

US EPA ARCHIVE DOCUMENT

circulation to ensure State wide coverage and by mailing notices to persons on the State and EPA mailing lists. Approximately one (1) week prior to the hearing EPA mailed a follow-up notice to the major news media outlets in the State.

By the close of the public comment period, EPA received comments from six (6) persons on the Tentative Decision to grant Final Authorization to Arkansas. Comments are summarized and responded to below. The comments are grouped, to the extent possible, according to common areas for ease of response. This grouping is not meant to indicate any special significance or lack of significance of any comment. All comments have been carefully considered in reaching the decision to grant Final Authorization to the State of Arkansas.

1. *Comment:* One commenter stated that the current hazardous waste regulations in Arkansas will not protect the interests of the people of Arkansas. The commenter suggests that more resources are needed for the Arkansas program and that a more comprehensive plan of action is required. Such a regulatory scheme would include, among other things, waste reduction with a goal of zero discharge by 1990, on-site detoxification, waste exchange, not allowing any exemptions from full regulations, and prohibiting the landfilling of hazardous waste in Arkansas.

Response: As discussed earlier in this notice, EPA's decision to grant Final Authorization is based on the statutory requirements found in Sections 3006(b) and 7004 of RCRA as enacted by the Congress. EPA has reviewed the Arkansas program and has found that it meets those requirements, including sufficient resources for its operation.

EPA recognizes that the standards set out in the federal regulations may be supplemented by state requirements in order to provide the program desired by the state. Section 3006 of RCRA does allow for State programs to be more stringent than the federal program, if consistent with the federal scheme. All of the suggestions of the commenter encouraging stricter regulations have merit and deserve to be considered by the state. They are, however, not a consideration in the RCRA authorization process; EPA cannot deny authorization because the state has not implemented a more stringent program than EPA requires.

2. *Comment:* Two commenters expressed concern that the hazardous waste program in Arkansas would not prevent contamination of the environment by hazardous wastes. The

commenters were concerned that hazardous waste not enter the environment and cause pollution of environmental resources, including aesthetic resources and water resources, and that due care be taken in preserving the environment of the State.

One of the commenters was also concerned that not enough resources were being allocated in Arkansas to properly regulate hazardous waste.

Response: EPA appreciates such concerns and wishes to assure the commenters, and all people concerned with proper hazardous waste management, that EPA is also concerned with the preservation of the environment and the abatement of existing pollution problems. The performance and technical standards for the protection of ground and surface water resources from hazardous waste contamination are at the core of the RCRA program. EPA has reviewed the Arkansas program and found that it meets the applicable requirements of the federal program. As noted above, part of this determination includes an assessment of Arkansas' resources for implementation of its program. Implementation of this program in Arkansas should serve to prevent pollution by hazardous waste.

3. *Comment:* Two commenters expressed support for the Final Authorization of the State of Arkansas' hazardous waste management program.

Response: EPA appreciates these comments and has certainly taken them, along with the other comments received, into consideration in reaching a decision. Arkansas has demonstrated that the State program meets the requirements of Sections 3006 and 7004 of RCRA, the primary standards, against which EPA measures the Arkansas program in reaching the decision to grant Final Authorization.

4. *Comment:* One commenter stated that the Arkansas Department of Pollution Control and Ecology does not consider the comments of interested persons when reaching a decision. The commenter asserts that only industry in the State has input into regulatory decisions and that the present regulatory system allows too much self regulation by industry.

Response: EPA has reviewed the public participation procedures the State of Arkansas utilizes in developing regulations, issuing permits, etc. EPA has found that these procedures are equivalent to the procedures EPA would use in similar circumstances. EPA solicits and welcomes details regarding specific situations where the agency has failed to follow those procedures. The federal RCRA hazardous waste

regulatory program is a cradle to grave system for regulating hazardous waste. This system, which Congress has chosen to establish, involves compliance, reporting, and record keeping by the regulated community and compliance monitoring and enforcement by government. The Arkansas program for compliance and enforcement of hazardous waste laws and regulations has been found to meet the applicable requirements of the federal program. Failure of the State to implement the authorized RCRA program in a manner equivalent to the federal program would result in action by EPA to withdraw the authorization.

Decision

After reviewing the public comments, re-evaluating the State's submittal in light of those comments, and considering the performance of the State under Interim Authorization, it is my conclusion that Arkansas' application for Final Authorization meets all of the regulatory and statutory requirements established by RCRA.

Accordingly, Arkansas is granted Final Authorization to operate its hazardous waste management program. Subject to the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984), Arkansas now has responsibility for permitting, treatment, storage and disposal facilities within its borders and for carrying out all other aspects of the RCRA program. Arkansas also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Prior to the Hazardous and Solid Waste Amendments (HSWA) amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the EPA. EPA's regulations no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. Now, however, under section 3006(g) of RCRA, 42 U.S.C. 6226(g), the new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Arkansas. To the extent the authorized State program is unaffected

by the HSWA, the State program will operate in lieu of the Federal program. EPA will administer and enforce the prohibitions and requirements of the HSWA in Arkansas until Arkansas receives authorization to do so. Among other things, this will entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized. Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time the State will assist EPA's implementation of the HSWA under a Cooperative Agreement.

HSWA-related requirements and prohibitions that are more stringent than the State's program apply in Arkansas. Any State requirement that is more stringent than HSWA provision also remains in effect: thus, the universe of the more stringent provisions in the authorized State program and the HSWA defines the applicable requirements in Arkansas. (Arkansas is not being authorized now for any requirement implementing the HSWA.)

EPA will be publishing a Federal Register notice that explains in detail the HSWA and its effect on authorized States. That notice should be referred to for further information.

Region VI and Arkansas are currently reviewing the Memorandum of Agreement (MOA) to revise it to address the requirements of the HSWA. The current MOA provides that Arkansas shall administer the RCRA program in lieu of EPA and that EPA shall not issue permits in the State. Thus, it is inconsistent with the HSWA and will be revised to reflect EPA's and Arkansas' respective responsibilities under the new Federal/State regulatory scheme. (Because of the strict statutory time clock for processing final authorization applications, the State and EPA did not have ample time to revise the MOA before EPA's final approval of the State's application.)

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Arkansas' program, thereby eliminating duplicative requirements for handlers of

hazardous waste in the State. It does not impose any new burden on small entities. This Final Determination therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Authority: This Final Determination is issued under the authority of sections 2002(a), 3008, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6928, 6974(b) and EPA delegation 8-7.

Dated: December 19, 1984.

Dick Whittington,

Regional Administrator.

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40 CFR Part 271

[SW-6-FRL-2786-4]

New Mexico; Decision on Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on New Mexico's application for final authorization.

SUMMARY: New Mexico has applied for Final Authorization under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed New Mexico's application and has reached a final determination that New Mexico's Hazardous Waste Program satisfies all of the requirements necessary for Final Authorization. Thus, EPA is granting Final Authorization to the State to operate its program.

EFFECTIVE DATE: Final Authorization for New Mexico, for purposes of judicial review, shall be effective January 25, 1985.

FOR FURTHER INFORMATION CONTACT: H.J. Parr, State Programs Section (SAW-HP), Hazardous Materials Branch, U.S. Environmental Protection Agency, Region VI, 1201 Elm St., Dallas, Texas 75270 (214) 767-2848.

SUPPLEMENTARY INFORMATION: Section 3008(b) of RCRA allows the EPA to authorize State hazardous waste management programs to operate in the state in lieu of the Federal program. To qualify for Final Authorization, a State's program must (1) be "equivalent" to the Federal program, (2) be consistent with

the Federal program and other authorized state programs and (3) provide for adequate enforcement (Section 3006(b) of RCRA, 42 U.S.C. 6228(b)).

On July 28, 1984, New Mexico submitted a complete application to obtain Final Authorization to administer a RCRA program. On October 24, 1984, EPA published a tentative decision announcing its intent to grant New Mexico Final Authorization. Further background on the tentative decision appears at 49 FR 42761, October 24, 1984.

Along with the tentative determination, EPA announced the availability of the State's application for public review and comment and the date of a public hearing on the application and EPA's tentative determination. The public hearing was held on November 28, 1984, at 10:00 a.m. in Albuquerque, New Mexico.

The State of New Mexico received Interim Authorization for Phase I and for Phase II, Components A and B on September 30, 1983. New Mexico chose not to apply for Component C. Upon receiving Final Authorization, New Mexico will implement its program for permitting land disposal facilities. Otherwise, there will be no change in the status of permits or permitting authority on the effective date of this Final Determination.

New Mexico is not authorized by the Federal government to operate the RCRA program on Indian Lands and this authority will remain with EPA.

Responsiveness Summary

In addition to the Federal Register notice of tentative determination cited above, EPA publicized the notice of determination, the availability of the State's application for review and comment, and the public hearing by providing for publication of the notice in enough newspapers of general circulation to ensure State wide coverage and by mailing notices to persons on the State and EPA mailing lists. Approximately one (1) week prior to the hearing EPA mailed a follow-up notice to the major media outlets in the State.

EPA received comments from three (3) persons on the Tentative Decision to grant Final Authorization to New Mexico. Comments are summarized and responded to below. The comments are grouped, to the extent possible, according to common areas for ease of response. This grouping is not meant to indicate any special significance or lack of significance of any comment. All comments have been carefully

