

US EPA ARCHIVE DOCUMENT

2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the repeal of emission standards for perc dry cleaning systems from the Virginia SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Recordkeeping and reporting requirements, Volatile organic compounds.

Dated: December 4, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

2. In § 52.2420, the table in paragraph (c) is amended by removing the entry for Chapter 40, Part II, Article 38 Dry Cleaning Systems [Rule 4–38].

[FR Doc. 02–31470 Filed 12–13–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7412–6]

New Jersey: Final Authorization of State Hazardous Waste Program Revision

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.* (“RCRA”), and the regulations thereunder, the State of New Jersey (the “State”) applied for final authorization of changes to its hazardous waste program. These revisions were adopted by the State in January 1999. The Environmental Protection Agency, Region 2 (“EPA”) has reviewed the State’s application and has determined that the State’s revisions to its

hazardous waste program satisfy all of the requirements necessary to qualify for final authorization. Accordingly, EPA is today approving and authorizing the State’s revisions through this immediate final rule. EPA did not publish a proposal before today’s rule because it views this as a routine program change to the State’s hazardous waste program and does not expect comments that oppose this approval. Consequently, unless EPA receives written comments which oppose this authorization during the comment period, the decision to authorize the revisions to the State’s hazardous waste program will take effect as provided below. If EPA receives comments that oppose this action, EPA shall publish a document in the **Federal Register** withdrawing this rule before it takes effect. In addition to this rule, EPA is publishing in the proposed rules section of today’s **Federal Register**, a separate notice that proposes to authorize the State’s program revisions. This proposal (the “companion proposal”) will serve as a proposal to authorize the State’s program revisions, if necessary, as explained more fully below in the section identifying the effective date of this rule as well as in the companion proposal itself.

DATES: This rule will become effective on February 14, 2003, unless adverse comments are received by January 15, 2003. If EPA receives such comment, EPA will publish a timely withdrawal of this rule in the **Federal Register** and inform the public that this rule will not take effect.

ADDRESSES: Written comments should be sent to Walter M. Mugdan, Director, Division of Environmental Planning and Protection, U.S. EPA, Region 2, 290 Broadway, New York, New York 10007–1866, (212) 637–3724. For further information contact Clifford Ng, Division of Environmental Planning and Protection, USEPA, Region 2, 290 Broadway (22nd Floor) New York, NY 10007–1866; telephone (212) 637–4113; E mail—ng.clifford@epamail.epa.gov.

Copies of the State’s application for authorization are available for inspection and copying as follows:

The New Jersey Department of Environmental Protection (“NJDEP”)

Address: Public Access Center, NJDEP, 401 East State Street, 1st Floor, Trenton, NJ 08625.

Hours: Monday through Friday (excluding holidays), 8:30 a.m.–1 p.m., 2 p.m.–4:30 p.m.

Telephone: (609) 777–3373.

EPA

Address: EPA Library, 16th Floor, 290 Broadway, New York, NY 10007–1866.

Hours: Monday through Thursday (excluding holidays), 9 a.m.–4:30 p.m., Friday (excluding holidays), 9 a.m.–1 p.m.

Telephone: (212) 637–3185.

FOR FURTHER INFORMATION CONTACT:

Clifford Ng, (212) 637–4113.

SUPPLEMENTARY INFORMATION: This rule will become effective on February 14, 2003, unless adverse comments are received during the comment period. In the event that such adverse comments are received, EPA will publish in the **Federal Register** a notice withdrawing this rule before it becomes effective. EPA will then base any further decision on the authorization of the State’s program revisions on the companion proposal published in today’s **Federal Register** and will address all public comments in a later final rule. Interested persons may not have another opportunity to comment. Therefore, if you want to comment on this authorization, you must do so at this time. If EPA receives comments that oppose only the authorization of a particular revision to the State’s hazardous waste program, EPA will withdraw that part of this rule, but the authorization of the program revisions that the comments do not oppose will become effective on the date specified above. The **Federal Register** notice of withdrawal will specify which part of the authorization will become effective, and which part is being withdrawn.

I. State Authorization Under RCRA

Pursuant to section 3006 of RCRA, 42 U.S.C. 6926, EPA may, upon application by a state, authorize the applicant state’s hazardous waste program to operate in the state in lieu of the federal hazardous waste program. For purposes of authorization, the federal hazardous waste program (the “Federal Program”) is comprised of the regulations published in Title 40 of the Code of Federal Regulations (“CFR”) under the authority of RCRA. To qualify for final authorization, a state’s hazardous waste program must: (1) Be equivalent with the Federal Program; (2) be consistent with the Federal Program; and (3) provide for adequate enforcement. RCRA section 3006(b), 42 U.S.C. 6926(b).

II. Background—History of RCRA Authorization Within the State

In 1985, the State was granted final authorization by EPA for the RCRA base program, effective February 21, 1985 (50 FR 5260, 2/7/85). At that time the base

program covered the essential core of the Federal Program as reflected in the initial enactment of RCRA prior to its amendment by the Hazardous and Solid Waste Amendments of 1984. In 1988 and 1993 EPA authorized the State for a small number of additional regulations (53 FR 30054, 8/10/88, and 58 FR 59370, 11/9/93).

On October 21, 1996, the State repealed its regulations comprising its then existing hazardous waste program, including those regulations authorized by EPA, and adopted a new program (N.J.A.C. 7:26G-1.1 *et seq.*, 28 New Jersey Register 4606, 10/21/96). As part of this October 21, 1996 adoption, the State adopted, with certain exceptions and modifications, 40 CFR Parts 124, 260-266, 268 and 270 as set forth in the July 1, 1993 CFR, by incorporation by reference, and designated these provisions N.J.A.C. 7:26G-4 through N.J.A.C. 7:26G-13, inclusive. (28 New Jersey Register 4652-4668, 10/21/96. N.J.A.C. 7:26G-4 through N.J.A.C. 7:26G-13 are referred to below as the "State Program"). Under cover of a letter dated January 13, 1999, the State submitted an application meeting the requirements of 40 CFR Part 271, requesting authorization of the State Program.¹ In August 1999, EPA published a Federal Register notice in which it authorized the State Program. (64 FR 41823, 8/2/99).

III. The January 1999 Adoption and the Scope of the Authorization for Which the State Has Applied

On September 8, 1998, the State proposed various amendments to the State Program, as well as amendments to the procedures by which revisions to the state Program would subsequently be adopted. (30 N.J.R. 3128, 9/8/98). On January 19, 1999, the State adopted the proposed amendments with changes responsive to public comment. (31 N.J.R. 166, 1/19/99, the "Adoption"). In terms of process, the Adoption amended the New Jersey Administrative Code ("N.J.A.C.") by establishing a procedure pursuant to which the regulations comprising the Federal Program would subsequently be adopted by prospective incorporation by reference. (N.J.A.C. 7:26G-1.4(b), (c), (e) and (j)-(l), 31 N.J.R. 169-70, 1/19/99). Substantively, the

Adoption revised the State Program by incorporating by reference all of the changes to the Federal Program promulgated by EPA from July 2, 1993 through July 31, 1998, with certain specified modifications, and by prospectively incorporating the Federal Program as thereafter amended and supplemented. Since the CFR is current through July 1 of the calendar year in which it is published, this means that in effect the State incorporated by reference the Federal Program as set forth in the July 1998 version of 40 CFR; incorporated by reference all amendments or additions to the Federal Program adopted by EPA from July 2 through July 31, 1998, of which there was only one: 63 FR 37780 (7/14/98), amending subsection 40 CFR 261.5(j); and prospectively incorporated by reference the regulations comprising the Federal Program as subsequently amended and supplemented. (The period from July 2, 1993 through July 31, 1998, shall be referred to below as the "relevant period").

Under cover of a letter dated August 22, 2002, the State submitted an application meeting the requirements of 40 CFR Part 271, requesting final authorization of the State Program revisions made in the Adoption with a specified limitation. Thus, in its application, the State limited its request for authorization to those of its regulations which incorporate by reference the changes to the Federal Program promulgated by EPA during the relevant period. Conversely, the State in its application is not requesting to be authorized for those of its regulations which were adopted by means of prospective incorporation by reference of federal regulations promulgated by EPA subsequent to July 31, 1998. (The revisions to the State Program for which the State has requested authorization shall be referred to below as the "1999 Program Revisions").

IV. Decision

A. Authorization of the 1999 Program Revisions and the State Program As Revised

EPA has reviewed the State's application and has determined that the 1999 Program Revisions possess the requisite equivalence and consistency with the Federal Program. Furthermore, the State's application indicates that the State possesses the necessary enforcement resources and is prepared to utilize those resources to provide adequate enforcement of the State Program as revised. Accordingly, EPA has determined that the 1999 Program

Revisions qualify for authorization and hereby approves and authorizes them.

As noted above, the Adoption adopts the changes to the Federal Program promulgated by EPA during the relevant period, with certain specified modifications. These modifications, however, are not substantive. Rather, they reflect appropriate substitutions of State citations for federal citations, the substitution of State terminology for federal terminology where the subject federal terms are not replaced globally in the State Program's definitions (7:26G-4.2), the exclusion from said definitional section of certain required federal terminology, technical corrections to State rules, and the nonadoption of federal regulations applicable only to facilities outside the State or not otherwise required for authorization. None of these nonsubstantive modifications impact the requisite equivalence or consistency of the State Program as revised, and therefore, pose no obstacle to authorization.

EPA notes that its determination to authorize the 1999 Program Revisions is based on the information submitted to EPA by the State. If the criteria upon which EPA bases its approval subsequently change for any reason, including without limitation changes in State laws, regulations or administrative procedures, or major budgetary changes, which negate the equivalency or consistency of one or more provisions of the 1999 Program Revisions, or in any way limit the State's ability to enforce or properly administer the State Program as revised, EPA may revisit its approval. In such event, EPA may exercise its authority, provided in 40 CFR 271.22, to afford the State an opportunity to correct any program deficiencies, or EPA may withdraw authorization of the 1999 Program Revisions, in whole or in part. Furthermore, authorization of the 1999 Program Revisions by EPA shall not be deemed in any way as a waiver by EPA of any of its statutory rights under RCRA including but not limited to sections 3004(v), 3005(c)(3), 3007, 3008, 3013, 3020(c) and 7003 (42 U.S.C. 6924(v), 6925(c)(3), 6927, 6928, 6934, 6939b(c) and 6973).

B. Exceptions

In 1999, when EPA authorized the State Program, it did so with two important exceptions. These two exceptions are in no way altered by today's action authorizing the 1999 Program Revisions. These two exceptions to EPA's authorization of the State Program, as revised, are specified below.

¹ The State's redesignation of the Parts of the Federal Program adopted by incorporation by reference on October 21, 1996, and comprising the State Program, is as follows: N.J.A.C. 7:26G-4 (40 CFR Part 260); N.J.A.C. 7:26G-5 (40 CFR Part 261); N.J.A.C. 7:26G-6 (40 CFR Part 262); N.J.A.C. 7:26G-7 (40 CFR Part 263); N.J.A.C. 7:26G-8 (40 CFR Part 264); N.J.A.C. 7:26G-9 (40 CFR Part 265); N.J.A.C. 7:26G-10 (40 CFR Part 266); N.J.A.C. 7:26G-11 (40 CFR Part 268); N.J.A.C. 7:26G-12 (40 CFR Part 270); and N.J.A.C. 7:26G-13 (40 CFR Part 124).

(1) *Corrective Action* In its October 1996 adoption, in N.J.A.C. 7:26G–8.1(a), the State incorporated by reference 40 CFR Part 264, the part of the Federal Program fixing the standards for the owners and operators of hazardous waste treatment, storage and disposal facilities. In the remaining subparagraphs of 7:26G–8.1 [(b) through (h)] the State neither omitted 40 CFR 264.101, 264.552 and 264.553, nor adopted these federal regulations with modifications. Thus, in 1996 the State adopted 40 CFR 264.101, 264.552 and 264.553 by means of incorporation by reference through 7:26G–8.1(a). The above three sections of the Federal Program are the sections implementing the corrective action provisions of RCRA, which provisions were incorporated into RCRA upon the enactment of the Hazardous and Solid Waste Amendments of 1984. The State, despite its adoption of 40 CFR 264.101, 264.552 and 264.553, informed EPA in its 1999 application for authorization of the State Program that it was not applying for authorization for corrective action at that time, and would apply for corrective action authorization under a separate application in the future.

Accordingly, in its 1999 **Federal Register** notice authorizing the State Program, while EPA authorized N.J.A.C. 7:26G–8.1(a), EPA did not authorize the State for corrective action, and stated explicitly that 40 CFR 264.101, 264.552 and 264.553 would remain in full force and effect, and that until the State is authorized for corrective action, EPA would continue to issue corrective action permits within the State. (64 FR at 41824, 8/2/99).

In its current application, the State again has not sought authorization for corrective action. Consequently, the State remains unauthorized for corrective action; 40 CFR 264.101, 264.552 and 264.553 remain in full force and effect; and EPA shall continue to issue corrective action permits within the State pursuant to federal permitting regulations, until the State is authorized for corrective action.

(2) *Loss of Interim Status* The second exception evolves the regulations governing the loss of interim status. In its October 1996 adoption, in N.J.A.C. 7:26G–12.1(a), the State incorporated by reference 40 CFR 270.73(a) and (b). The State, however, did not incorporate by reference 40 CFR 270.73(c)-(g). Rather, the State replaced these subparagraphs of 40 CFR 270.73 with 7:26G–12.1(c)(16). Title 40 CFR 270.73 is the regulation in the Federal Program governing the loss of interim status (RCRA section 3005(c)(2)(C) and (e)(2)(3), 42 U.S.C. 6925(c)(2)(C) and

(e)(2)(3)). N.J.A.C. 7:26G–12.1(c)(16) provides that the State may terminate interim status at its discretion, under a variety of circumstances subject to a hearing, if requested. By contrast, the federal loss of interim status regulations, excluded by the State and replaced by 7:26G–12.1(c)(16), are non-discretionary and operate automatically, without the opportunity for a hearing, if the requirements cited in these federal provisions are not met. Since 7:26G–12.1(c)(16) is discretionary and lacks automatic application, it is not equivalent to 40 CFR 270.73(c)-(g), is less stringent than 40 CFR 270.73(c)-(g), and therefore, could not be authorized. Consequently, in its 1999 **Federal Register** notice authorizing the State Program, EPA did not authorize the State for N.J.A.C. 7:26G–12.1(c)(16), and stated explicitly that 40 CFR 270.73(c)-(g) would remain in full force and effect.

In the 1999 Program Revisions, the State did not alter the provisions of N.J.A.C. 7:26G–12.1(c)(16) which previously precluded its authorization. Consequently, EPA today is not authorizing the State for N.J.A.C. 7:26G–12.1(c)(16), and 40 CFR 270.73(c)-(g) shall remain in full force and effect.

V. 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 the State's 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 does not have tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 9, 2000). It does not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, as specified in Executive Order 13175. This action will not have substantial direct effects on the states, on the relationship between the Federal 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 of New Jersey's 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 such 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 60 days after publication of this notice, or later, if adverse comment is received.

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.

Authority: This rule is issued under the authority of Sections 2002(a), 3006 and 7004(b) of RCRA, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 28, 2002.

William J. Muszynski,

Deputy Regional Administrator, Region II.

[FR Doc. 02-31015 Filed 12-13-02; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02-3087; MM Docket No. 01-144; RM-10142, RM-10340]

Radio Broadcasting Services; Snyder, Littlefield, Wolfforth & Floydada, TX & Hobbs, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a petition filed by Charles Crawford requesting an allotment at Snyder, Texas, we shall allot Channel 235C3 in lieu of Channel 237C3 to the community at coordinates 32-42-25 and 101-05-36. See 66 FR 37632, July 19, 2001. In response to a counterproposal filed in this proceeding by 21st Century Radio Venture, Inc. and Littlefield Broadcasting, LLC, we shall substitute Channel 238C1 for Channel 238C3 at Littlefield, Texas, reallocate Channel 238C1 to Wolfforth, Texas, and modify the license for Station KAIQ accordingly. The coordinates for Channel 238C1 at Wolfforth are 33-33-00 and 102-05-11. To accommodate the allotment at Wolfforth, Station KPER, Hobbs, New Mexico, has consented to a site change. The coordinates for the new

site are 32-41-37 and 103-17-24. To further accommodate the Wolfforth allotment, Station KAIQ, Floydada, Texas, has filed a one-step application to modify its license to specify operation on Channel 291C3 in lieu of Channel 237A. The issue of opening the allotment of Channel 235C3 at Snyder, Texas, for auction will be addressed by the Commission in a subsequent order. With this action, this proceeding is terminated.

DATES: Effective December 23, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 01-144, adopted October 23, 2002, and released November 8, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 235C3 at Snyder, by removing Littlefield, Channel 238C3 and by adding Wolfforth, Channel 238C1.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02-31605 Filed 12-13-02; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991207325-0063-02; I.D. 100699A]

Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Halibut and Sablefish IFQ Cost Recovery Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of standard prices and fee percentage for North Pacific halibut and sablefish Individual Fishing Quota (IFQ) cost recovery program.

SUMMARY: The NMFS publishes IFQ standard prices and notification of adjustment of the IFQ fee percentage for the IFQ Cost Recovery Program in the halibut and sablefish fisheries of the North Pacific. This action is required by regulations in 50 CFR part 679. This action is intended to provide holders of halibut and sablefish IFQs with information to calculate the payments required for IFQ cost recovery fees due by January 31, 2003.

DATES: Effective December 16, 2002.

FOR FURTHER INFORMATION CONTACT: Kristie Balovich, Fee Coordinator, 907-586-7344.

SUPPLEMENTARY INFORMATION:

Background

NMFS, Alaska Region, administers the halibut and sablefish IFQ programs in the North Pacific. The IFQ Programs are limited access systems authorized by section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Northern Pacific Halibut Act of 1982. Fishing under the IFQ Programs began in March 1995. Regulations implementing the IFQ Program are set forth at 50 CFR part 679.

In 1996, the Magnuson-Stevens Act was amended (by Public Law 104-297) to, among other things, require the Secretary of Commerce to "collect a fee to recover the actual costs directly related to the management and enforcement of any * * * individual fishing quota program." (Section 304(d)(2)(A)). Section 304(d)(2) of the Magnuson-Stevens Act specifies an upper limit on these fees, when the fees must be collected, and where the fees must be deposited. Section 303(d)(4) of the Magnuson-Stevens Act allows