURTHER INFORMATION CONTACT: Grisell Diaz-Cotto, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway-19th

Floor, New York, New York 10007-1866, (212) 637-4430.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Intended Site Deletion
- V. Action

I. Introduction

The United States Environmental Protection Agency Region II announces the deletion of the Renora, Inc., Site (the "Site"), which is located in Edison Township, Middlesex County, New Jersey, from the National Priorities List (NPL), which constitutes appendix B of the National Oil and Hazardous Substance Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments on this deletion. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. Pursuant to 40 CFR 300.425(e) of the NCP, any site or portion of a site deleted from the National Priorities List remains eligible for Fund-financed remedial actions if future conditions at the site warrant such action.

EPA will accept comments, concerning this document, for thirty days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the Renora, Inc., Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

As described in § 300.425(e)(3) of the NCP, sites may be deleted from the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA, in consultation with the New Jersey Department of Environmental Protection (NJDEP), shall consider whether any of the following criteria have been met:

- (i) Responsible parties or other persons have implemented all appropriate response actions required;
- (ii) All appropriate responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or
- (iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions at the Site if