

US EPA ARCHIVE DOCUMENT

United States and its territories and most capable of supporting civil emergency functions. Those forces include (but are not limited to) construction, airlift, medical, signal, transportation, and military police elements, and training base forces of all Services. The DODRDB will not include strategic forces or any other forces identified for exclusion by the Chairman of the Joint Chiefs of Staff, unless otherwise directed by the Secretary of Defense.

(iii) The DODRDB shall serve as the basis for emergency reports under continuity of operations, damage assessment, and residual capabilities, and shall include (but not be limited to) reports through the STARCs required by subsection F.2. of DoD Directive 3020.26.¹⁴

(4) Plan and conduct civil-military training courses and exercises in conjunction with FEMA.

(k) The Commander in Chief, Forces Command; the Commander in Chief, U.S. Atlantic Command; and the Commander in Chief, U.S. Pacific Command, shall:

(1) In accordance with guidance from the DoD Executive Agent communicated through the Chairman of the Joint Chiefs of Staff—

(i) Serve as DoD Planning Agents for MSCA for the areas specified in § 185.4(b)(3); and develop MSCA plans and preparedness measures for their MSCA areas of responsibility.

(ii) Ensure cooperative planning for MSCA operations between DoD Components, FEMA, and other Federal or State civil agencies, as required.

(iii) Utilize RMEC teams to assist in plan development.

(iv) Coordinate with the STARCs through channels established by the Secretary of the Army; and utilize liaison officers provided for in DoD Directive 1215.6 and others, as appropriate, to facilitate coordination of emergency planning.

(v) Plan to perform any designated function of the DoD Executive Agent under this part, if ordered by the Secretary of Defense in time of war or attack on the United States.

(vi) Evaluate MSCA plans, preparedness measures, and training in joint civil military exercises.

(2) Furnish MSCA as directed by the DoD Executive Agent. Employ RMEC Teams and liaison officers, as appropriate, to coordinate emergency response operations with civil agencies, the National Guard, the Military Departments and the CINCs.

(3) Furnish assistance to civil authorities in non-declared emergency situations when directed by the DoD Executive Agent.

(1) The Directors of the Defense Agencies shall:

(1) Designate a principal planning agent and regional planning agents for MSCA, and advise the DoD Executive Agent of such designated agents.

(2) Ensure effective and efficient coordination of planning by subordinate elements with Federal Regions, STARCs, and State and local civil authorities, through the DoD Planning Agents, as directed by the DoD Executive Agent.

(3) Furnish resources for MSCA when directed by the DoD Executive Agent.

(4) Make DoD resources available for technical support to the other DoD Components for MSCA, when required.

(5) Respond to requests by the DoD Executive Agent to identify resources for the DODRDB.

(6) Provide representatives to serve on RMEC teams, as requested by the DoD Executive Agent.

§ 185.6 Information requirements.

The reporting requirements in § 185.5 are exempt from licensing in accordance with paragraph E.4.b. of DoD 8910.1-M.¹⁵

Dated: October 5, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL-4783-7]

Hazardous Waste Management Program: Incorporation by Reference of Approved State Hazardous Waste Program for Arkansas

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Under the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the United States Environmental Protection Agency (EPA) may grant Final Authorization to States to operate their hazardous waste management programs in lieu of the Federal program. EPA uses part 272 of title 40 Code of Federal Regulations (CFR) to provide notice of the

authorization status of State programs, and to incorporate those provisions of the State statutes and regulations that EPA will enforce under RCRA Section 3008 by reference into 40 CFR part 272.

EFFECTIVE DATE: This document will be effective on December 13, 1993 unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on this action must be received by the close of business on November 12, 1993. The incorporation by reference of certain Arkansas statutes and regulations was approved by the Director of the Federal Register as of December 13, 1993 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Written comments should be addressed to Dick Thomas, Region 6 Authorization Coordinator (6H-HS), Grants and Authorization Section, RCRA Programs Branch, U.S. EPA Region VI, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, phone 214/655-8528.

FOR FURTHER INFORMATION CONTACT: Dick Thomas, Region 6 Authorization Coordinator (6H-HS), Grants and Authorization Section, RCRA Programs Branch, U.S. EPA Region VI, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, phone 214/655-8528.

SUPPLEMENTARY INFORMATION:

Background

Section 3006 of RCRA, 42 U.S.C. 6926 *et seq.*, allows the U.S. Environmental Protection Agency (EPA) to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. The purpose of today's Federal Register notice is to incorporate EPA's approval of Arkansas' base hazardous waste management program and its revisions into 40 CFR part 272.

On January 11, 1985, EPA published a Federal Register document announcing its decision to grant final authorization for the RCRA base program to the State of Arkansas (see 50 FR 1513). Effective August 23, 1985; May 29, 1990 (55 FR 11192); November 18, 1991 (56 FR 47153 and 56 FR 57593); December 4, 1992 (57 FR 45721 and 57 FR 45722), EPA granted Arkansas additional authorization.

Arkansas has adopted but is not authorized for the September 1, 1988 (53 FR 33938) amendments to 40 CFR parts 264 and 265 addressing liability requirements. Thus, the portions of the Arkansas Hazardous Waste Management Code, Chapter 2, Sections 3a(5) and 3a(6) incorporating the September 1, 1988 amendments are not part of the

¹⁴ See footnote 4 to § 185.1(f).

¹⁵ See footnote 4 to § 185.1(f).

State's authorized program and are not part of the incorporation by reference addressed by today's Federal Register document.

Arkansas is authorized to implement certain HSWA requirements in lieu of EPA. EPA has explicitly indicated its intent to allow such action in Federal Register documents granting Arkansas authorization effective November 18, 1991 (56 FR 47153; September 18, 1991) and December 4, 1992 (57 FR 45721 and 57 FR 45722; October 5, 1992).

EPA provides notice of its approval of State programs in 40 CFR part 272, and incorporates by reference therein the State statutes and regulations that it will enforce under section 3008 of RCRA. This effort will provide clearer notice to the public of the scope of the authorized program in Arkansas. Such notice is particularly important in light of the Hazardous and Solid Waste Act Amendments of 1984 (HSWA), Public Law 98-618. Revisions to State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By incorporating by reference the authorized Arkansas program and by amending the Code of Federal Regulations whenever a new or different set of requirements is authorized in Arkansas, the status of Federally approved requirements of the Arkansas program will be readily discernible.

The Agency will only incorporate by reference for enforcement purposes those provisions of the Arkansas hazardous waste management program for which authorization approval has been granted by EPA. Concerning HSWA, some State requirements may be similar to HSWA requirements that are in effect under Federal statutory authority in that State. However, a State's HSWA-type requirements are not authorized and will not be codified into the CFR until the Regional Administrator publishes his final decision to authorize the State for specific HSWA requirements. Until such time, EPA will enforce the HSWA requirements and not the State analogs.

Arkansas Authorized Hazardous Waste Program

To incorporate by reference the Arkansas authorized hazardous waste program, EPA intends to add subpart E to 40 CFR part 272. The State statutes and regulations are incorporated by reference at 40 CFR 272.201(a) and the Memorandum of Agreement, the Attorney General's Statement and the Program Description are referenced at

40 CFR 272.201(d), (e) and (f), respectively.

The Agency retains the authority under sections 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedure Act rather than the authorized State analogues to these requirements. Therefore, the Agency does not intend to incorporate by reference for purposes of enforcement such particular, authorized Arkansas enforcement authorities. Section 272.201(b) of 40 CFR lists those authorized Arkansas authorities that are part of the authorized program but are not incorporated by reference.

Some provisions of the State's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions are not part of the RCRA Subtitle C program because they are "broader in scope" than RCRA Subtitle C (see 40 CFR 271.1(i)). As a result, State provisions which are "broader in scope" than the Federal program are not incorporated by reference for purposes of enforcement in 40 CFR part 272. Section 272.201(c) of 40 CFR lists for reference and clarify the Arkansas statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not, therefore, part of the authorized program being incorporated by reference. "Broader in scope" provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions.

HSWA Provisions

As noted above, the Agency is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are immediately effective in Arkansas and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (see 50 FR 28702, July 15, 1985).

Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously

authorized and incorporated by reference State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by the deadlines set forth in 40 CFR 271.21, and then to seek authorization for those revisions pursuant to 40 CFR part 271. EPA expects that States will modify their programs substantially and repeatedly. Instead of amending 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the section of 40 CFR part 272 applicable to the State. In the interim, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

Incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

As indicated earlier, Arkansas is authorized to implement certain HSWA requirements in lieu of EPA. EPA has explicitly indicated its intent to allow such action in Federal Register documents granting Arkansas authorization effective November 18, 1991 (56 FR 47153; September 18, 1991) and December 4, 1992 (57 FR 45721 and 57 FR 45722; October 5, 1992).

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. It intends to incorporate by reference the decisions already made to authorize Arkansas' program and has no separate effect on handlers of hazardous waste in the State or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

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.

List of Subjects in 40 CFR Part 272

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

Dated: September 23, 1993.

Joe D. Winkle,

Acting Regional Administrator.

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Subpart E—[Amended]

2. Subpart E is amended by adding § 272.201 to read as follows:

§ 272.201 Arkansas State-Administered Program: Final Authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), Arkansas has final authorization for the following elements as submitted to EPA in Arkansas' base program application for final authorization which was approved by EPA effective on January 25, 1985. Subsequent program revision applications were approved effective on August 23, 1985, May 29, 1990, November 18, 1991, and December 4, 1992. Arkansas is authorized to implement certain HSWA requirements in lieu of EPA. EPA has explicitly indicated its intent to allow such action effective on November 18, 1991 and December 4, 1992.

(b) *State Statutes and Regulations.*

(1) The Arkansas statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et seq.

(i) EPA Approved Arkansas Statutory Requirements Applicable to the

Hazardous Waste Management Program, September, 1993.

(ii) EPA Approved Arkansas Regulatory Requirements Applicable to the Hazardous Waste Management Program, September, 1993.

(2) The following statutes and regulations concerning State enforcement, although not incorporated by reference, are part of the authorized State program:

(i) Arkansas Hazardous Waste Management Act of 1979, Act 406 of 1979, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 1991 Replacement, Sections 8-7-204 through 8-7-214, 8-7-217, 8-7-218, 8-7-220, 8-7-222, and 8-7-225(b) through 8-7-225(d).

(ii) Arkansas Resource Reclamation Act of 1979, Act 1098 of 1979, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 1991 Replacement, Sections 8-7-302(3), 8-7-303, 8-7-308(1), and 8-7-308(4).

(iii) Arkansas Department of Pollution Control and Ecology (ADPC&E) Regulation No. 23, Hazardous Waste Management, as amended December 6, 1991, effective January 27, 1992, chapter two, sections 3a(11), 3b, 3c, 4, 6 (except 6b and 6c), 7, 8, 12b(7), 12c introductory paragraph, 12c(1)-12c(9), 12d, 12e, 14a, 17; chapter three, sections 19 and 20; chapter five, sections 26 and 27.

(iv) Arkansas Department of Pollution Control and Ecology, Regulation No. 7, Civil Penalties, May 25, 1984.

(v) Arkansas Department of Pollution Control and Ecology, Regulation No. 8, Administrative Procedures, July 6, 1984.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Arkansas Hazardous Waste Management Act, as amended, Act 406 of 1979, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 1991 Replacement, Section 8-7-226.

(ii) Arkansas Department of Pollution Control and Ecology Regulation No. 23, Hazardous Waste Management, as amended December 6, 1991, effective January 27, 1992, chapter two, section 2a(5) (only the second sentence), section 2b(11), section 3a(10), section 11, section 16a, and portions of sections 16c and 16d that refer to PCBs; and chapter four, section 23.

(4) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VI and the State of Arkansas Department of Pollution Control and Ecology, signed by the EPA Regional Administrator on September 6, 1991, is referenced as part of the authorized hazardous waste

management program under Subtitle C of RCRA, 42 U.S.C. 6921 et seq.

(5) *Statement of Legal Authority.* "Attorney General's Statement for Final Authorization", signed by the Attorney General of Arkansas on July 9, 1984 and revisions, supplements and addenda to that Statement dated September 24, 1987, February 24, 1989, December 11, 1990, and May 7, 1992, are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et seq.

(6) *Program Description.* The Program Description dated and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et seq.

3. Appendix A to part 272, is amended by adding in alphabetical order, "Arkansas" and its listing to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Arkansas

The statutory provisions include: Arkansas Hazardous Waste Management Act, as amended, Act 406 of 1979, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 1991, Sections 8-7-202, 8-7-203, 8-7-215, 8-7-216, 8-7-219, 8-7-221, 8-7-223, 8-7-224, and 8-7-225(a), published in 1991 by the Michie Company, Law Publishers, 1 Town Hall Square, Charlottesville, Virginia 22906-7587.

The regulatory provisions include: Arkansas Department of Pollution Control and Ecology Regulation No. 23, Hazardous Waste Management, as amended December 6, 1991, effective January 27, 1992, chapter one; chapter two, sections 2a (excluding all of 2a(5) except the first sentence), 2b (except 2b(11)), 2c, 3a (except 3a(10) and 3a(11)), 5, 6 introductory paragraph, 6b, 6c, 9, 10, 12 introductory paragraph, 12a, 12b (except 12b(7)), 12c(10), 12c(11), 13, 14 introductory paragraph, 14b, 15, 16 introductory paragraph, 16b, 16c (except the phrase "or the letters 'PCB' for PCB shipments" in 16c(1)(e)), 16d(1) (except the phrase "(including PCBs and PCB contaminated wastes)" in the first sentence), 16d(1)(a)-16d(1)(d), 16d(1)(e) (except the phrase "or 'PCBs'" in the first sentence), 16d(1)(f)-16e. Copies of the Arkansas regulations can be obtained from the Arkansas Register, Secretary of State, State Capitol Building, Little Rock, Arkansas 72201.

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