

US EPA ARCHIVE DOCUMENT

appropriateness of withdrawing the Class II UIC Program from the State Oil & Gas Board of Alabama on the grounds that it does not, as currently approved by EPA, regulate as "underground injection" hydraulic fracturing associated with methane gas production. This action constitutes the second step in the withdrawal process set out in 40 CFR 145.32(b) and the Writ of Mandamus. Following the public hearing and close of the public comment period, EPA will fully evaluate the record in this matter. If EPA determines that the State is still not in compliance, the Administrator will notify the State.

Within 90 days of receipt of that notification, the State of Alabama must fully implement any required remedial actions regarding regulating hydraulic fracturing or the State's Class II UIC Program will be withdrawn. Class II program approval will, however, not be withdrawn if Alabama can demonstrate that hydraulic fracturing associated with methane gas production is regulated as "underground injection" (by permit or rule) pursuant to the EPA approved underground injection control program. If EPA withdraws approval of the Alabama Class II Program pursuant to the requirement of 40 CFR 145.32(b) and the Writ of Mandamus, it will propose and promulgate a federal program for Class II wells located in Alabama, including hydraulic fracturing associated with methane gas production.

EPA is extending the public comment period regarding withdrawal of the Alabama Class II UIC Program for failure to adequately regulate hydraulic fracturing associated with methane gas production as "underground injection." Public comments received on or before close of business on September 16, 1999, will be considered in EPA's final evaluation of the State of Alabama Section 1425 Program. Comments may be submitted at the rescheduled public hearing to be held on September 9, 1999, at 4 p.m., CST at the University of Alabama, in the Sellers Auditorium of the Bryant Conference Center at 240 Bryant Drive, Tuscaloosa, Alabama 35401.

List of Subjects in 40 CFR Part 147

Environmental protection,
Intergovernmental relations, Water supply.

Dated: July 30, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-6417-2]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: South 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 needed to qualify for Final authorization, and is proposing to authorize the State's changes through this proposed final action.

DATES: Send your comments by September 9, 1999.

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. We must receive your comments by September 9, 1999. You can view and copy South Dakota's applications at the following addresses: SDDENR, from 9:00 AM to 5:00 PM, Joe Foss Building, 523 E. Capitol, Pierre, South Dakota 57501-3181, contact: Carrie Jacobson, phone number (605) 773-3153 and EPA Region VIII, from 8:00 AM to 4:00 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 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.

B. What Decisions Have We Made in This Rule?

We conclude that South Dakota's applications to revise its authorized program meet all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant South Dakota Final authorization to operate its hazardous waste program with the changes described in the authorization applications. South Dakota has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised 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 those requirements and prohibitions in South Dakota, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

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

- Do inspections and require monitoring, tests, analyses, or reports
- Enforce RCRA requirements and suspend or revoke permits
- Take enforcement actions regardless of whether the State has taken its own actions

This action does not impose additional requirements on the regulated community because the proposed regulations for which South Dakota is requesting authorization are already effective, and are not changed by this proposed approval.

D. What Happens If EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will address all public comments in a later **Federal Register**. You will not have another opportunity to comment. If you want to

comment on this action, you must do so at this time.

E. What Has South Dakota Previously Been Authorized For?

South Dakota initially received Final authorization on October 19, 1984, effective November 2, 1984 (49 FR 41038) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on April 17, 1991,

effective June 17, 1991 (56 FR 15503); September 8, 1993, effective November 8, 1993 (FR 47216); January 10, 1994, effective March 11, 1994 (59 FR 01275); and July 24, 1996, effective September 23, 1996 (61 FR 38392).

F. What Changes Are We Proposing To Authorize With Today's Action?

On August 1, 1997, September 3, 1997, and March 23, 1999, South Dakota submitted final complete program

revision applications, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a Final decision, subject to receipt of written comments that oppose this action, that South Dakota's hazardous waste program revisions satisfy all of the requirements necessary to qualify for Final authorization. Therefore, we propose to grant South Dakota authorization for the following program changes:

Description of federal requirement	Analogous state authority ¹	Effective date
Wood Preserving Listings [55 FR 50450–50490, 12/6/90] (Checklist 82).	74:28:21:02; 74:28:22:01; 74:28:23:01; 74:28:25:01; 74:28:26:01; 74:28:28:01.	08/05/97
Wood Preserving Listings; Technical Corrections [56 FR 30192–30198, 7/1/91] (Checklist 92).	74:28:22:01; 74:28:23:01; 74:28:25:01; 74:28:26:01; 74:28:28:01.	08/05/97
Burning of Hazardous Waste in Boilers & Industrial Furnaces; Corrections & Technical Amendments I [56 FR 32688, 7/17/91] (Checklist 94).	74:28:22:01; 74:28:26:01; 74:28:27:01; 74:28:28:01	08/05/97
Land Disposal Restrictions for Electric Arc Furnace Dust (K061) [56 FR 41164–41178, 8/19/91] (Checklist 95).	74:28:22:01; 74:28:30:01	08/05/97
Burning of Hazardous Waste in Boilers & Industrial Furnaces; Technical Amendments II [56 FR 42504–42517, 8/27/91] (Checklist 96).	74:28:22:01; 74:28:27:01; 74:28:28:01	08/05/97
Exports of Hazardous Waste; Technical Correction [56 FR 43704–43705] (Checklist 97).	74:28:23:01	08/05/97
Burning of Hazardous Waste in Boilers & Industrial Furnaces; Administrative Stay of Applicability & Technical Amendment [56 FR 43874–43877, 9/5/91] (Checklist 98).	74:28:27:01	08/05/97
Amendments to Interim Status Standards for Downgradient Ground-Water Monitoring Well Locations [56 FR 66365–66369, 12/23/91] (Checklist 99).	74:28:21:02; 74:28:28:01	08/05/97
Linens & Leak Detection Systems for Hazardous Waste Land Disposal Units [57 FR 3462–3497, 1/29/92] (Checklist 100).	74:28:21:02; 74:28:25:01; 74:28:26:01; 74:28:28:01	08/05/97
Administrative Stay for the Requirement that Existing Drip Pads Be Impregnable [57 FR 5859–5861, 2/18/92] (Checklist 101).	74:28:25:01; 74:28:28:01	08/05/97
Second Correction to the Third Third Land Disposal Restrictions [57 FR 8086–8089, 3/6/92] (Checklist 102).	74:28:25:01; 74:28:28:01; 74:28:30:01	08/05/97
Hazardous Debris Case-by-Case Capacity Variance [57 FR 20766–20770, 5/15/92] (Checklist 103).	74:28:30:01	08/05/97
Used Oil Filter Exclusion [57 FR 21524–21534, 5/29/92] (Checklist 104).	74:28:22:01	08/05/97
Recycled Coke By-Product Exclusion [57 FR 27880–27888, 6/22/92] (Checklist 105).	74:28:22:01; 74:28:27:01	08/05/97
Lead-bearing Hazardous Materials Case-by-Case Capacity Variance [57 FR 28628–28632, 6/26/92] (Checklist 106).	74:28:30:01	08/05/97
Used Oil Filter Exclusion: Technical Corrections [57 FR 29220, 7/1/92] (Checklist 107).	74:28:22:01	08/05/97
Land Disposal Restrictions for Newly Listed Wastes & Hazardous Debris [57 FR 37194–37282] (Checklist 109).	74:28:21:02; 74:28:22:01; 74:28:23:01; 74:28:25:01; 74:28:26:01; 74:28:28:01; 74:28:30:01.	08/05/97
Coke By-Products Listings [57 FR 37284–37306, 8/18/92] (Checklist 110).	74:28:22:01	08/05/97
Burning of Hazardous Waste in Boilers & Industrial Furnaces; Technical Amendment III [57 FR 38558–38566, 8/25/92] Checklist 111.	74:28:21:02; 74:28:22:01; 74:28:25:01; 74:28:27:01; 74:28:28:01.	08/05/97
Recycled Used Oil Management Standards [57 FR 41566–41626, 9/10/92] (Checklist 112).	74:28:22:02; 74:28:22:01; 74:28:27:01	08/05/97
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).	74:28:25:01; 74:28:28:01	08/05/97
Burning of Hazardous Waste in Boilers & Industrial Furnaces; Technical Amendment IV [57 FR 44999–45001, 9/30/92] (Checklist 114).	74:28:27:01	08/05/97
Chlorinated Toluene Production Waste Listing [57 FR 47376–47386, 10/15/92] (Checklist 115).	74:28:22:01	08/05/97
Hazardous Soil Case-By-Case Capacity Variance [57 FR 47772–47776, 10/20/92] (Checklist 116).	74:28:30:01	08/05/97
Liquids in Landfills II [57 FR 54452–54461, 11/18/92] (Checklist 118).	74:28:21:02; 74:28:25:01; 74:28:28:01	08/05/97

Description of federal requirement	Analogous state authority ¹	Effective date
Wood Preserving: Revisions to Listings & Technical Requirements [57 FR 61492–61505, 12/24/92] (Checklist 120).	74:28:22:01; 74:28:25:01; 74:28:28:01	08/05/97
Corrective Action Management Units & Temporary Units [58 FR 8658–8685, 2/16/93] (Checklist 121).	74:28:21:02; 74:28:25:01; 74:28:26:01; 74:28:28:01; 74:28:30:01.	08/05/97
Recycled Used Oil Management Standards; Technical Amendments & Corrections I [58 FR 26420–26426, 5/3/93] (Checklist 122).	74:28:22:01; 74:28:25:01; 74:28:27:01; 74:28:28:01	08/05/97
Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case-By-Case Capacity Variance [58 FR 28506–28511, 5/14/93] (Checklist 123).	74:28:30:01	08/05/97
Land Disposal Restrictions for Ignitable & Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated [58 FR 29860–29887, 5/24/93] (Checklist 124).	74:28:25:01; 74:28:26:01; 74:28:28:01; 74:28:30:01	08/05/97
Boilers & Industrial Furnaces; Changes for Consistency with New Air Regulations [58 FR 38816–38884, 7/20/93] (Checklist 125).	74:28:21:02; 74:28:27:01	10/02/95
Testing & Monitoring Activities [58 FR 46040–46051, 8/31/93] (Checklist 126).	74:28:22:01; 74:28:25:01; 74:28:26:01; 74:28:28:01; 74:28:30:01.	10/02/95
Boilers & Industrial Furnaces; Administrative Stay & Interim Standards for Bevill Residues [58 FR 59598–59603, 11/9/93] (Checklist 127).	74:28:27:01	10/02/95
Wastes From the Use of Chlorophenolic Formulations in Wood Surface Protection [59 FR 458–469, 1/4/94] (Checklist 128).	74:28:21:02	10/02/95
Revision of Conditional Exemption for Small Scale Treatability Studies [59 FR 8362–8366, 2/18/94] (Checklist 129).	74:28:22:01	10/02/95
Recycled Used Oil Management Standards; Technical Amendments & Corrections II [59 FR 10550–10560, 3/4/94] (Checklist 130).	74:28:27:01	10/02/95
Recordkeeping Instructions; Technical Amendment [59 FR 13891–13893, 3/24/94] (Checklist 131).	74:28:25:01; 74:28:28:01	10/02/95
Wood Surface Protection; Correction [59 FR 28484, 6/2/94] (Checklist 132).	74:28:21:02	10/02/95
Letter of Credit Revision [59 FR 29958–29960, 6/10/94] (Checklist 133).	74:28:25:01	10/02/95
Correction of Beryllium Powder (P015) Listing [59 FR 31551–31552, 6/20/94] (Checklist 134).	74:28:22:01; 74:28:30:01;	10/02/95
Recovered Oil Exclusion [59 FR 38336–38545, 7/28/94] (Checklist 135).	74:28:22:01; 74:28:27:01	11/05/96
Removal of the Conditional Exemption for Certain Slag Residues [59 FR 43496–43500, 8/24/94] (Checklist 136).	74:28:27:01; 74:28:30:01	11/05/96
Universal Treatment Standards & Treatment Standards for Organic Toxicity Characteristic Wastes & Newly Listed Wastes [59 FR 47982–48110, 9/19/94] (Checklist 137).	74:28:21:02; 74:28:22:01; 74:28:25:01; 74:28:27:01; 74:28:28:01; 74:28:30:01.	11/05/96
Testing & Monitoring Activities Amendment I [60 FR 3089–3095, 1/13/95] (Checklist 139).	74:28:21:02	11/05/96
Testing & Monitoring Activities Amendment II [60 FR 17001–17004, 4/4/95] (Checklist 141).	74:28:21:02	11/05/96
Universal Waste: General Provisions [60 FR 25492–25551, 5/11/95] (Checklist 142A).	74:28:21:02; 74:28:22:01; 74:28:25:01; 74:28:26:01; 74:28:27:01; 74:28:28:01; 74:28:30:01; 74:28:33:01.	11/05/96
Universal Waste: Specific Provisions for Batteries [60 FR 25492–25551, 5/11/95] (Checklist 142B).	74:28:21:02; 74:28:22:01; 74:28:23:01; 74:28:25:01; 74:28:26:01; 74:28:28:01; 74:28:30:01; 74:28:33:01.	11/05/96
Universal Waste: Specific Provisions for Thermostats [60 FR 25492–25551, 5/11/95] (Checklist 142D).	74:28:21:02; 74:28:22:01; 74:28:25:01; 74:28:26:01; 74:28:28:01; 74:28:30:01; 74:28:33:01.	11/05/96
Universal Waste: Petition Provisions to Add a New Universal Waste [60 FR 25492–25551, 5/11/95] (Checklist 142E).	74:28:21:02; 74:28:33:01	11/05/96
Liquids in Landfills III [60 FR 35703–35706, 7/11/95] (Checklist 145).	74:28:25:01; 74:28:28:01	08/05/97
Amendments to the Definition of Solid Waste; Amendment II [61 FR 13103–13106, 3/26/96] (Checklist 150).	74:28:22:01	08/05/97
Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes & Spent Potliners [61 FR 15566–15660, 4/8/96] (Checklist 151).	74:28:30:01	08/05/97

¹ Administrative Rules of South Dakota.

G. Where Are The Revised State Rules Different From The Federal Rules?

EPA cannot delegate the Federal requirements at 40 CFR 268.5, 268.42(b), and 268.44. South Dakota has excluded these requirements and EPA will

continue to implement these requirements.

H. Who Handles Permits After This Authorization Takes Effect?

South Dakota will issue permits for all the provisions for which it is authorized

and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. When the State incorporates

the terms and conditions of the Federal permits into State permits or issues State permits to those facilities, EPA will terminate the Federal permits. 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 will continue to implement and issue permits for HSWA requirements for which South Dakota is not yet authorized.

I. How Does Today's Action Affect Indian Country (18 U.S.C. Section 1151) In South Dakota?

EPA has been consulting with the affected Tribes and has had discussions with the State regarding the extent of Indian country in South Dakota. Based on these discussions, we propose the following language. Recognizing that the affected parties may have differing opinions, we invite comment from the Tribes, the State and others.

EPA's decision to authorize the South Dakota hazardous waste program does not include any land that is, or becomes after the date of this authorization, "Indian Country," as defined in 18 U.S.C. 1151, including:

1. Land within formal Indian reservations located within or abutting the State of South Dakota, including the:
 - a. Cheyenne River Indian Reservation,
 - b. Crow Creek Indian Reservation,
 - c. Flandreau Indian Reservation,
 - d. Lower Brule Indian Reservation,
 - e. Pine Ridge Indian Reservation,
 - f. Rosebud Indian Reservation,
 - g. Standing Rock Indian Reservation,
- and
- h. Yankton Indian Reservation.
2. Any land held in trust by the United States for an Indian tribe, and
3. Any other land, whether on or off a reservation, that qualifies as Indian country.

Moreover, in the context of these principles, a more detailed discussion for three reservations follows.

Rosebud Sioux Reservation

In the September 16, 1996, FR Notice, EPA noted that the U.S. Supreme Court in *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584 (1977), determined that three Congressional acts diminished the Rosebud Sioux Reservation and that it no longer includes Gregory, Tripp, Lyman and Mellette Counties. Accordingly, EPA authorizes the South Dakota hazardous waste program for all land in Gregory, Tripp, Lyman and Mellette Counties that was formerly within the 1889 Rosebud Sioux Reservation boundaries and does not otherwise qualify as Indian country under 18 U.S.C. 1151. This

authorization does not include any trust or other land in Gregory, Tripp, Lyman and Mellette Counties that qualifies as Indian country.

Lake Traverse (Sisseton-Wahpeton) Reservation

In the September 16, 1996, FR Notice, EPA noted that the U.S. Supreme Court in *DeCoteau v. District County Court*, 420 U.S. 425 (1975), determined that an Act of Congress disestablished the Lake Traverse (Sisseton-Wahpeton) Reservation. Therefore, EPA is authorizing the South Dakota hazardous waste program for all land that was formerly within the 1867 Lake Traverse Reservation boundaries and does not otherwise qualify as Indian country under 18 U.S.C. 1151. This authorization does not include any trust or other land within the former Lake Traverse Reservation that qualifies as Indian country.

Yankton Sioux Reservation

The U.S. Supreme Court's ruling in *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329 (1998), found that the Yankton Sioux Reservation has been diminished by the unallotted, "ceded" lands, that is, those lands that were not allotted to Tribal members and that were sold by the Yankton Sioux Tribe to the United States pursuant to an Agreement executed in 1892 and ratified by the United States Congress in 1894. Accordingly, EPA is authorizing the South Dakota hazardous waste program for unallotted, ceded lands that were ceded as a result of the Act of 1894, 28 Stat. 286 and do not otherwise qualify as Indian country under 18 U.S.C. 1151. This authorization does not include any trust or other land within the original boundaries of the Yankton Sioux Reservation that qualifies as Indian country under 18 U.S.C. 1151. EPA acknowledges that there may be further interpretation of land status by the final Federal court decision in *Yankton Sioux Tribe v. Gaffey*, Nos. 98-3893, 3894, 3986, 3900. If Indian country status changes as a result of *Gaffey*, EPA will act to modify this authorization as appropriate.

J. What Is Codification and Is EPA Codifying South Dakota's Hazardous Waste Program As Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program 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

QQ for this authorization of South Dakota's program until a later date.

K. 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 South Dakota 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

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under the existing State laws that are now being authorized by EPA. EPA's authorization does not impose any significant additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on

small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the Comptroller General

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. The 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 today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

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 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. The State administers its hazardous waste program voluntarily, and any duties on other State, local or tribal governmental

entities arise from that program, not from this action. Accordingly, the requirements of Executive Order 12875 do not apply to this rule.

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 E.O. 13045 because it is not an economically significant rule as defined by E.O. 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 E.O. 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments. South 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, Incorporation by reference, 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: August 2, 1999.

Jack McGraw,

Acting Regional Administrator, Region 8.
[FR Doc. 99-20551 Filed 8-9-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL-6414-6]

North Carolina; Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of state of North Carolina for final approval, public hearing and public comment period.

SUMMARY: The State of North Carolina has applied for approval of its underground storage tank program for petroleum and hazardous substances under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the North Carolina application and has made the tentative decision that the North Carolina underground storage tank program for petroleum and hazardous substances satisfies all of the requirements necessary to qualify for approval. North Carolina's application for approval is available for public review and comment. A public hearing will be held to solicit comments on the application, unless insufficient public interest is expressed.

DATES: Written comments on the North Carolina approval application, as well as requests to present oral testimony, must be received by the close of business on September 9, 1999. A public hearing is scheduled for September 13, 1999, unless insufficient public interest is expressed in holding a hearing. EPA reserves the right to cancel the public hearing if sufficient public interest is not communicated to EPA in writing by September 9, 1999. EPA will determine by September 14, 1999, whether there is significant interest to hold the public hearing. The State of North Carolina will participate in the public hearing held by EPA on this subject.

ADDRESSES: Copies of the North Carolina approval application are available during the hours of 9 am to 5 pm at the following addresses for inspection and copying:

North Carolina Department of Environment and Natural Resources, Underground Storage Tank Section, 2728 Capital Boulevard, Parker-Lincoln Building, Raleigh, North Carolina 27604, Phone: (919) 733-8486;

U.S. EPA Docket Clerk, Office of Underground Storage Tanks, 1235

Jefferson Davis Highway—1st Floor, Arlington, Virginia 22202, Phone: (703) 603-9231; and,

U.S. EPA Region 4, Underground Storage Tank Section, Atlanta Federal Center, 15th Floor, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, Phone: (404) 562-9277.

Written comments should be sent to Mr. John K. Mason, Chief of Underground Storage Tank Section, U.S. EPA Region 4, 61 Forsyth Street S.W., Atlanta, Georgia 30303, telephone (404) 562-9277.

Unless insufficient public interest is expressed, EPA will hold a public hearing on the State of North Carolina's application for program approval on September 13, 1999, at 7 pm at the North Carolina Department of Environment and Natural Resources Archdale Building, Ground Floor Hearing Room, 512 North Salisbury Street, Raleigh, North Carolina 27604-1148. Anyone who wishes to learn whether or not the public hearing on the State's application has been canceled should telephone the following contacts after September 14, 1999.

Mr. John K. Mason, Chief, Underground Storage Tank Section, U.S. EPA Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, Phone: (404) 562-9277, or

Mr. Burrie Boshoff, Chief, Underground Storage Tank Section, North Carolina Department of Environment and Natural Resources, Post Office Box 29578, Raleigh, North Carolina 27626-0578, Phone: (919) 733-8486.

FOR FURTHER INFORMATION CONTACT: Mr. John K. Mason, Chief, Underground Storage Tank Section, U.S. EPA Region 4, 61 Forsyth Street S.W., Atlanta, Georgia 30303, phone: (404) 562-9277.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) authorizes EPA to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. Program approval may be granted by EPA pursuant to RCRA Section 9004(b), if the Agency finds that the State program is: "no less stringent" than the Federal program for the seven elements set forth at RCRA Section 9004(a)(1) through (7); includes the notification requirements of RCRA section 9004(a)(8); and provides for adequate enforcement of compliance with UST standards of RCRA Section 9004(a).