

reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor; and (3) Resolution of one or more of the factual issues in the manner sought by the person requesting the hearing would be adequate to justify the action requested.

Any person wishing to comment on any objections or requests for a hearing may submit such comments to the Hearing Clerk on or before March 11, 1996.

A record has been established for this rulemaking under docket number [OPP-300394A] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [OPP-300394A], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at: opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

#### B. Effective Date

EPA is making this final rule effective January 26, 1996 given the lack of

adverse comments on EPA's proposed action. In addition, if EPA does not receive objections to this Order, this Order and the factual and legal basis for this Order become final and are not judicially reviewable. See section 409(g)(1), 21 U.S.C. 348(g)(1), and *Nader v. EPA*: 859 F.2d 747 (9th Cir. 1988), *cert. denied*, 490 U.S. 1931 (1989).

#### C. Request for Stays of Effective Date

A person filing objections to this final rule may submit with the objections a petition to stay the effective date of this final rule. Such stay petitions must be submitted to the Hearing Clerk on or before February 26, 1996. A copy of the stay request filed with the Hearing Clerk shall be submitted to the Office of Pesticide Programs Docket Room. A stay may be requested for a specific time period or for an indefinite time period. The stay petition must include a citation to this final rule, the length of time for which the stay is requested, and a full statement of the factual and legal grounds upon which the petitioner relies for the stay. In determining whether to grant a stay, EPA will consider the criteria set out in the Food and Drug Administration's regulations regarding stays of administrative proceedings at 21 CFR 10.35. Under those rules, a stay will be granted if it is determined that: (1) The petitioner will otherwise suffer irreparable injury; (2) The petitioner's case is not frivolous and is being pursued in good faith; (3) The petitioner has demonstrated sound public policy grounds supporting the stay; and (4) The delay resulting from the stay is not outweighed by public health or other public interests.

Under FDA's criteria, EPA may also grant a stay if EPA finds such action is in the public interest and in the interest of justice.

Any person wishing to comment on any stay request may submit such comments and objections to a stay request, to the Hearing Clerk, on or before March 11, 1996. Any subsequent decisions to stay the effect of this Order, based on a stay request filed, will be published in the Federal Register, along with EPA's response to comments on the stay request.

#### V. Regulatory Requirements

##### A. Executive Order 12866

Under Executive Order 12866, the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under the order, a "significant regulatory action" is an action that is

likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, and the environment, public health or safety, of State, local, or tribal governments or communities"; (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. EPA has determined that this final rule is not a "significant" action under E.O. 12866. EPA is taking this action because it has determined that the food additive regulation for trifluralin is not needed. Therefore, the Agency expects that no economic impact will result.

#### B. Regulatory Flexibility Act

The regulatory action has been reviewed under the Regulatory Flexibility Act of 1980, and, as stated above, EPA expects that it will not have any economic impacts, including impacts on small entities.

#### C. Paperwork Reduction Act

This Order does not contain any information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

#### List of Subjects in 40 CFR Part 185

Environmental protection, Administrative practice and procedures, Agricultural commodities, Food additives, Pesticides and pests, Reporting and recordkeeping.

Dated: January 19, 1996.

Lynn R. Goldman,  
Assistant Administrator for Prevention,  
Pesticides and Toxic Substances.

Therefore, 40 CFR part 185 is amended as follows:

#### PART 185—[AMENDED]

1. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

#### § 185.5900 [Removed]

2. By removing § 185.5900 *Trifluralin*.

[FR Doc. 96-1402 Filed 1-25-96; 8:45 am]

BILLING CODE 6560-50-F

**40 CFR Part 271**

[FRL-5402-4]

**New Mexico: Final Authorization of State Hazardous Waste Management Program Revisions****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Review of Immediate Final Rule; Response to Public Comments.

**SUMMARY:** This notice responds to comments received on the immediate final rule published on October 17, 1995 (60 FR 53708), and affirms the agency's decision to authorize the State of New Mexico's revised program pursuant to 40 CFR 271.21(b)(3).

**DATES:** Final authorization for New Mexico's program revisions shall be effective January 2, 1996.

**FOR FURTHER INFORMATION CONTACT:** Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section, (6PD-G), U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 665-8533.

**SUPPLEMENTARY INFORMATION:** On October 17, 1995, EPA published an immediate final rule pursuant to 40 CFR 271.21(b)(3) which announced the agency's decision to authorize New Mexico's revisions to its hazardous waste program. Comments were received during the public comment period from one responder. After considering the comments received, the Regional Administrator has decided to affirm her decision to authorize the State of New Mexico for the program revisions. The significant issues raised by the commentor and EPA's responses are summarized below. The comments have been summarized, to the extent possible, according to common areas for ease of response. All comments have been carefully considered in reaching the decision to approve the State's program revision.

*Comment:* The EPA has not provided detailed or specific information regarding how the Regional Administrator arrived at her determination that New Mexico's hazardous waste program is (1) equivalent to the Federal program (2) is consistent with the Federal program, and (3) provides for adequate enforcement of compliance with the requirements of RCRA.

*Response:* The EPA appreciates these comments and certainly has taken these factors into consideration in reaching a decision. The primary standard against which EPA measures the New Mexico Program revision are those set out in

Section 3006(b) of RCRA; namely (1) the State program is equivalent to the federal program, (2) the State program is consistent with the Federal or state programs applicable in other states, and (3) the State provides adequate enforcement of compliance with program requirements.

**1. Equivalent Program**

The State demonstrated equivalency through its legal authorities in their statutes and regulations. The EPA also reviewed the State's Attorney General Statement, Memorandum of Agreement, Program Description and other documents included in the State's application. The State's regulatory authority for the Hazardous and Solid Waste amendments of 1984 (HSWA) is identical to the federal authority. The State adopts EPA hazardous waste regulations by reference. Therefore, the State will enforce equivalent standards for HSWA provisions within the State.

**2. Consistent Program**

The EPA implemented the requirement to be consistent with the federal program at 40 CFR 271.4. This regulation defines an inconsistent State program as: (1) Any aspect of the State program which unreasonably restricts, impedes, or operates as a ban on the free movement across the State border of hazardous waste from or to other States for treatment, storage, or disposal at facilities authorized to operate under the Federal or an approved State program shall be deemed inconsistent. (2) Any aspect of State law or of the State program which has no basis in human health or environmental protection and which acts as a prohibition on the treatment, storage or disposal of hazardous waste in the State may be deemed inconsistent. (3) If the State manifest system does not meet the requirements of this part, the State program shall be deemed inconsistent. After review of the State's program revision application and 40 CFR part 271.4, EPA determined that the State complies with the consistency requirement.

**3. Adequate Enforcement**

The EPA has thoroughly and carefully evaluated the State's hazardous waste management program and is confident that the State does, in fact, have the resources to administer the HSWA program. The State maintains a competent permitting staff who are already actively involved in HSWA permitting.

The EPA and the State are committed to carrying out a quality Resource Conservation and Recovery Act (RCRA)

program in New Mexico. EPA does not require a State to have a specific amount of resources in order to be authorized. A State, though, must have sufficient resources to carry out its responsibilities. EPA is concerned that New Mexico, and all States, have the resources and capabilities to implement the program.

Based on a review of the State's application for program revisions of its hazardous waste program, EPA determined that the State operates a RCRA enforcement program which satisfactorily meets the requirements for compliance evaluation and enforcement authority of 40 CFR 271.15 and 271.16.

The State's compliance and monitoring enforcement strategy contains enforcement timeframes which are at least equivalent to EPA's enforcement timeframes. EPA has evaluated the State's performance with respect to meeting those enforcement timeframes and has found that the State performance has been satisfactory. The EPA, through oversight responsibility, must monitor the State's enforcement program. The Memorandum of Agreement (MOA), Program Description (PD), and the RCRA section 3011 Multiyear grant entered into by the State and EPA, establish the procedures for oversight and the terms of the State's accountability for compliance monitoring and enforcement. These agreements enable EPA to track the State's enforcement process and determine if the State is meeting specific commitments which it agreed to accomplish.

The RCRA section 3011 Multiyear grant awarded to the State will function like a contract between the State and EPA. The EPA agrees to pay the State if the State performs certain program activities. If, through EPA's oversight and grant review, it determines that the State is not meeting its commitments, limited funding and authorization may be withdrawn. Although, the State has primary enforcement responsibility, 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.

The EPA believes that the State has demonstrated in its application that it will have adequate funds and staffing. It is EPA's responsibility in the exercise of its oversight role, to insure after the State is authorized, that it maintains adequate funding and staff to operate the program according to the commitments set out in the application. The EPA has conducted extensive training for the staff of the State on the corrective action program.

Also, the commentor expressed a concern regarding the Federal Register notice not listing detailed or specific information on how the Administrator reached a decision. There is no requirement to provide in the public notice detailed or specific information regarding how the Regional Administrator reached her decision. As required by 40 CFR Part 271.21(b), the Federal Register notice did include a summary of New Mexico's program revisions and indicated that EPA intended to approve the State's program revision (See 60 FR 53708 and 53709). The notice also provided that "Copies of the New Mexico program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4 p.m., Monday through Friday at the New Mexico Environment Department and EPA" (See 60 FR 53709).

*Comment:* The Work Share Agreement between EPA and the State materially impacts the State's ability to meet the statutory requirements necessary to qualify for authorization.

*Response:* In the spirit of authorization, the State and EPA have agreed to a Work Share Plan to enhance the State's hazardous waste program to ensure that it will be consistent with, equivalent to, and as stringent as the federal requirements. The EPA headquarters encourages the use of Work Share Plan to assist the States. The Work Share Plan is an agreement between EPA Region 6 and the State providing for EPA to give technical assistance to the New Mexico Environment Department's (NMED) hazardous waste management program revision in the review of certain corrective action documents. The Work Share Plan specifically acknowledges that the State is the regulatory authority for the correction action program and EPA will not be making final determinations, thus there is no sharing of regulatory responsibilities in the authorized program. There should be no ambiguity in how EPA and the State function as regulators because the State will make all regulator determinations for those areas that they are authorized for. The continued involvement of EPA at selected facilities should ensure consistency between the State and EPA programs.

#### Decision

The EPA has reevaluated its decision to approve this final authorization for the State's hazardous waste program and all documentation, including the authorization application and several EPA mid-year and end of year

evaluation reports on New Mexico. Additionally, EPA also considered the New Mexico HSWA capability assessment. The EPA hereby affirms its decision to approve this final authorization.

#### Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12866.

#### Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 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. This authorization effectively suspends the applicability of certain Federal regulations in favor of New Mexico's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. This authorization does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

#### List of Subjects in 40 CFR Part 271

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 Final Determination is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 14, 1995.

Linda Carroll,

*Acting Regional Administrator.*

[FR Doc. 96-1208 Filed 1-25-96; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Part 300

[FRL-5403-5]

#### National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

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

**ACTION:** Notice of Deletion of the Anderson Development Company Superfund Site from the National Priorities List (NPL).

**SUMMARY:** The Environmental Protection Agency (EPA) announces the deletion of

the Anderson Development Company site in Michigan from the National Priorities List (NPL). The NPL is Appendix B of the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Michigan have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further response by responsible parties is appropriate. Moreover, EPA and the State of Michigan have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

**EFFECTIVE DATE:** January 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Rita Garner-Davis at (312) 886-2440, Associate Remedial Project Manager, Office of Superfund, U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, IL 60604. Information on the site is available at the local information repository located at: Adrian Public Library, 143 East Maumee, Adrian Michigan 49221, Contact: Julie Foebender, Phone No. (517) 263-2265; and Adrian City Hall, 100 East Church Street, Adrian, MI. Requests for comprehensive copies of documents should be directed formally to the Regional Docket Office. The point of contact for the Regional Docket Office is Jan Pfundheller (H-7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353-5821.

**SUPPLEMENTARY INFORMATION:** The site to be deleted from the NPL is the Anderson Development Company Site located in Adrian, Michigan. A Notice of Intent to Delete was published August 30, 1995 (60 FR 13944) for this site. The closing date for comments on the Notice of Intent to Delete was September 29, 1995. EPA received no comments and therefore a Responsiveness Summary was not prepared.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the