

US EPA ARCHIVE DOCUMENT

40 CFR Part 272

[FRL-4786-4]

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

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 title 40, part 272 of 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. EPA intends to incorporate by reference the New Mexico authorized State program in 40 CFR part 272.

EFFECTIVE DATES: This document will be effective 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 November 12, 1993. The incorporation by reference of certain New Mexico 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 sent 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 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 New Mexico's base hazardous waste management program and its revisions to that program.

On January 11, 1985, EPA published a Federal Register (FR) document announcing its decision to grant final authorization for the RCRA base program to the State of New Mexico (see 50 FR 1515). Effective April 10, 1990 (see 55 FR 4604); July 25, 1990 (55 FR 28397); and December 4, 1992 (57 FR 45717), EPA granted New Mexico additional authorization.

New Mexico has adopted but is not authorized for the Federal rules published in the Federal Register from January 28, 1983 through March 20, 1984 (see 53 FR 33938; 48 FR 3977; 48 FR 39611; 48 FR 52718; 49 FR 5308; and 49 FR 10490) and on September 1, 1988 (see 53 FR 33938). Therefore, these rules included in the State incorporation by reference of Federal code at Parts I, II, III, V, VI, and IX are not Federally enforceable.

Except for the HSWA provisions concerning research, development and demonstration permits (50 FR 28702; July 15, 1985), New Mexico is not authorized to implement any HSWA requirements in lieu of EPA. However in adopting Federal requirements by reference, the State included in its adoption certain of the HSWA-based regulations that were promulgated by EPA prior to July 1, 1990. 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 a distinct section of this subpart any requirements which while adopted and incorporated by reference, are not authorized by EPA, and therefore are not Federally enforceable. 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 received specific HSWA authorization from EPA.

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 New Mexico. 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 New Mexico program and by amending the Code of Federal Regulations whenever a new or different set of requirements is authorized in New Mexico, the status of Federally approved requirements of the New Mexico program will be readily discernible.

The Agency will only enforce those provisions of the New Mexico 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 analogs.

New Mexico Authorized Hazardous Waste Program

To incorporate by reference the New Mexico authorized hazardous waste program, EPA intends to add subpart GG to 40 CFR part 272. The State statutes and regulations are incorporated by reference at 40 CFR 272.1601(a) and the Memorandum of Agreement, the Attorney General's Statement and the Program Description are referenced at 40 CFR 272.1601(e), (f) and (g), 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 New Mexico enforcement authorities. Section 272.1601(b) of 40 CFR lists those authorized New Mexico 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 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 272.1601(c) of 40 CFR lists for reference and clarity the New Mexico 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. Similarly, the State's adoption of Federal rules listed at 40 CFR 272.1601(d) is not approved by EPA and are not Federally enforceable.

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 New Mexico 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 40 CFR

part 271. EPA expects that the States will be modifying 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 section 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR 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 New Mexico's 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 28, 1993.

A. Stanley Meiburg,
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).

2. Subpart GG is amended by adding § 272.1601 to read as follows:

§ 272.1601 New Mexico State-Administered Program: Final Authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), New Mexico has final authorization for the following elements as submitted to EPA in New Mexico's base program application for final authorization which was approved by EPA effective on January 25, 1985. Subsequent program revision applications were approved effective on April 10, 1990, July 25, 1990, and December 4, 1992.

(b) *State Statutes and Regulations.* (1) The New Mexico 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 New Mexico Statutory Requirements Applicable to the Hazardous Waste Management Program, September, 1993.

(ii) EPA Approved New Mexico 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) New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4, (1992 Replacement Pamphlet), Sections 74-4-4 (except 74-4-4C), 74-4-4.1, 74-4-4.2C through 74-4-4.2E, 74-4-4.2G(1), 74-4-4.2H, 74-4-4.21, 74-4-4.3 (except 74-4-4.3A(2) and 74-4-4.3F), 74-4-4.7, 74-4-5, 74-4-7B, 74-4-7C, 74-4-10, 74-4-10.1 (except 74-4-10.1C), 74-4-11 through 74-4-14.

(ii) New Mexico Hazardous Waste Management Regulations,

Environmental Improvement Board (EIB), HWMR-6, as amended, February 28, 1991, New Mexico Register, Vol. II-No. 4, Part IX, Sections 902 (except 902.B.1 through 902.B.6); and Part X, Sections 1001, 1004, and 1005.

(3)(i) 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:

(ii) New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4, (1992 Replacement Pamphlet), Sections 74-4-3.3 and 74-4-4.2j.

(4) **Unauthorized State Provisions:** The State's adoption of the Federal rules listed below, while incorporated by reference at 40 CFR 272.1601(a), is not approved by EPA and are not enforceable:

Federal requirement	Federal Register reference	Publication date
Liability Requirements.	53 FR 33938	09/01/88
Biennial Report	48 FR 3977	01/28/83
Permit Rules:	48 FR 39611	09/01/83
Settlement Agreement.		
Interim Status Standards	48 FR 52718	11/22/83
Applicability.		
Chlorinated Aromatic Hydrocarbon Listing (F024).	49 FR 5308	02/10/84
National Uniform Manifest.	49 FR 10490	03/20/84

Additionally, except for the HSWA provisions concerning research, development and demonstration permits (50 FR 28702; July 15, 1985), New Mexico is not authorized to implement any HSWA rule in lieu of EPA. EPA will continue to enforce the Federal HSWA standards for which the State is not authorized until the State receives specific HSWA authorization from EPA.

(5) **Memorandum of Agreement.** The Memorandum of Agreement between EPA Region VI and the State of New Mexico signed by the EPA Regional Administrator on January 27, 1993, 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 New Mexico in January, 1985, and revisions, supplements and addenda to that Statement dated April 13, 1988, September 14, 1988, July 19,

1989 and July 23, 1992, 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 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, "New Mexico" and its listing to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

New Mexico

The statutory provisions include: New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4, (1992 Replacement Pamphlet), Sections 74-4-2, 74-4-3 (except 74-4-3L, 74-4-3O, and 74-4-3R), 74-4-3.1, 74-4-4.2.A, 74-4-4.2B, 74-4-4.2F, 74-4-4.2G(2), 74-4-4.3F, 74-4-7 introductory paragraph, 74-4-7A, 74-4-9, and 74-4-10.1C, as published by the Michie Company, Law Publishers, 1 Town Hall Square, Charlottesville, Virginia 22906-7587.

The regulatory provisions include: New Mexico Hazardous Waste Management Regulations, Environmental Improvement Board (EIB), HWMR-6, as amended, February 28, 1991, New Mexico Register, Vol. II-No. 4, Parts I through Part VIII; Part IX, Sections 901, 902.B.1 through 902.B.6; and Part X, Section 1003. Copies of the New Mexico regulations can be obtained from the New Mexico Register, New Mexico Information Systems, P. O. Box 6703, Santa Fe, NM 87502.

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40 CFR Part 272

[FRL-4783-8]

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

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 title 40 Code of Federal Regulations (CFR), part 272 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. EPA intends to incorporate by reference the Oklahoma authorized State program in 40 CFR part 272.

EFFECTIVE DATES: This document will be effective December 13, 1993 unless EPA publishes a prior Federal Register (FR) action withdrawing this immediate final rule. All comments on this action must be received by the close of business November 12, 1993. The incorporation by reference of certain Oklahoma 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 sent 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, 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, 214/655-8528.

SUPPLEMENTARY INFORMATION:

Background

Section 3006 of RCRA, 42 U.S.C. 6926 *et seq.*, allows the 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 Oklahoma's base hazardous waste management program and its four revisions to that program.

On December 27, 1984, EPA published a Federal Register notice announcing its decision to grant final authorization for the RCRA base program to the State of Oklahoma (see 49 FR 50362). Effective on June 18, 1990 (see 55 FR 14280); November 27, 1990 (see FR 39274); June 3, 1991 (see 56 FR 13411); and November 19, 1991 (see 56