

US EPA ARCHIVE DOCUMENT

authorized representative. All requests for changes or deletions of company or individual PINs or changes in authorized representatives must be submitted in writing, on company letterhead, and signed by a responsible corporate officer.

VI. Confidential Business Information

Some information required to be submitted under "Table 2" or "the detail area" of the transaction sets, as identified in the technical guidance may be claimed as business confidential by the reporting party. The responsible corporate officer representing the reporting party may claim confidentiality as to "Table 2" or "detail area" information for those reports required to be filed for calendar year 1995 by initialing this clause. A reporting party may also notify EPA of a claim of confidentiality in a separate writing addressed to the Director, Field Operations and Support Division, 401 M Street, SW. (6406-J), Washington, DC 20460. Beginning with the report due on May 31, 1996, parties will be able to claim business confidentiality through the electronic reporting format. The reporting party will receive timely notice of such procedures, which will be included in an update to the technical guidance document.

Initials of Responsible Corporate Officer

VII. Acceptance

The terms and conditions set forth above are hereby accepted and agreed to by the Reporting Party. Upon receipt of this properly signed Terms and Conditions Memorandum and the list of reporting facilities and authorized representatives, EPA will issue PINs and accept electronic reports from the Reporting Party.

Signature of Responsible Corporate Officer

Printed/Typed Name of Responsible Corporate Officer

Company Name

Date

The statutory authority for today's notice is granted to EPA by §§ 211(c) and (k) and § 301(a) of the Clean Air Act as amended, 42 U.S.C. 7545(c) and (k) and 7601(a).

Dated: June 8, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95-14799 Filed 6-19-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 272

[FRL-5188-7]

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 by reference those provisions of the State statutes and regulations that EPA will enforce under RCRA Section 3008. Thus, EPA intends to codify the Arkansas authorized State program in 40 CFR Part 272. The purpose of this action is to incorporate by reference EPA's approval of recent revisions to Arkansas' program.

DATES: This document will be effective on August 21, 1995 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 July 20, 1995. The incorporation by reference of certain Arkansas statutes and regulations was approved by the Director of the Federal Register as of August 21, 1995 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Written comments should be sent to Alima Patterson, Region 6 AR-NM Authorization Coordinator, Grants and Authorization Section (6H-HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, Phone #: 214-665-8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 AR-NM Authorization Coordinator, Grants and Authorization Section (6H-HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, Phone #: 214-665-8533.

SUPPLEMENTARY INFORMATION:

Background

Section 3006 of the Resource Conservation and Recovery Act of 1976, as amended (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** document is to incorporate by reference EPA's approval of recent revisions to Arkansas' program.

Effective December 13, 1993 (see 58 FR 52674), EPA incorporated by reference Arkansas' then authorized hazardous waste program. ~~Effective December 21, 1994~~ (see 59 FR 51115), EPA granted authorization to Arkansas for additional program revisions. In this document, EPA is incorporating the currently authorized State hazardous waste program in Arkansas.

EPA provides both notice of its approval of State programs in 40 CFR part 272 and incorporates by reference therein the State statutes and regulations that EPA 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 98-616. 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 enforce those provisions of the Arkansas hazardous waste management program for which authorization approval has been granted by EPA. This document incorporates by reference provisions of State hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. 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 analogues.

Arkansas Authorized Hazardous Waste Program

EPA is incorporating by reference the Arkansas authorized hazardous waste program in subpart E of 40 CFR part 272. The State statutes and regulations are incorporated by reference at § 272.201(b)(1) and the Memorandum of Agreement, the Attorney General's Statement and the Program Description are referenced at § 272.201 (b)(5), (b)(6) and (b)(7), 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)(2) of 40 CFR lists those authorized Arkansas authorities that are part of the authorized program but are not incorporated by reference.

The public also needs to be aware that some provisions of the State's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions include:

(1) Provisions that 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)); and

(2) Federal rules for which Arkansas is not authorized, but which have been incorporated into the State regulations because of the way the State adopted Federal regulations by reference.

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(b)(3) 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.

Arkansas has adopted but is not authorized for the September 1, 1988 (53 FR 33938) and the July 1, 1991 (see 56 FR 30200) amendments to 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 and the July 1, 1991 amendments are not part of the State's authorized program and are not part of the incorporation by reference addressed by today's **Federal Register** document.

Since EPA cannot enforce a State's requirements which have not been reviewed and approved according to the Agency's authorization standards, it is important that EPA clarify any limitations on the scope of a State's approved hazardous waste program. Thus, in those instances where a State's method of adopting Federal law by reference has the effect of including unauthorized requirements, EPA will provide this clarification by: (1) Incorporating by reference the relevant State legal authorities according to the requirements of the Office of Federal Register; and (2) subsequently identifying in 272.201(b)(4) any requirements which while adopted and incorporated by reference, are not authorized by EPA, and therefore are not Federally enforceable. Thus, notwithstanding the language in the Arkansas hazardous waste regulations incorporated by reference at 272.201(b)(1), EPA would only enforce the State provisions that are actually authorized by EPA. With respect to HSWA requirements for which the State has not yet been authorized, EPA will continue to enforce the Federal HSWA standards until the State receives specific HSWA authorization from EPA.

HSWA Provisions

As noted above, the Agency is not amending 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 supercedes 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 part 271. EPA expects that the States will be modifying their programs substantially and repeatedly. Instead of amending the 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 State's part 272 incorporation by reference. 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.

The 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.

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 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

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: March 30, 1995.

Myron O. Knudson,
Acting Regional Administrator.

For the reasons set forth in the preamble, subpart E of 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).

2. 40 CFR part 272, subpart E is amended by revising § 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, December 4, 1992 and December 21, 1994.

(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, dated March, 1995.

(ii) EPA Approved Arkansas Regulatory Requirements Applicable to the Hazardous Waste Management Program, dated March, 1995.

(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, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 1993 Replacement, Sections 8-7-204 (except 8-7-204(e)(3)(B)), 8-7-205 through 8-7-214, 8-7-217, 8-7-218, 8-7-220, 8-7-222, 8-7-224 and 8-7-225(b) through 8-7-225(d).

(ii) Arkansas Resource Reclamation Act of 1979, as amended, Arkansas Code

of 1987 Annotated (A.C.A.), 1993 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 August 27, 1993, effective September 21, 1993, chapter two, sections 3a(11), 3b, 3c, 4, 6a, 6d through 6m, 7, 8, 12b(7), 12c (except 12c(10) and 12c(11)), 12d, 12e, 14a, 17; chapter three, sections 19 and 20; chapter five, section 26.

(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, Arkansas Code of 1987 Annotated (A.C.A.), 1993 Replacement, Section 8-7-226.

(ii) Arkansas Department of Pollution Control and Ecology Regulation No. 23, Hazardous Waste Management, as amended as amended August 27, 1993, effective September 21, 1993, chapter two, sections 2a(5) (only the second sentence), 2b(11), 3a(10), 11, 16a, and portions of sections 16c and 16d that refer to PCBs; and chapter four, section 23.

(4) *Unauthorized State Provisions:* Arkansas has adopted but is not authorized for the September 1, 1988 (53 FR 33938) and the July 1, 1991 (56 FR 30200) amendments to 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) adopting the September 1, 1988 and the July 1, 1991 amendments are not part of the State's authorized program and are not Federally enforceable.

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 6 and the State of Arkansas signed by the EPA Regional Administrator on November 3, 1994 is referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et seq.

(6) *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, May 7, 1992, and by the Independent Legal Counsel on May 10,

1994 are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et seq.

(7) *Program Description.* The Program Description 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, State Requirements, is amended by revising the listing for "Arkansas" to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Arkansas

The statutory provisions include:

Arkansas Hazardous Waste Management Act, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 1993 Replacement, Sections 8-7-202, 8-7-203, 8-7-215, 8-7-216, 8-7-219, 8-7-221, 8-7-223 and 8-7-225(a), as published 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 August 27, 1993, effective September 21, 1993, chapter one; chapter two, sections 2a (except the second sentence of 2a(5)), 2b (except 2b(11)), 2c, 3a (except 3a(10), 3a(11) and 3a(13)), 5, 6 introductory paragraph, 6b, 6c, 9, 10, 12 introductory paragraph, 12a, 12b (except 12b(7) and 12b(8)), 12c(10), 12c(11), 13a introductory paragraph, 13a(1) through 13a(7), 13a(11), 14 introductory paragraph, 14b, 15, 16 introductory paragraph, 16b, 16c introductory paragraph, 16c(1) (except the phrase "or the letters "PCB" for PCB shipments" in 16c(1)(e)), 16c(2) through 16c(6), 16c(7) (except the second and third sentences), 16c(8) through 16c(12), 16d(1) (except the phrase "(including PCBs and PCB contaminated wastes)" in the first sentence), 16d(1)(a) through 16d(1)(d), 16d(1)(e) (except the phrase "or "PCBs"" in the first sentence), and 16d(1)(f) through 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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