VIII. Regulatory Analyses

A. Executive Order 12866

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], EPA must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review and the requirements of the Executive Order.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. section 601–612, Pub. L. 96–354, September 19, 1980), whenever an agency publishes a General Notice of Rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the Agency certifies that the rule will not have a significant impact on a substantial number of small entities.

This rule will not require the purchase of new instruments or equipment. The regulation requires no new reports beyond those now required. This rule will not have an adverse economic impact on small entities since its effect will be to provide greater flexibility to all of the regulated community by providing an increased choice of appropriate analytical methods for RCRA applications, including small entities. Therefore, in accordance with 5 U.S.C. section 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Thus, the regulation does not require an RFA.

C. Paperwork Reduction Act

There are no additional reporting, notification, or recordkeeping provisions in this rule. Such provisions, were they included, would be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Incorporation by reference.

Dated: December 13, 1994.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40, Chapter I, of the Code of Federal Regulations is amended as set forth below:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

2. Section 260.11 (a) is amended by revising the ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'' reference to read as follows:

§ 260.11 References.

(a) * * *

''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846 [Third Edition (November, 1986), as amended by Updates I (July, 1992), II (September, 1994), and IIA (August, 1993)]. The Third Edition of SW–846 and Updates I, II, and IIA (document number 955–001–00000–1) are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

* * * * *

[FR Doc. 95–821 Filed 1–12–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 271

[FRL–5138–9]

Michigan: Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on application of Michigan for final authorization.

SUMMARY: Notice is hereby given that the United States Environmental Protection Agency (U.S. EPA) approves the revisions to the State of Michigan's authorized hazardous waste management program resulting from the reorganization of the Michigan Department of Natural Resources (MDNR) by Executive Order 1991–31.

EFFECTIVE DATE: January 13, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Feigler, RCRA Regulatory Development Section, U.S. EPA, Region 5, 77 W. Jackson (HRM–7J), Chicago, Illinois 60604, or telephone (312) 886–4179.

SUPPLEMENTARY INFORMATION:

A. Background

On October 21, 1994, EPA published in the **Federal Register** a notice announcing the preliminary determination to approve the State of Michigan's hazardous waste management program, as revised, pursuant to Section 3006(b) of the Resource Conservation and Recovery Act (RCRA) and 40 CFR 271.21(b)(4).

States with final authorization under Section 3006(b) of RCRA, 42 U.S.C. 6929(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 management program. When either EPA's or a State program's controlling statutory or regulatory authority is modified or supplemented, or when certain other changes occur, revisions to State hazardous waste management programs may be necessary. The procedures that States and EPA must follow for revision of State programs are found at 40 CFR 271.21(b).

The State of Michigan initially received final authorization for its hazardous waste management program effective on October 30, 1986 (51 FR 36804–36805, October 16, 1986). Subsequently, Michigan received authorization for revisions to its program, effective on January 23, 1990 (54 FR 225, November 24, 1989); June 24, 1991 (56 FR 18517, April 23, 1991);

and November 30, 1993 (58 FR 51244, October 1, 1993). Michigan's Program Description dated June 30, 1984, and addenda thereto dated June 30, 1986; September 12, 1988; July 31, 1990; and August 10, 1992, which were a component of the State's original final authorization and subsequent revision applications, specified that the Michigan Department of Natural Resources (MDNR) was the agency responsible for implementing Michigan's hazardous waste management program. The Program Description indicated that the Site Review Board (SRB) also had authority to approve or deny construction permit applications.

On November 8, 1991, the Governor of Michigan issued Executive Order 1991–31 (EO 1991–31). EO 1991–31, which became effective on September 2, 1993, provides that:

> All the statutory authority, power, duties, functions, and responsibilities of the Commission of Natural Resources and the Department of Natural Resources * * * and of the director of the Department of Natural Resources and of the agencies, boards and commissions contained therein * * * are hereby transferred to the director of a new Michigan Department of Natural Resources, by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, being Section 16.103 of the Michigan Compiled Laws.

EO 1991–31, Section I(A)(1).

EO 1991–31 also affected the SRB. EO 1991–31 also provides that:

> * * * the functions, duties, and responsibilities of the Site Review Boards * * * are transferred by a Type II transfer * * * and a Site Review Board shall be advisory to the director of the new Michigan Department of Natural Resources.

EO 1991–31, Section III(C)(9). The Director of the MDNR now has the authority to approve or deny construction permit applications.

Pursuant to EPA's request, on March 10 and August 18, 1994, Michigan submitted documents to EPA that were necessary for EPA to determine the impact of EO 1991–31 upon the authorized State hazardous waste management program. The documents consisted of a modified Program Description, an addendum to the Attorney General's Statement, and an addendum to the Memorandum of Agreement between the State and EPA outlining the policies, responsibilities and procedures under which the program is administered. Michigan in its submittal indicated that there had been no substantive changes in Michigan's hazardous waste management program as a result of EO 1991–31. Rather, according to Michigan, EO 1991–31 resulted in some internal reorganization of the MDNR.

Based upon review of the documents submitted by Michigan, EPA made a preliminary determination to approve Michigan's hazardous waste management program, as revised, pursuant to 271.21(b). On October 21, 1994, EPA published a notice in the **Federal Register** announcing EPA's proposed decision. The notice also stated that the proposed decision would be subject to public review and comment, and announced the availability of Michigan's application for public inspection at two locations in Michigan.

B. Comments

In response to the October 21, 1994, notice, EPA received comments from the National Wildlife Federation (NWF), who disagreed with EPA's proposed approval of Michigan's hazardous waste management program revisions. A summary of NWF's comments and EPA's response is provided below:

In its first comment, NWF claims that Michigan has failed to demonstrate that its reorganized program complies with the minimum Federal requirements concerning public participation of Section 7004(b) of RCRA. The commenter noted that in changing the role of the SRB from a decision-making body to an advisory body, EO 1991–31 transferred the permit decision-making power to the Director of the MDNR. According to the commenter, the MDNR Director, unlike the former SRB, is not subject to Michigan's Open Meetings Act. The commenter states that public access to monitor the Director is limited by the reorganization, and Michigan's public has no right to observe and attend the meetings at which key permitting decisions are made. Therefore, the commenter believes that the ''new MDNR'' fails to encourage public participation.

EPA does not agree that this change represents a change in the public participation requirements of Michigan's hazardous waste program that is inconsistent with RCRA Section 7004(b)(2). Michigan, in its submittal to EPA of information on March 10 and August 18, 1994, demonstrated that EO 1991–31 did not substantially alter the public participation processes or affect the authorized State program's equivalence or consistency to the Federal program. The State's public participation provisions include the following: notice of the State's intent to issue a permit through publication in major local newspapers of general circulation; broadcasts of such notice over local radio stations; written notice to certain State and local governmental agencies; at least a 45-day public comment period; and an informal public hearing if one is requested during the comment period (see Michigan Administrative Code Sections R299.9513 and R 299.9514). The change in the applicability of the State's Open Meetings Act did not constitute a change in the State hazardous waste program, since the State's Open Meetings Act has never been relied upon by the State to meet the Federal guidelines for public participation (see 40 CFR 271.14 and 124). RCRA Section 3006(b) requires States to maintain equivalency to the Federal program; however, States can also pass legislation that is more stringent than the Federal programs. The Michigan Open Meetings Act would fall in that category since it is a State law that goes beyond the Federal requirements for public participation. Consequently, the change in the applicability of the State's Open Meetings Act to the MDNR Director does not represent a change in Michigan's hazardous waste management program. Any direct comments on the Michigan Open Meetings Act should be referred to the State of Michigan.[1]

The commenter also suggested that EO 1991–31 affected the public participation requirements, since it changed the manner in which the State develops administrative rules implementing Michigan's hazardous waste program. The Director of the MDNR now establishes the administrative rules by which the program is administered rather than the Michigan Natural Resources Commission (MNRC). The commenter stated that the Director of the MDNR, unlike MNRC, is not subject to Michigan's Open Meetings Act and therefore the Director can make final decisions on administrative rules pertaining to the hazardous waste management program in closed meetings and the substance of those meetings need not be recorded. The commenter suggested that this represents a significant change in the way the State develops administrative

[1] It should be noted, though, that public involvement in RCRA activities is receiving increased visibility. On June 2, 1994, EPA published in the **Federal Register** (59 FR 28680–28711) a proposed rule that would require earlier and more meaningful public participation in the RCRA permitting process. This Agency rulemaking is anticipated to be finalized the summer of 1995. When this rule becomes finalized, States will be required to be authorized for these activities. However, for the time being, the State of Michigan is meeting all the current requirements for public participation under the Federal RCRA program.

rules for Michigan's hazardous waste management program.

EPA does not agree that this apparent change in the manner in which administrative rules are developed represents a change in Michigan's hazardous waste management program that is inconsistent with RCRA Section 7004(b). A State's Federally authorized hazardous waste management program consists of the statutes and rules which govern the State's program. EPA has no role to play in overseeing or dictating how those statutes and rules are developed. Instead, EPA's role is to determine whether the statutes and rules which comprise the program comply with minimum Federal requirements for authorized programs (e.g., providing public notice, hearings, and comment periods on permit decisions). If the State desires to change those statutes or rules, EPA has no role in determining the manner in which those statutes or rules are changed, so long as the State submits the proposed changes to EPA for review. Consequently, this change in the manner in which the State develops administrative rules is outside the scope of EPA's review of the State's hazardous waste management program under 40 CFR 271.

The second comment made by NWF is that, pursuant to 40 CFR 271.21(c), whenever a State transfers all or part of the approved hazardous waste management program from the approved State agency to any other State agency, the new agency is not authorized to administer the program until approved by EPA. The commenter claimed that EO 1991–31 consolidated various departments and agencies into a ''new'' MDNR, since the Director of the MDNR has assumed, under a Type III transfer, all the powers, duties and authorities which were formerly allocated to the Hazardous Waste Management Planning Committee (HWMPC), as well as all powers (including sole power to issue permits), duties and authority formerly allocated to the SRB, under a Type II transfer. The commenter also claimed that this reorganization is a ''transfer'' within the purview of 40 CFR 271.21(c), because the ''old MDNR'' and the ''new MDNR,'' as well as the SRB, HWMPC, and the Director of the ''new MDNR'' are each separate ''agencies'' within the meaning of 40 CFR 271.21(c). The commenter also claimed that both the State courts and the State of Michigan have indicated that the reorganization constitutes a revision and transfer.

EPA has determined that the revisions to Michigan's program are consistent with the requirements of RCRA and its implementing regulations. Based on the information available to us, EPA has determined that the reorganization of Michigan's hazardous waste management program resulting from EO 1991–31 constitutes a program revision requiring appropriate EPA review and approval. However, EPA has determined that the reorganization of the MDNR resulting from EO 1991–31 does not constitute a transfer to another agency for the purposes of 40 CFR 271.21(c).

EPA recognizes that the Michigan Supreme Court has held that EO 1991–31 created a ''new'' MDNR. Dodak v. Engler, 443 Mich. 560 (1993). However, the Michigan Attorney General, in a letter dated November 8, 1993, has stated that the Executive Order did not create a new agency. In any event, the question of whether MDNR remained the same agency or whether it became ''any other State agency'' as a result of 1991–31 is not at issue in this determination. The MDNR, as described above, has been the approved State agency for the implementation of Michigan RCRA hazardous waste management program, both before and after the Executive Order. Whether MDNR is considered to be a ''new'' agency under State law is not controlling with respect to whether there has been a transfer of authority from an ''approved State agency to any other State agency.'' Instead, it is EPA's regulations which are controlling in this issue.

EPA's regulations at 40 CFR 271.21(c) do not provide clear guidance on whether the reorganization and consolidation of environmental programs accomplished by EO 1991–31 constitutes a ''transfer'' of authority requiring prior EPA approval. The preamble to the 1986 State hazardous waste program regulations similarly fails to provide any such guidance. (See 51 FR 33712, September 22, 1986). However, the 1980 preamble to the final National Pollutant Discharge Elimination System State program rule, in addressing language at 40 CFR 123.62(c), which is similar to that at 40 CFR 271.21(c), stated:

> One commenter requested that there be no formal EPA review of nominal changes in the structure and responsibilities of State agencies administering an approved program. It was not the intent of the proposal nor is it of these final regulations to require EPA review in such cases [''nominal changes'' in State agencies]. Only when controlling Federal or State statutory or regulatory authority is modified or supplemented, or when the State proposes to transfer all or part of a program from an approved State agency to another State agency may EPA approval be necessary. Changes solely to the internal structure of an approved State agency, with no changes to the overall authority of the agency, do not require EPA approval.

45 FR 33290, 33384 (May 19, 1980).

In addition, EPA's guidance to States on developing applications for revisions to their authorized State programs, the State Authorization Manual (SAM) (OSWER Directive 9540.00–9A, October 1990) is also consistent with the above preamble language. The SAM, on page 2–2, states that: ''. . . changes within the internal structure of the approved State agency, with no changes in the overall authority of the agency, do not require EPA approval.'' EPA interprets the language of 40 CFR 271.21(c) as not applying to changes within the internal structure that do not substantively change the overall authority of the agency. The controlling authorities under State law pertaining to the RCRA hazardous waste management program were not affected by EO 1991–31, nor were the overall functions or structure of the Michigan hazardous waste management program substantially changed. Therefore, EPA does not view the reorganization of the MDNR resulting from EO 1991–31 as a transfer under the purview of 40 CFR 271.21(c).

In regards to the Michigan HWMPC, that department has never been considered to be part of Michigan's authorized State hazardous waste program. The HWMPC was established by Section 8A of Michigan Public Act 64 for the purpose of developing a State hazardous waste management plan. The plan was adopted by the Michigan Natural Resources Commission on January 1, 1992. Abolishment of the HWMPC by EO 1991–31 and transfer of the all of its statutory authority, powers, and duties to the MDNR did not impact the State's hazardous waste management program, since RCRA does not require States to develop such a plan.

In regards to the SRB, EPA does not agree that the transfer of permit decision-making authority from the SRB to the Director of the ''new'' MDNR constitutes a transfer between agencies under the purview of 40 CFR 271.21(c). As described above, the prior EPA approval requirement in 40 CFR 271.21(c) applies in situations where such restructuring or consolidation impacts the controlling authorities by which a State implements the RCRA hazardous waste management program. EO 1991–31 did not affect the State's controlling authorities by which the State implements the RCRA hazardous waste management program, but rather it transferred decision-making responsibilities within the authorized State hazardous waste management

program. Consequently, EPA does not view the change in roles of the SRB and the MDNR Director as a transfer of authorities between agencies under the purview of 40 CFR 271.21(c).

The third comment made by NWF is not related in any way to EO 1991–31. The commenter suggested that Michigan's program has wrongfully failed to eliminate the exemption for municipal waste combustion ash addressed in *Chicago v. Environmental Defense Fund,* 114 S.Ct. 1588 (1994). According to the commenter, Michigan's reorganized RCRA program is therefore not in conformance with the Federal RCRA program, and authority for it should be withdrawn pursuant to 40 CFR 271.22. In the present matter, EPA requested that Michigan submit information to EPA pursuant to 40 CFR 271.21(d) on whether any revisions occurred in Michigan's Federally authorized hazardous waste management program as a result of EO 1991–31. EPA has not requested information pertaining to any other issues regarding Michigan's hazardous waste management program. Therefore, EPA is limiting its review to the effects of EO 1991–31.

EPA appreciates the comments received on these matters, has forwarded them to Michigan, and will consider them in the context of EPA's ongoing oversight of Michigan's hazardous waste management program. If, in the course of its ongoing oversight, EPA determines that additional program revisions have occurred, EPA will take the appropriate steps as set forth at 40 CFR 271.21 to review and approve or disapprove of the revisions.

C. Decision

I conclude that Michigan's application for final authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Michigan is granted final authorization to operate its hazardous waste program as revised. Michigan now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Michigan 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.

D. Incorporation by Reference

EPA incorporates by reference authorized State programs in 40 CFR part 272 to provide notice to the public of the scope of the authorized program in each State. Incorporation by reference of these revisions to the Michigan program will be completed at a later date.

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.

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 small entities, nor will it impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

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 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, 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).

Dated: January 4, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 95–823 Filed 1–12–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7110

[AK–932–1410–00; AA–6649]

Withdrawal of Public Lands for Atka Village Selection; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 13,968.61 acres of public lands located within the Alaska Peninsula National Wildlife Refuge or the Alaska Maritime National Wildlife Refuge, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, pursuant to section 22(j)(2) of the Alaska Native Claims Settlement Act. This action also reserves the lands for selection by the Atxam Corporation, the village corporation for Atka. This withdrawal is for a period of 120 days; however, any lands selected shall remain withdrawn by the order until they are conveyed. Any lands described herein that are not selected by the corporation will remain withdrawn as part of the Alaska Peninsula National Wildlife Refuge or the Alaska Maritime National Wildlife Refuge, pursuant to the Alaska National Interest Lands Conservation Act, and will be subject to the terms and conditions of any withdrawal of record.

EFFECTIVE DATE: January 13, 1995.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 22(j)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1621(j)(2) (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands located within the Alaska Peninsula Wildlife Refuge or the Alaska Maritime National Wildlife Refuge, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and are hereby reserved for selection under Section 12 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1611 (1988), by the Atxam Corporation, the village corporation for Atka:

Seward Meridian

T. 52 S., R. 72 W.,
Secs. 15 to 34, inclusive.
T. 75 S., R. 121 W.,
Secs. 28, 33, 34, and 35.
T. 76 S., R. 121 W.,