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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7262–6]

Florida: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Florida has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Florida's changes to their hazardous waste program will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on October 21, 2002, unless EPA receives adverse written comment by September 19, 2002. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments to Narindar M. Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960; (404) 562–8440. You can view and copy Florida's application from 8 a.m. to 5 p.m. at the following addresses: The Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400 and from 8:30 a.m. to 3:45 p.m., EPA Region 4, Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960, Phone number (404) 562–8190, Kathy Piselli, Librarian.

FOR FURTHER INFORMATION CONTACT: Narindar M. Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960; (404) 562–8440.

SUPPLEMENTARY INFORMATION:

A. Why are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes 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 change 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 Decisions Have We Made in This Rule?

We conclude that Florida's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Florida Final authorization to operate its hazardous waste program with the changes described in the authorization application. Florida 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 that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Florida, including issuing permits, until the State is granted authorization to do so.

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

The effect of this decision is that a facility in Florida subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Florida has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- do inspections, and require monitoring, tests, analyses or reports
- enforce RCRA requirements and suspend or revoke permits
- take enforcement actions regardless of whether the State has taken its own actions

This action does not impose additional requirements on the regulated community because the regulations for which Florida is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens If EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the state program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal**

Register withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Florida Previously Been Authorized For?

Florida initially received Final authorization on January 29, 1985, effective February 12, 1985 (50 FR 3908), to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on December 1, 1987, effective March 3, 1988 (52 FR 45634), December 16, 1988, effective January 3, 1989 (53 FR 50529), December 14, 1990, effective February 12, 1991 (55 FR 51416), February 5, 1992, effective April 6, 1992 (57 FR 4371), February 7, 1992, effective April 7, 1992 (57 FR 4738), May 20, 1992, effective July 20, 1992 (57 FR 21351), November 9, 1993, effective January 10, 1994, (58 FR 59367), July 11, 1994, effective September 9, 1994 (59 FR 35266), August 16, 1994, effective October 17, 1994 (59 41979), October 26, 1994, effective December 27, 1994 (59 FR 53753), April 1, 1997, effective June 2, 1997 (62 FR 15407), August 23, 2001, effective October 22, 2001 (66 FR 44307). The authorized Florida program was incorporated by reference into the CFR on January 20, 1998, effective March 23, 1998 (63 FR 2896). Florida received corrective action authority on September 18, 2000, effective November 17, 2000 (65 FR 56256).

G. What Changes Are We Authorizing With Today's Action?

On September 10, 1998, Florida submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. Florida's revisions consist of provisions contained in the Boilers and Industrial Furnaces rule. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Florida's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Florida Final authorization for the following program changes:

Description of Federal requirement	Federal Register	Analogous State authority*
Consolidated Checklist for the Burning of Hazardous Waste in Boilers and Industrial Furnaces (85, 94, 96, 98, 105, 110, 111, 114, 125, 127).	56 FR 7134, 02/21/91, 56 FR 32688, 07/17/91; 56 FR 42504, 08/27/91; 56 FR 43874, 09/05/91; 57 FR 27880, 06/22/92; 57 FR 37284, 08/18/92; 57 FR 38558, 08/25/92; 57 FR 44999, 09/30/92; 58 FR 38816, 07/21/93, and FR 58 59598, 12/09/93.	Section 403.72(1), Florida Statute (F.S.) (1993 and 1994 Supplement); Rule 62–730.030(1), Florida Administrative Code (F.A.C.), effective January 5, 1995; Section 403.72(1), F.S., (1993 and 1994 Supplement); Rule 17–730.030(1), F.A.C., effective October 14, 1992; Sections 403.72(1), 403.721(1), 403.721(2), 403.721(6), 403.721(7), 403.722, and 403.7895, F.S. (1993 and 1994 Supplement); Rules 17–730.030(1) and 17–730.181, F.A.C. effective October 14, 1992; Section 403.72(1), F.S. (1993 and 1994 Supplement); Rule 17–730.030(1), F.A.C., effective October 7, 1993 and January 5, 1995; Section 403.72(1), F.S. (1993 and 1994 Supplement); Rule 17–730.030(1), F.A.C., effective October 14, 1992; Rule 62–730.030(1), F.A.C., effective January 5, 1995; Sections 403.087(2), 403.704(16), 403.721(2), 403.722(3), and 403.722(7), F.S. (1993 and 1994 Supplement); Rule 17–730.220(3), F.A.C., effective October 14, 1992; Sections 403.704(15), 403.72(1), 403.721(1), 403.721(2), 403.721(6), 403.721(7), 403.722, and 403.7895, F.S. (1993 and 1994 Supplement); Rules 17–730.020(1), 17–730.021(1)(a), 17–730.030(1), 17–730.180(1), 17–730.180(2), and 17–730.181 F.A.C., effective October 14, 1992; Rules 62–730.020(1), 62–730.030(1),62–730.180(1), 62–730.180(2), and 62–730.181(1), F.A.C. effective January 5, 1995; Sections 403.721(1), 403.721(2), 403.721(6), 403.721(7), 403.722, and 403.7895, F.S. (1993 and 1994 Supplement); Rule 17–730.181, F.A.C., effective October 14, 1992 and October 7, 1993; Sections 403.721(1), 403.721(2), 403.721(6), 403.721(7), 403.722, and 403.7895, F.S. (1993 and 1994 Supplement); Rules 62–730.021(1)(a) and 62–730.181(1), F.A.C., effective January 5, 1995; Sections 403.721(1), 403.721(2), 403.721(6), 403.721(7), 403.722, and 403.7895, F.S. (1993 and 1994 Supplement); Rule 62–730.181(1), F.A.C., effective January 5, 1995

*On August 10, 1994, the Florida Administrative Code chapter 17–730 was renumbered as 62–730 as part of a reorganization of the Florida Department of Environmental Protection. The chapter title, ''Hazardous Waste,'' remained the same, and the contents of the Chapter did not change as a result of the renumbering.

H. Where Are the Revised State Rules Different From the Federal Rules?

This section discusses certain rules where the State is broader in scope and will not be authorized and optional rules that the state did not adopt.

The State of Florida's permitting requirements for boilers and industrial furnaces are broader in scope than the Federal requirements. Section 403.7895, F. S., requires a certification of need issued by the Governor and Cabinet sitting as the Statewide Multipurpose Hazardous Waste Facility Siting Board before a permit can be issued.

The State did not adopt 40 CFR 260.20 and does not do delisting petitions. Section 120.54(5), Florida Statutes, describes what is required in Florida for rulemaking petitions.

I. Who Handles Permits After the Authorization Takes Effect?

Florida will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until the permits expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Florida is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in Florida?

Florida is not authorized to carry out its hazardous waste program in Indian country within the State, which includes:

- Seminole Tribe of Florida
- Miccosukee Tribe of Indians of Florida

Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in these lands.

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

Codification is the process of placing the 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 K for this authorization of Florida's program changes until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. 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 (Public Law 104–4). For the same reason, this action does not have tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000). It does not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. 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 rule 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.

Under RCRA 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 note) 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 rule 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). This action will be effective October 21, 2002.

List of Subjects in 40 CFR Part 271

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

Authority: This action is issued under the authority of 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 30, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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