

US EPA ARCHIVE DOCUMENT

California Air Resources Board on September 23, 1998, with supplemental materials submitted on May 2, 2002.

(c) * * *

(6) Existing large municipal waste combustors.

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■ 3. Subpart F is amended by adding an undesignated center heading and § 62.1130 to read as follows:

Emissions From Large Existing Municipal Waste Combustion Units

§ 62.1130 Identification of sources.

The plan applies to existing large municipal waste combustors that were constructed on or before September 20, 1994, as described in 40 CFR part 60, subpart Cb.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-7509-9]

Nebraska: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of immediate final rule.

SUMMARY: EPA is withdrawing the immediate final rule for Nebraska: Final Authorization of State Hazardous Waste Management Program Revision published on April 10, 2003, which authorized changes to Nebraska's hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA stated in the immediate final rule that if EPA received written comments that oppose this authorization during the comment period, EPA would publish a timely notice of withdrawal in the **Federal Register**. Since EPA did receive comments that oppose this authorization, EPA is withdrawing the immediate final rule. EPA will address these comments in a subsequent final action based on the proposed rule also published on April 10, 2003, at 68 FR 17576.

DATES: As of June 9, 2003, EPA withdraws the immediate final rule published on April 10, 2003, at 68 FR 17553.

FOR FURTHER INFORMATION CONTACT: Lisa V. Haugen, U.S. EPA Region 7, ARTD/RESP, 901 North 5th Street, Kansas City,

KS 66101, phone number: (913) 551-7877 or haugen.lisa@epa.gov.

SUPPLEMENTARY INFORMATION: Because EPA received written comments that oppose this authorization, EPA is withdrawing the immediate final rule for Nebraska: Final Authorization of State Hazardous Waste Management Program Revision published on April 10, 2003, at 68 FR 17553, which authorized changes to Nebraska's hazardous waste rules. EPA stated in the immediate final rule that if EPA received written comments that oppose this authorization during the comment period, EPA would publish a timely notice of withdrawal in the **Federal Register**. Since EPA received comments that oppose this action, today EPA is withdrawing the immediate final rule. EPA will address the comments received during the comment period in a subsequent final action based on the proposed rule also published on April 10, 2003. EPA will not provide for additional public comment during the final action.

James B. Gulliford,

Regional Administrator, Region 7.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-7510-1]

Nebraska: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule and response to comments.

SUMMARY: Nebraska applied to EPA for Final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reached a final determination that these changes satisfy all requirements needed to qualify for Final authorization. Thus, with respect to these revisions, EPA is granting Final authorization to the State to operate its program subject to the limitations on its authority retained by EPA in accordance with RCRA, including the Hazardous and Solid Waste Amendments (HSWA) of 1984.

DATES: Final authorization for the revisions to Nebraska's hazardous waste management program will become effective June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Lisa V. Haugen, U.S. EPA Region 7, ARTD/RESP, 901 North 5th Street, Kansas City, Kansas 66101, phone number: (913) 551-7877 or haugen.lisa@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received Final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is 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 the 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.

Nebraska initially received Final authorization on January 24, 1985, effective February 7, 1985 (50 FR 3345), to implement the RCRA hazardous waste management program. We granted authorization for changes to its program on October 4, 1985, effective December 3, 1988 (53 FR 38950), June 25, 1996, effective August 26, 1996 (61 FR 32699), and June 4, 2002, effective April 22, 2002 (67 FR 38418).

On July 23, 2002, Nebraska submitted a final complete program revision application, seeking authorization of its changes in accordance with 40 CFR 271.21. On April 10, 2003, EPA published both an Immediate Final Rule (68 FR 17553) granting Nebraska Final authorization for these revisions to its Federally-authorized hazardous waste program, along with a companion Proposed Rule announcing EPA's proposal to grant such a Final authorization (68 FR 17576). EPA announced in both documents that the Immediate Final Rule and the Proposed Rule were subject to a thirty-day public comment period. The public comment period ended on May 12, 2003. EPA received written comments from one commenter during the public comment period. Today's action responds to the comments EPA received and publishes EPA's Final determination granting Nebraska Final authorization of its program revisions. Further background on EPA's Immediate Final Rule and its tentative determination to grant authorization to Nebraska for its program revisions appears in the aforementioned **Federal Register** notices. The issues raised by the

commenter are summarized and responded to as follows.

B. What Were the Comments and Responses to EPA's Proposal?

The commenter argued that Region VII's process for authorizing revisions to Nebraska's program should require a public hearing, which, the commenter believed, is required by 40 CFR 271.20. EPA disagrees. 40 CFR 271.21 applies only to initial program authorization, and not, as in the instant matter, to program revisions. For this program revision, EPA has proceeded in accordance with 40 CFR 271.21, pursuant to which public hearings are not required. On March 4, 1986, at 51 FR 07540, EPA promulgated amendments to 40 CFR 271.21 that eliminated public hearing requirements for program revisions. In this March 4, 1986 *Federal Register*, EPA stated: "As discussed in the proposal, the new procedures do not require public hearings to be held in conjunction with EPA's authorization decisions. Since there is no legal requirement to provide for hearings on revision decisions and little public interest has been shown to date in attending hearings on initial authorization of State programs, we think the opportunity to provide written comments is adequate. Only one comment was received on the elimination of routine public hearings, and that comment favored the rule change. However, while the regulatory requirement is deleted, a Regional Administrator, in his discretion, could decide to hold a hearing." (51 FR 07541).

Consequently, EPA Region VII believes it adhered to the governing regulations regarding opportunities for public hearings during the EPA approval process for State program revisions. EPA Region VII also believes that due to the nature and limited number of comments received, the opportunity to provide for written comments, in lieu of a public hearing, was an adequate process to obtain public comment.

The commenter expressed a concern about Nebraska's adoption of the provisions of 40 CFR part 266, subpart C. EPA understands this comment to state concerns about the provisions of the Nebraska regulations (which incorporate the Federal rules by reference) that allow, under certain conditions, "hazardous wastes," like lime-based slag, to be used as a "fertilizer." This comment addresses an issue which is not part of the referenced revision application. Specifically, with regard to the provisions of 40 CFR part 266, subpart C, in the context of

fertilizer applications, these provisions in Nebraska's program were authorized by EPA as part of Nebraska's first program revision, which took effect on December 3, 1989—over thirteen years ago. Nebraska's current revision application, for which EPA recently published its tentative approval, with an opportunity for public comment, does not include any regulatory revisions to 40 CFR part 266, subpart C. Since the comment EPA has received on "use constituting disposal" is not part of Nebraska's most recent program revision application, EPA believes the public comments on "use constituting disposal" are not within the scope of this Agency action. The commenter expressed further concern regarding "EPA's failure to require the Nebraska Attorney General to review Nebraska's statutes based on rule-by-rule authority as required under 40 CFR 271.7." The commenter asserts that "checklists do not provide for as comprehensive a review." EPA uses checklists to review State rules in detail. 40 CFR 271.7 requires the State Attorney General to submit a statement that the laws of the State provide adequate authority to carry out the program described under 40 CFR 271.6. This statement should include citations to the specific statutes, administrative regulations and, where appropriate, judicial decisions which demonstrate adequate authority. The State of Nebraska has done this. 40 CFR 271.7 further requires that the State statutes and regulations cited by the State Attorney General shall be in the form of lawfully adopted State statutes and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. Nebraska's Attorney General has submitted a statement which satisfies this requirement.

C. What Decisions Have We Made in This Rule?

Based on EPA's response to public comments, the Agency has determined that approval of Nebraska's RCRA program revisions should proceed. EPA has made a final determination that Nebraska's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Nebraska Final authorization to operate its hazardous waste program with the changes described in its application for program revisions. Nebraska has responsibility for carrying out the aspects of the RCRA program described in its approved program applications, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New

Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement any such HSWA requirements and prohibitions in Nebraska, including issuing HSWA permits, until the State is granted authorization to do so. For further background on the scope and effect of today's action to approve Nebraska's RCRA program revisions, please refer to the preambles of EPA's April 10, 2003, Proposed and Immediate Final Rules at 68 FR 17576 and 68 FR 17553, respectively.

D. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 document 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 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 action will be effective August 8, 2003.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation-by-Reference, Indian lands, Intergovernmental relations, Penalties,

Reporting and recordkeeping requirements.

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).

James B. Gulliford,

Regional Administrator, Region 7.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 25, 74 and 78

[ET Docket No. 98-206; FCC 03-25]

Fixed Satellite and Terrestrial Systems in the Ku-Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addresses the Petitions for Reconsideration from Skybridge L.L.C. ("Skybridge"); and Hughes Communications, Inc., Hughes Communications Galaxy, Inc. and Hughes Network Systems, a division of Hughes Electronics Corporation ("Hughes") filed in response to the *First Report and Order and Further Notice of Proposed Rule Making* ("First R&O"). The proceeding addresses a request by Skybridge to allow non-geostationary orbit ("NGSO") fixed satellite services ("FSS") to share various frequencies in the Ku-Band with existing geostationary orbit ("GSO") satellite services and terrestrial services. Our action herein addresses aspects of the Skybridge Reconsideration Petition relating to NGSO FSS sharing with terrestrial services and Federal Government operations, as well as the Hughes Reconsideration Petition relating to our radio frequency ("RF") safety rules requiring warning labels and recommending professional installation for NGSO FSS subscriber antennas.

DATES: Effective August 8, 2003.

FOR FURTHER INFORMATION CONTACT:

James Miller, Office of Engineering and Technology, (202) 418-7351, or Ted Ryder, Office of Engineering and Technology, (202) 418-2803.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Memorandum Opinion and Order*, ET Docket No. 98-206, FCC 03-25, adopted February 3, 2003, and released February 11, 2003. The full text of this Commission decision is available on the Commission's Internet site at <http://www.fcc.gov>. It is available for inspection and copying during normal

business hours in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365.

Summary of the Second Memorandum Opinion and Order

1. In the *Second Memorandum Opinion and Order*, the Commission granted Skybridge's request and amended our rules to allow, under certain conditions, NGSO FSS Earth-to-space ("uplink") operations in the 13.15-13.2125 GHz portion of the 12.75-13.25 GHz band. In making the change the Commission concludes that NGSO FSS can implement measures to protect incumbent broadcast auxiliary service ("BAS") and cable television relay service ("CARS") mobile pickup operations from harmful interference.

2. The Commission grants Skybridge's request and states that power flux density ("PFD") limits for NGSO FSS in the 10.7-11.7 GHz band are sufficient to protect services in the band without the need for individual coordination. This ensures incumbent services are protected against harmful interference without creating an unnecessary burden on NGSO FSS licensees.

3. The Commission granted Skybridge's request and amended the rules to clarify the definition of NGSO FSS earth station gateways to limit use only for NGSO FSS backbone support.

4. The Commission granted Skybridge's request and adopted the Telecommunications Union's ("ITU") effective isotropically radiated power ("EIRP") limit on federal radiolocation operations in the 13.75-14.0 GHz band, and permits NGSO FSS operations to claim protection from these radiolocation operations.

5. The Commission denied Skybridge's request, maintains the EIRP density limit to protect against interference to the National Aeronautics and Space Administration ("NASA") tracking data and relay satellite system ("TDRSS") operations across the 10 megahertz of the 13.77-13.78 GHz band, and denies the request to restrict this protection to only 6 megahertz.

6. The Commission denied Skybridge's request to require NGSO FSS licensees and radio astronomy service ("RAS") entities to use the