ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7442–8]

Ohio: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is granting Ohio final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA published a proposed rule on October 21, 2002, and provided an opportunity for public comment. The public comment period ended on December 5, 2002. EPA received no comments. No further opportunity for public comment will be provided. EPA has determined that Ohio's revisions satisfy all requirements necessary for final authorization and is authorizing Ohio's revised program through this final action.

EFFECTIVE DATE: Final authorization for revisions to Ohio's hazardous waste management program will become effective on January 24, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Feigler, Ohio Regulatory Specialist, U.S. Environmental Protection Agency, Waste, Pesticides and Toxics Division (DM–7J), 77 W. Jackson Blvd., Chicago, Illinois 60604, phone number: (312) 886–4179.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program which is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must revise their programs and ask EPA to authorize the revisions. Revisions to state programs may be necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must revise their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Were the Comments and Responses to EPA's Proposal?

On October 21, 2002, EPA published a proposed rule (see 67 FR 64594). In the rule, EPA proposed granting authorization of revisions to Ohio's hazardous waste program and provided an opportunity for public comment. EPA received no comments on the proposal.

C. What Decisions Have We Made in This Rule?

EPA has determined that Ohio's revisions to its authorized program meet all the statutory and regulatory requirements established by RCRA. Therefore, EPA grants Ohio final authorization to operate its hazardous waste program with the revisions described in the authorization application. Ohio now has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by federal regulations promulgated by EPA under the authority of HSWA take effect in authorized states before the states are authorized for the requirements. Thus, EPA implements those requirements and prohibitions in Ohio, including issuing permits, until Ohio is granted authorization to do so.

D. What Revisions Are We Authorizing With Today's Action?

On June 25, 2002, Ohio submitted a complete program revision application, seeking authorization of its revisions in accordance with 40 CFR 271.21. EPA now makes a final decision that Ohio's hazardous waste management program, as revised, satisfies all requirements under RCRA necessary to qualify for final authorization. Therefore, EPA grants Ohio final authorization for the program revisions described in the October 21, 2002, proposed rule (67 FR 64594). For further details, see the October 21, 2002 proposed rule.

E. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Ohio that is subject to RCRA will now have to comply with the authorized state requirements in lieu of the corresponding federal requirements in order to comply with RCRA. Such facilities must also comply with any applicable federally-issued requirements, such as, for example, HSWA regulations issued by EPA for which Ohio has not received authorization, and RCRA requirements that are not supplanted by authorized state-issued requirements. Ohio will issue permits for all provisions for which it is authorized and will administer the permits that it issues. Ohio continues to have enforcement responsibility under its state hazardous waste management program for violations of that program, but EPA retains authority under RCRA sections 3007, 3008, 3013 and 7003 (42 U.S.C. 6927, 6928, 6934 and 6973) which includes, among others, the authority to:

- Conduct inspections and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement action regardless of whether Ohio has taken its own actions.

Today's action to approve these revisions does not impose additional requirements on the regulated community because the regulations included in the program revisions affected by this authorization decision are already effective under state law and are not changed by today's action.

F. Who Handles Permits After the Authorization Takes Effect?

Ohio will issue permits for all provisions for which it is authorized and will administer the permits that it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits that EPA issued prior to the effective date of this authorization, until they expire or are terminated. EPA will not issue any more new permits or new portions of permits for the provisions for which Ohio is authorized after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Ohio is not yet authorized.

G. What Has Ohio Previously Been Authorized for?

Ohio initially received final authorization effective June 30, 1989 (54 FR 27170–27174, June 28, 1989) to implement the RCRA hazardous waste management program. We granted authorization for changes to Ohio's program effective June 7, 1991 (56 FR 14203, April 8, 1991), as corrected June 7, 1991 (56 FR 28808, June 19, 1991); effective September 25, 1995 (60 FR 51244, July 27, 1995); and effective December 23, 1996 (61 FR 54950, October 23, 1996).

H. What Is the Effect of Authorizing Ohio for These Revisions on Indian Country (18 U.S.C. 1151) in Ohio?

Ohio is not authorized to carry out its hazardous waste program in ''Indian

country,'' as defined in 18 U.S.C. 1151. Indian country includes:

1. All lands within the exterior boundaries of Indian reservations within or abutting the State of Ohio;

2. Any land held in trust by the U.S. for an Indian tribe; and

3. Any other land, whether on or off an Indian reservation that qualifies as Indian country. Therefore, this action has no effect on Indian country. EPA retains the authority to implement and administer the RCRA program in Indian country. However, at this time, there is no Indian country within the State of Ohio.

I. What Is Codification and Is EPA Codifying Ohio's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing a state's statutes and regulations that comprise the state's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized state rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart P, for authorization of Ohio's program revisions until a later date.

J. Administrative Requirements

The Office of Management and Budget has exempted RCRA authorization from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. Furthermore, this action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by state law. This authorization will effectively suspend the applicability of certain federal regulations in favor of Ohio's program, thereby eliminating duplicate requirements in the state. Authorization will not impose any new burdens on small entities. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This action does not have tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes state requirements as part of the state RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action does not include environmental justice-related issues that require consideration under Executive Order 12898 (59 FR 7929, February 16, 1994).

Under RCRA section 3006(b), EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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. EPA will submit a report containing this document 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 in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action 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).

Dated: January 9, 2003.

Bharat Mathur,

Deputy Regional Administrator, Region 5.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 312

[FRL–7442–4]

RIN 2050–AF05

Clarification to Interim Standards and Practices for All Appropriate Inquiry Under CERCLA and Notice of Future Rulemaking Action

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to clarify a provision included in recent amendments to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Specifically, today's direct final rule addresses the interim standard set by Congress in the Small Business Liability Relief and Brownfields Revitalization Act (''the Brownfields Law'') for conducting ''all appropriate inquiry'' to establish that a landowner had no reason to know of contamination at a property under CERCLA liability provisions prior to purchasing the property. Today's action clarifies that, in the case of property purchased on or after May 31, 1997, the requirements for conducting ''all appropriate inquiry,'' including the