

US EPA ARCHIVE DOCUMENT

to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action being promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### *D. Submission to Congress and the General Accounting Office*

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. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability, applying only to Pennsylvania Power—New Castle plant, located in Lawrence County.

#### *E. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action pertaining to the disapproval of PADEP's NO<sub>x</sub> RACT proposal for Pennsylvania Power New Castle must be filed in the United States Court of Appeals for the appropriate circuit by June 29, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone,

Reporting and recordkeeping requirements.

Dated: April 8, 1998.

**W. Michael McCabe,**  
*Regional Administrator, Region III.*

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

#### **PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

*Authority:* 42 U.S.C. 7401 *et seq.*

#### **Subpart NN—Pennsylvania**

2. Section 52.2023 is amended by adding paragraph (e) to read as follows:

#### **§ 52.2023 Approval status.**

\* \* \* \* \*

(e) Disapproval of the April 19, 1995 NO<sub>x</sub> RACT proposal for Pennsylvania Power Company—New Castle plant located in Lawrence County, Pennsylvania.

\* \* \* \* \*

[FR Doc. 98-11507 Filed 4-29-98; 8:45 am]

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 272**

[FRL-6003-4]

### **Oklahoma: Final Authorization and Incorporation by Reference of State Hazardous Waste Management Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Immediate final rule.

**SUMMARY:** Oklahoma has revised its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). With respect to today's document, Oklahoma has made conforming changes to make its regulations internally consistent relative to the revisions made for the above listed authorizations. Oklahoma has also changed its regulations to make them more consistent with the Federal requirements. The EPA has reviewed Oklahoma's changes to its program and has made a decision, subject to public review and comment, that Oklahoma's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Unless adverse written comments are received during the review and comment period on the parallel proposed rule also in today's **Federal Register** (FR) notice,

EPA's decision to approve Oklahoma's hazardous waste program revisions will take effect as provided below. Oklahoma's program revisions are available for public review and comment.

The 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 are part of the authorized State program. Thus, EPA intends to revise and incorporate by reference the Oklahoma authorized State program in 40 CFR part 272. The purpose of this action is to incorporate by reference into CFR currently authorized State hazardous waste program in Oklahoma. 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.

**DATES:** Final authorization for Oklahoma's program revisions shall be effective July 14, 1998 without further notice unless EPA, receives relevant adverse comment on the parallel notice of proposed rulemaking. Should the agency receive such comments, it will publish a notice informing the public that this rule did not take effect. All comments on Oklahoma's program revisions must be received by close of business June 1, 1998. The incorporation by reference of certain Oklahoma statutes and regulations was approved by the Director of the Federal Register as of July 14, 1998 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

**ADDRESSES:** Copies of Oklahoma's program revisions and materials EPA used in evaluating the revisions are available for copying from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following addresses: State of Oklahoma Department of Environmental Quality, 1000 Northeast Tenth Street, Oklahoma City, Oklahoma 73117-1212, Phone number: (405) 271-5338; or EPA Region 6 Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202-2733, Phone number: (214) 665-6444. Written comments referring to Docket Number OK98-1 should be sent to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD-G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, Phone number: (214) 665-8533.

**FOR FURTHER INFORMATION CONTACT:** Alima Patterson, Region 6 Authorization

Coordinator, Grants and Authorization Section (6PD-G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, Phone number: (214) 665-8533.

**SUPPLEMENTARY INFORMATION:**

**I. Authorization of State Initiated Changes**

*A. Background*

States with final authorization under section 3006(b) of the RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter HSWA) allow States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 266, 268, 270, 273, and 279.

*B. Oklahoma*

Oklahoma initially received final authorization to implement its hazardous waste program on December 27, 1984, effective January 10, 1985 (49 FR 50362). Oklahoma received final authorization for revisions to its program on April 17, 1990, effective June 18, 1990 (55 FR 14280); on September 26, 1990, effective November 27, 1990 (55 FR 39274); on April 2, 1991, effective June 3, 1991 (56 FR 13411); on September 20, 1991, effective November 19, 1991 (56 FR 47675); on September 29, 1993, effective November 29, 1993 (58 FR 50854); on October 7, 1994, effective December 21, 1994 (59 FR 51116); on January 11, 1995, effective April 27, 1995 (60 FR 2699); and on October 9, 1996 (61 FR 52884), as corrected on March 14, 1997, effective March 14, 1997 (62 FR 12100).

The EPA has reviewed these changes and has made an immediate final decision, in accordance with 40 CFR 271.21(b)(3), that Oklahoma's hazardous waste program revisions satisfy all of the requirements necessary to qualify

for final authorization. Consequently, EPA grants final authorization for the additional program modifications to Oklahoma's hazardous waste program. As explained in the Proposed Rule section of today's FR, the public may submit written comments on EPA approval actions until June 1, 1998. Copies of Oklahoma's program revisions are available for inspection and copying at the locations indicated in the ADDRESSES section of this notice.

Approval of Oklahoma's program revision shall become effective in 75 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period on the parallel proposed rule in today's FR notice. If an adverse comment is received EPA will publish either: (1) A withdrawal of the immediate final decision or, (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

The EPA is authorizing changes to the following State provisions. These provisions do not have a direct analog in the Federal RCRA regulations. However, none of these provisions are considered broader in scope than the Federal program. This is so because these provisions were either previously authorized as part of Oklahoma's base authorization or have been added to make the State's regulations internally consistent with changes made for the other authorizations listed in the first paragraph of this section. The EPA has reviewed these provisions and has determined that they are consistent with and no less stringent than the Federal requirements. Additionally, this authorization does not affect the status of State permits and those permits issued by EPA because no new substantive requirements are a part of these revisions. The Oklahoma provisions are from *The Oklahoma Administrative Code*, Title 252, Chapter 200, 1996 Edition, unless otherwise stated.

**State Requirement**

252:200-1-1(b)  
252:200-3-2(2) through 252:200-3-2(4), as amended May 15, 1997, effective June 2, 1997  
252:200-3-2(6)&(7), as amended May 15, 1997, effective June 2, 1997  
252:200-3-2(9)&(10), as amended May 15, 1997, effective June 2, 1997  
252:200-3-2(12), as amended May 15, 1997, effective June 2, 1997  
252:200-3-4, as amended May 15, 1997, effective June 2, 1997

252:200-5-1 introductory paragraph, as amended May 15, 1997, effective June 2, 1997

252:200-5-1(3), as amended May 15, 1997, effective June 2, 1997

252:200-5-3

252:200-5-4, as amended May 15, 1997, effective June 2, 1997

252:200-5-6, as amended May 15, 1997, effective June 2, 1997

252:200-7-1

252:200-7-3

252:200-8-1 through 252:200-8-8

(except 252:200-8-5)

252:200-8-5, as amended May 15, 1997, effective June 2, 1997

252:200-9-2, as amended May 15, 1997, effective June 2, 1997

252:200-9-4(b)

252:200-9-8

252:200-11-1 (except the phrases "or off-site recycling" and "(TSDRs)")

252:200-11-2

252:200-11-3(a) (except the word "recycling")

252:200-11-4(a)(1) (except the phrases "Except as otherwise provided in this Section" and "or recycling")

252:200-11-4(a)(5) (except the phrase "For the purposes of this section")

252:200-11-4(b) through 252:200-11-4(e)

252:200-13-2 introductory paragraph

Oklahoma has made corresponding statutory changes which need to be authorized at this time. The Oklahoma provisions are from the Oklahoma Hazardous Waste Management Act, as amended, 27A Oklahoma Statute (O.S.) 1997 Edition, effective August 30, 1996.

**State Requirement**

2-7-110(A)

2-7-111(D)(2)&(3)

2-7-113.1(A) through 2-7-113.1(C)

2-7-115

2-7-116(A)

2-7-118(A)

Oklahoma is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

*C. Decision*

I conclude that Oklahoma's program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Oklahoma is granted final authorization to operate its hazardous waste program as revised.

Oklahoma now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Oklahoma also has primary enforcement responsibilities, 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.

## II. Incorporation by Reference

### A. Background

Effective December 13, 1993 (58 FR 52679), EPA incorporated by reference Oklahoma's then authorized hazardous waste program. Effective November 29, 1993 (58 FR 50854); December 21, 1994 (59 FR 51116); April 27, 1995 (60 FR 2699); and March 14, 1997 (62 FR 12100), EPA granted authorization to Oklahoma for additional program revisions.

The 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 are part of the authorized State program under RCRA. This effort will provide clearer notice to the public of the scope of the authorized program in Oklahoma. Such notice is particularly important in light of HSWA, PL 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 Oklahoma program and by amending the CFR whenever a new or different set of requirements is authorized in Oklahoma, the status of Federally approved requirements of the Oklahoma program will be readily discernible.

The Agency will only enforce those provisions of the Oklahoma hazardous waste management program for which authorization approval has been granted by EPA.

### B. Oklahoma Authorized Hazardous Waste Program

The EPA is revising the incorporation by reference the Oklahoma authorized hazardous waste program in subpart LL of 40 CFR part 272. The State statutes and regulations are incorporated by reference at § 272.1851(b)(1) and the Memorandum of Agreement, the Attorney General's Statement and the Program Description are referenced at § 272.1851(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 Oklahoma enforcement authorities. Section 272.1851(b)(2) lists those Oklahoma 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 nonauthorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are "broader in scope" than RCRA subtitle C (40 CFR 271.1(i)), and

(2) Federal rules for which Oklahoma 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 in 40 CFR part 272. Section 272.1851(b)(3) of 40 CFR lists for reference and clarity the Oklahoma 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.

Oklahoma has adopted but is not authorized for the following Federal rules regarding delisting wastes published on July 15, 1985 (50 FR 28702); and the Federal rules published in the **Federal Register** on October 5, 1990 (55 FR 40834); February 1, 1991 (56 FR 3978); February 13, 1991 (56 FR 5910); April 2, 1991 (56 FR 13406); May 1, 1991 (56 FR 19951); December 23, 1991 (56 FR 66365); and February 18, 1992 (57 FR 5859). Therefore, these Federal amendments included in Oklahoma's adoption by reference at 252:200-3-2(2) through 252:200-3-2(10) of the Oklahoma Administrative Code, 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 272.1851(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 Oklahoma hazardous waste regulations incorporated by reference at 272.1851(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.

### C. 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 Oklahoma 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 nonauthorized 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 (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. The EPA expects that the States will be modifying their programs substantially and repeatedly. Instead of amending the 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.

#### 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 certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, 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. The section 202 and 205 requirements do not apply to today's action because it is not a "Federal mandate" and because it does not impose annual costs of \$100 million or more.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector for two reasons. First, today's action does not impose new or additional enforceable duties on any State, local or tribal governments or the private sector because it merely makes federally enforceable existing requirements with which regulated entities must already comply under State law. Second, the Act also generally excludes from the definition of a "Federal mandate" duties that arise from participation in a voluntary Federal program. The requirements being authorized and codified today are the result of Oklahoma's voluntary participation in accordance with RCRA subtitle C.

Even if today's rule did contain a Federal mandate, this rule will not result in annual expenditures of \$100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector because today's action grants authorization as well as incorporating by reference an existing State program that EPA previously authorized. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The requirements of section 203 of UMRA also do not apply to today's

action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, section 203 of UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that although small governments may be hazardous waste generators, transporters, or own and/or operate treatment, storage, and disposal facilities, this codification incorporates into the CFR Oklahoma's requirements which have already been authorized by EPA under 40 CFR part 271 and, thus, small governments are not subject to any additional significant or unique requirements by virtue of this authorization and codification.

#### Certification Under the Regulatory Flexibility Act

The EPA has determined that this authorization and codification 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 treatment, storage, or disposal facilities are already subject to the State requirements authorized by EPA under 40 CFR part 271. The EPA's authorization and codification does not impose any additional burdens on these small entities. This is because EPA's codification would simply result in an administrative change, rather than a change in the substantive requirements imposed on small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this codification will not have a significant economic impact on a substantial number of small entities. This codification incorporates Oklahoma's requirements which have been authorized by EPA under 40 CFR part 271 into the CFR. 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 submitted 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 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, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

**Authority:** This notice 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).

**Lynda F. Carroll,**

*Acting Regional Administrator, Region 6.*

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

#### **PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS AS AMENDED AS FOLLOWS**

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

**Authority:** Sections 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 LL is amended by revising § 272.1851 to read as follows:

#### **§ 272.1851 Oklahoma State-Administered Program: Final Authorization.**

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), the EPA granted Oklahoma final authorization