

Requests for allowances for desulfurization during 1995 are due no later than April 1, 1996. Allowances allocated in 1996 will have a compliance year of 1996.

Dated: July 27, 1995.

Paul M. Stolpman,

Director, Office of Atmospheric Programs.

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[FRL-5270-4]

Maryland: Final Determination of Adequacy of the State's Municipal Solid Waste Landfill Permitting Program

AGENCY: Environmental Protection Agency (Region III).

ACTION: Notice of Final Determination of Partial Program Adequacy for the State of Maryland's Application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires states to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether states have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, state/tribal landfill permit programs. The Agency intends to approve adequate state/tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, states/tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved state/tribal permit programs provide interaction between the state/tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in state/tribal areas with approved permit programs can use the site-specific flexibility

provided by 40 CFR part 258 to the extent the state/tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a state/tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

The State of Maryland, through the Maryland Department of the Environment (MDE), applied for a determination of adequacy under section 4005 of RCRA. EPA has reviewed Maryland's MSWLF permit program application and proposed a determination on March 21, 1995, that Maryland's MSWLF permit program is adequate to ensure compliance with a major portion of the revised MSWLF Criteria, as described below. EPA is today issuing a final determination that the State of Maryland's program is adequate for partial approval.

EFFECTIVE DATE: The determination of adequacy for the State of Maryland shall be effective immediately.

FOR FURTHER INFORMATION CONTACT: U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Attn: Mr. Andrew Uricheck, mailcode (3HW50), telephone (215) 597-7936.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires states to develop permitting programs that incorporate the Federal Criteria under 40 CFR part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of state municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which state/tribal programs must satisfy to be determined adequate.

EPA intends to approve state/tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for states or tribes to develop "adequate" programs for permits or other forms of prior approval, as imposing several minimum requirements. First, each state/tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the state/tribe must have the authority to issue a permit or other notice of prior approval

to all new and existing MSWLFs in its jurisdiction. The state/tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the state/tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether state/tribal programs are "adequate" based on the criteria outlined above.

B. State of Maryland

On August 26, 1993, MDE submitted an application for adequacy determination for its MSWLF permit program. On March 21, 1995, EPA published a tentative determination of adequacy for most of the Maryland program, as described in detail below. Further background on the tentative determination of adequacy appears at Vol. 60, No. 54 **Federal Register** 14938-14941, March 21, 1995.

A public comment period began on March 21, 1995, and ended on May 19, 1995. As announced in the notice of tentative determination, a public hearing was held on May 17, 1995, in Baltimore, MD. Few people requested the opportunity to speak or offered public comments at the public hearing.

In the State's application for an adequacy determination, Maryland documented non-regulatory revisions to many portions of their existing program which had not fully met the Federal requirements in EPA's 40 CFR Part 258. EPA tentatively determined in the March 21, 1995 **Federal Register** that these changes, as described below, allowed Maryland's MSW landfill permitting program to be eligible for EPA approval as ensuring compliance with 40 CFR Part 258. Those portions of the Maryland municipal solid waste landfill permitting program proposed to be eligible for partial approval are as follows:

Subpart A—General

The existing Maryland requirements fully comply with 40 CFR Section 258.1, Purpose, Scope, and Applicability. MDE permit application checklists and internal guidance have been revised to fully incorporate the requirements of § 258.2, Definitions and § 258.3, Consideration of other Federal laws.

Subpart B—Location Restrictions

1. The existing Maryland requirements fully comply with § 258.11, Floodplains.

2. MDE permit application checklists and internal guidance have been revised to incorporate the requirements of § 258.10, Airport Safety; § 258.12, Wetlands; § 258.13, Fault areas; § 258.14, Seismic Impact Zones; § 258.15, Unstable Areas; and § 258.16, Closure of Existing Landfill Units.

Subpart C—Operating Criteria

1. The existing Maryland requirements fully comply with: § 258.20, Hazardous Waste Exclusion; § 258.21, Daily Cover; § 258.22, Disease Vectors Control; § 258.24, Air Criteria; § 258.25, Access requirements; and § 258.27, Surface Water Requirements.

2. MDE permit application checklists and internal guidance have been revised to incorporate the requirements of: § 258.23, Explosive Gas Control; § 258.26, Run-On/Run-Off Control Systems; § 258.28, Liquids Restrictions; and § 258.29, Record Keeping.

Subpart D—Landfill Design

1. MDE permit application checklists and internal guidance have been revised to incorporate the requirements of the § 258.40 design criteria. MDE now requires, as a minimum at all new MSW landfills and expansions to existing landfills, the bottom liner system described in § 258.40 (b). This consists of a composite liner composed of an upper synthetic (plastic) component in direct contact with a lower component at least two feet thick made of compacted soil (clay). MDE also allows an alternate design that meets the performance standards established in § 258.40 (a) and (c). MDE requires that conformance be demonstrated through the use of mathematical modeling, such as the Hydrologic Evaluation of Landfill Performance Model (HELP) and Multimedia Exposure Assessment Model (MULTIMED). MDE has, to date, submitted several alternate liner systems to EPA under the 40 CFR § 258.40(e) Liner Petition Process, which were subsequently approved, thereby demonstrating to EPA that this process is successfully in place. Submittal to EPA for such alternate liner approvals will no longer be required upon EPA final approval of this portion of the State's program.

Subpart E—Ground-Water Monitoring and Corrective Action

1. The previously existing Maryland requirements for groundwater sampling and corrective action were in need of substantial upgrading to meet the 40 CFR Part 258 requirements. Using existing authorities, MDE is requiring all current landfill operators to amend their existing ground-water monitoring plans

to meet the requirements of Subpart E in terms of monitoring frequency and coverage, including the pollution parameters listed in Appendices I and II of 40 CFR Part 258. For proposed facilities and changes to existing facilities, MDE has amended their application forms and checklists to require the preparation and implementation of a monitoring program which incorporates the complete EPA requirements (§§ 258.50 thru 258.55).

2. In the assessment of corrective measures, selection of remedies, and implementation of corrective actions, MDE will use the EPA regulations (§§ 258.56; 258.57; 258.58) to guide their enforcement actions.

Subpart F—Closure and Post-Closure Care

1. Closure Criteria (§ 258.60)—Maryland now requires flexible membrane caps, where appropriate, in accordance with the EPA regulations, and is implementing the closure periods required.

C. Public Comments

EPA Region III received the following written and/or verbal public comments on its tentative determination of full program adequacy approval of the Maryland MSW landfill permitting program.

The first commenter questioned if revisions made by MDE to their existing guidances, checklists and procedures to more fully comply with the Federal requirements, but made before MDE regulations were revised, were in compliance with the Maryland Administrative Procedure Act (MAPA). This issue was specifically addressed in a December 15, 1994 letter from MDE to EPA, in response to a question raised by EPA. MDE, supported by a statement from their Attorney General's Office, and referencing several specific existing regulations, took the position that their existing regulations allow them flexibility to expand their checklists, procedures, and guidances to require additional information and/or impose additional conditions on persons applying for a landfill permit in Maryland. In response to the commenter, MDE reiterated this position to EPA in a letter dated June 26, 1995. Furthermore, MDE has formally agreed to incorporate these changes in their regulations as soon as possible, thereby satisfying another concern expressed by this commenter.

A commenter objected to MDE's commitment to specify a synthetic membrane final cover whenever the bottom liner permeability is less than

1x10⁻⁵ cm/sec, since this would be far more stringent than the EPA requirements. We agree that this is more stringent than the minimum EPA requirements, but the states are always free to adopt requirements more stringent than the federal requirements. MDE, in a letter dated June 26, 1995, agreed with this commenter, and has revised their checklists and proposed regulations to conform to the federal criteria requiring a final cover of no more permeability than the bottom liner. Thus, a synthetic cap will not be required under all circumstances, but only when the bottom liner contains a synthetic liner or at specific sites where the State believes a more impervious cap is needed to protect groundwater.

This same commenter stated that the MDE checklists for groundwater monitoring did not allow the owner/operators to do verification sampling before having to issue a notification of the finding and beginning assessment sampling, if a statistical increase is found under detection monitoring. This again is more stringent than the EPA requirements. MDE, in the June 26, 1995 letter to EPA, agreed with this statement also, and has revised their permit review checklists to adopt the federal criteria more exactly.

This same commenter noted that the ASTM standard for a minimum sampling well diameter is two inches, while the MDE requirement is four inches. He stated that the installation and operation of a four-inch diameter well was obviously more expensive than a two-inch well, and his company has successfully been using two-inch wells. EPA does not prescribe a minimum well diameter. MDE's response was that state procedures allow a permittee to request a variance to the four-inch diameter requirement, and, in fact, they have granted such variances to the commenter's company in the past.

A commenter also criticized the requirement to analyze groundwater samples for the extensive parameter lists contained in Appendices I and II, and the prohibition of field filtering groundwater samples. Both of these issues are beyond the scope of this determination, as they address the 40 CFR 258 regulations as issued. This commenter also noted that his company was working with EPA Headquarters over its concerns on the field-filtering ban. We encourage this effort as the more appropriate means to affect a change in the EPA requirements.

A commenter objected to the MDE requirement that four samples be taken to establish background groundwater quality conditions. EPA requirements do not establish a specific number of

samples to be taken, only that the number is appropriate to the statistical method of analysis chosen. MDE responded in the June 26, 1995 letter to EPA that they agree, and have revised their permit review checklists to more specifically reference the federal criteria.

As a State's regulations and statutes are amended to comply with the federal MSWLF landfill regulations, unapproved portions of a partially approved MSWLF permit program may be approved by the EPA. The State may submit an amended application to EPA for review and an adequacy determination will be made using the same criteria as for the initial application. This adequacy determination will be published in the **Federal Register** and will summarize the Agency's decision and the portion(s) of the State MSWLF permit program affected. It will also provide a 30-day public comment period. The adequacy determination will become effective sixty (60) days following publication if no adverse comments are received. If EPA receives adverse comments on its adequacy determination, another **Federal Register** notice will be published either affirming or reversing the initial decision while responding to the public comments.

To ensure compliance with all of the revised Federal Criteria and to obtain full EPA approval, MDE must revise the following aspects of its permit program. Consequently, these portions of the Maryland program are not being proposed for approval:

(1) Post-Closure Care Requirements (§ 258.61)—MDE must amend its existing regulations extending the post-closure care period of closed landfills from a minimum of 5 years to 30 years, with the flexibility to increase or decrease that period as necessary or demonstrated. The extension of the period required for financial assurance will require legislative action. The State must also specifically require leachate collection and treatment, as well as gas and groundwater monitoring, as post-closure care requirements. MDE has committed to make these changes.

(2) Subpart G—Financial Assurance Criteria (§§ 258.70—258.74)—Maryland's only existing financial assurance requirements are limited to the posting of a \$5000 per acre closure bond, and even this requirement exempts, by statute, local governments, who currently operate most MSW landfills in Maryland. To comply with Federal requirements, MDE has committed to prepare a major revision to its regulations, adopting the financial assurance requirements in 40 CFR part

258 for closure, post-closure care, and corrective action. It is believed that these revisions will require an act by the Maryland legislature to revise the statute exempting local governments from financial assurance requirements. MDE has committed to submit the required legislation for consideration at the next General Assembly session.

Maryland has submitted a revised schedule, in a letter to EPA dated June 26, 1995, for completing the necessary changes to the laws, regulations, and/or guidance to comply with the remaining 40 CFR part 258 requirements. This schedule commits to revising the remaining portions of the MDE program not currently proposed for approval and have them in effect by December 20, 1996. Maryland will submit an application for full program approval to EPA when these revisions are effective.

D. Decision

Taking into consideration the public comments received as a result of our tentative determination, and several revisions made to the MDE program as a result thereof, we conclude that the State of Maryland's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Maryland is granted a determination of adequacy for partial approval of its municipal solid waste permit program, for those portions of their program as described above.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR Part 258 independent of any State/Tribal enforcement program. As explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a state/tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in Maryland's program are currently in effect as a matter of State law. EPA's action today does not impose any new requirements with which the regulated community must begin to comply, nor do these requirements become enforceable by EPA as federal law. Consequently, EPA does not find it

necessary to give notice prior to making its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice 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 approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of Section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended; 42 U.S.C. 6912, 6945 and 6949(a)(c).

Dated: July 25, 1995.

W. Michael McCabe,

Regional Administrator.

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[OPP-180977; FRL 4968-6]

Cymoxanil; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the New Jersey Department of Environmental Protection (hereafter referred to as the "Applicant") to use the pesticide cymoxanil (CAS 57966-95-7) to treat up to 6,500 acres of tomatoes to control metalaxyl-resistant late blight. The Applicant proposes the use of a new (unregistered) chemical; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before August 7, 1995.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-180977," should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.