V. PCBs

1. Aroclor 1016
2. Aroclor 1221
3. Aroclor 1232
4. Aroclor 1242
5. Aroclor 1248
6. Aroclor 1254
7. Aroclor 1260
8. PCBs not otherwise specified

VI. Dioxins and Furans

1. Hexachlorodibenzo-p-dioxins
2. Hexachlorodibenzofuran
3. Pentachlorodibenzo-p-dioxins
4. Pentachlorodibenzofuran
5. Tetrachlorodibenzo-p-dioxins
6. Tetrachlorodibenzofuran
7. 2,3,7,8-Tetrachlorodibenzo-p-dioxin

Subpart D—[Amended]

4. In § 268.48(a) Table UTS-Universal Treatment Standards is amended by adding a reference to new footnote number (8) to the entry for ''Total PCBs (sum of all PCB isomers, or all Aroclors),'' and adding footnote (8), to read as follows:

§ 268.48 Universal treatment standards.

* * * * *

(a) * * *

Regulated Constituent Common Name	CAS [1] Number	Wastewater Standard	Nonwastewater Standard
		Concentration in mg/l [2]	Concentration in mg/l [2] unless noted as ''mg/l TCLP''
* * * * *			
Total PCBs (sum of all PCB isomers, or all Arcolors)[8]	1336–36–3	0.10	10
* * * * *			

[8] This standard is temporarily deferred for soil exhibiting a hazardous characteristic due to D004–D011 only.

* * * * *

5. Section 268.49 is amended by revising paragraph (d) to read as follows:

§ 268.49 Alternative LDR treatment standards for contaminated soil.

* * * * *

(d) *Constituents subject to treatment.* When applying the soil treatment standards in paragraph (c) of this section, constituents subject to treatment are any constituents listed in § 268.48 Table UTS-Universal Treatment Standards that are reasonably expected to be present in any given volume of contaminated soil, except flouride, selenium, sulfides, vanadium, zinc, and that are present at concentrations greater than ten times the universal treatment standard. PCBs are not constituent subject to treatment in any given volume of soil which exhibits the toxicity characteristic solely because of the presence of metals.

* * * * *

[FR Doc. 00–32670 Filed 12–22–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6921–9]

Montana: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On May 9, 2000, we published an Immediate Final Rule at 65 FR 26750 to authorize changes to Montana's hazardous waste program under the Resource Conservation and Recovery Act (RCRA). At that time, we determined that the changes to Montana's hazardous waste program satisfied all requirements for final authorization and authorized the changes through an Immediate Final Rule. The Immediate Final Rule was to be effective on August 7, 2000 unless significant written comments opposing the authorization were received during the comment period. At the same time, in the event we received written comments, we also published a Proposed Rule at 65 FR 26802 to authorize these same changes to the Montana hazardous waste program.

As a result of comments received on the Immediate Final Rule, we withdrew the Immediate Final Rule on August 8, 2000 at 65 FR 48392 and went forward with the Proposed Rule. By this action, we are issuing a Final Rule authorizing the changes to the Montana hazardous waste program as listed in the Immediate Final Rule at 65 FR 26750 and responding below to each of the comments received.

DATES: This authorization will be effective on December 26, 2000.

ADDRESSES: You can view and copy Montana's application at the following addresses: Air and Waste Management Bureau, Montana Department of Environmental Quality, Metcalf Building, 1520 East Sixth Avenue, Helena, MT 59620 , Phone (406) 444–1430; and U.S. EPA Region VIII, Montana Office, 301 South Park Avenue, Federal Building, Helena, MT 59626, phone (406) 441–1130 ext 239.

FOR FURTHER INFORMATION CONTACT: Kris Shurr, EPA Region VIII, 999 18th Street, Suite 300, Denver, CO 80202–2466, Phone (303) 312–6139; or Eric Finke, Waste and Toxics Team Leader, 301 South Park Avenue, U.S. EPA Montana Office, 301 South Park Avenue, Federal Building, Helena, MT 59626, Phone (406) 441–1130 ext 239.

SUPPLEMENTARY INFORMATION: The reader should also refer to the Proposed Rule at 65 FR 26802 and the Immediate Final Rule at 65 FR 26750, both published on May 9, 2000.

We received written comments from four parties during the comment period, two of which opposed the authorization. One comment expressed concern that Montana has more programs than the State can afford and it appeared that EPA wants to put more people out of business. Two comments expressed concern that this authorization would make Montana's rules more stringent than the Federal rules. One of these commenters later withdrew this comment but noted that StATS (EPA's database containing the status of Federal rule adoptions for each State) showed that Montana had not yet adopted EPA's less stringent Land Disposal Restrictions (LDR) rules and that it was odd and confusing that EPA plans to authorize Montana for some rules that are no longer effective. Another comment expressed concern that Montana has not been able to retain sufficient trained

staff to adequately implement the Corrective Action program; one comment asked EPA to clarify that Montana cannot enforce HSWA rules until Montana adopts them; and one comment asked EPA to clarify that EPA cannot enforce non-HSWA requirements until Montana adopts them. Finally, three comments addressed EPA's statement in the Immediate Final Rule that EPA ''retains the authority to take enforcement actions regardless of whether the State has taken its own actions''. Specifically, these three comments stated that in light of the Eighth Circuit decision in *Harmon Industries, Inc.* v. *Browner,* 1919 F. 3d 894 (8th Circuit 1999), EPA has no authority under RCRA to bring an enforcement action against a company that has already settled with an authorized State agency for the same violations.

A. Statutory Framework

Congress enacted RCRA in 1976 to provide nationwide protection against environmental and health dangers arising from the generation, management, and disposal of waste. Congress' overriding concern was ''the effect on the population and the environment of the disposal of discarded hazardous wastes—those which by virtue of their composition or longevity are harmful, toxic, or lethal'' and ''present a clear danger to the health and safety of the population and to the quality of the environment.'' [1] Both the statutory text and legislative history make clear that Congress considered the problems associated with hazardous waste management to be national in scope. *See, e.g.,* RCRA 1003(b), 42 U.S.C. 6902(b), establishing a ''national policy'' that hazardous waste should be treated, stored or disposed to minimize its threat; RCRA 1003(a)(4) and (5), 42 U.S.C. 6902(a)(4) and (5). Subtitle C of RCRA, sections 3001–3023, establishes a ''cradle-to-grave'' regulatory structure overseeing the safe treatment, storage, and disposal of hazardous waste.[2] 42 U.S.C. 6921–6939e. EPA believes it is clear that the protective management of hazardous waste is the central policy objective underlying RCRA Subtitle C.

To achieve its goal of nationwide protection, Congress established a system that relies on both the Federal and State governments. Congress established some statutory requirements governing hazardous waste management and directed EPA to establish additional standards governing the identification of hazardous waste, RCRA 3001, and the management of such hazardous waste by generators, RCRA 3002; transporters, RCRA 3003; and treatment, storage and disposal facilities, RCRA 3004. 42 U.S.C. 6921–6924. Congress also established a permit requirement for hazardous waste treatment, storage, and disposal facilities in RCRA 3005 and directed EPA to establish regulations governing permitting. These statutory and regulatory requirements make up the Federal hazardous waste management program. See 40 CFR parts 124, 260–270, and 273.

Congress also established a process in RCRA 3006 of Subtitle C allowing States to request EPA to authorize a qualified State program. 42 U.S.C. 6926. The State hazardous waste ''program'' consists of statutes and regulations issued by the State prior to authorization that EPA determines are equivalent to the Federally-issued hazardous waste program and meet other statutory authorization requirements. Once authorized, a State may carry out its authorized program ''in lieu of the Federal program under * * * subtitle [C] in such State and * * * issue and enforce permits for the storage, treatment, or disposal of hazardous waste.'' RCRA 3006(b).

When EPA authorizes a provision of a State-issued statute or regulation, that requirement replaces the equivalent, Federally-issued requirement, and becomes the Federal requirement governing regulated parties in the State. Authorization federalizes the State-issued requirement so that it becomes a requirement of RCRA Subtitle C. A regulated party complying with authorized State-issued requirements is also complying with Federal requirements.[3]

The authorized State-issued laws also retain their status as independent State requirements. RCRA 3009 allows States to retain the authority to regulate hazardous waste within the national framework established in RCRA Subtitle C and regulations promulgated by EPA. 42 U.S.C. 6929. State requirements, however, may be no less stringent than those authorized under RCRA Subtitle C.

RCRA 3006(b) also gives EPA the power to authorize a qualified State ''to issue and enforce permits'' for treatment, storage, and disposal (TSD) facilities. Congress used RCRA 3006(d) to clarify the effect of authorization on the permits so that any permit issued by a State with an authorized program ''shall have the same force and effect as action taken by the Administrator under this subtitle.'' After EPA authorizes State permitting, the State rather than EPA issues any new permits and TSD facilities in such a State generally do not need to get a second permit from EPA, as they did prior to authorization.[4]

B. Responses to Comments Received

(1) *Comment:* ''Montana does not need to expand any more programs, we have more now than the people in this State can afford. Sounds [to] me like you want to put some more people out of business or drive them out of this State!''

EPA's response: Our authorization of Montana's application would not add new programs in Montana. Instead, it would merely authorize regulations that Montana adopted in 1995 to update a program that it has operated since 1984. RCRA requires that States continue to adopt new Federal rules for hazardous waste in order for States to continue to regulate hazardous waste under the Federal program. Before we authorize Montana's newly adopted hazardous waste rules, handlers of hazardous waste in Montana are actually subject to regulation by both Montana and EPA. After we authorize Montana's rules, as we are doing today, the primary responsibility for implementing those rules rests with Montana, and EPA's primary role becomes one of oversight.

(2) *Comment:* The commenters noted that the rules that EPA proposes to approve are more stringent than current Federal rules in some cases. The commenters noted that Montana cannot adopt rules that are more stringent than Federal rule and objected to EPA's approval until EPA provides assurance that the program elements that EPA is approving are not those in the application package, but are in fact Montana's December 1999 updated rules.

EPA's response: States must formally adopt rules before they can apply to EPA for approval. As a result, our review and authorization of State rules lags behind the State's own rulemaking process. RCRA allows States one year to adopt new Federal rules where no State

[1] H.R. Rep. No. 94–1491 at 3, 11 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6238, 6241.

[2] *United Technologies* v. *EPA,* 821 F.2d 714, 716 (D.C. Cir. 1987).

[3] Not all Federally-issued Subtitle C requirements are superseded in States with authorized programs. Federal requirements found in the 1984 Solid and Hazardous Waste Amendments (HSWA) and attendant regulations apply directly in all States, even those with authorized programs, until EPA authorizes equivalent State-issued requirements. 42 U.S.C. 6926(g). See 50 FR 28702 and 28728–28733 (July 15, 1985).

[4] If the permit contains Federally-issued requirements issued pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) and the State has not been authorized for those requirements, the facility must obtain a permit from EPA for the HSWA requirements.

statutory change is necessary and two years where a State statutory change is necessary. The process of application, review, and authorization of those newly adopted rules may take an additional year or more, particularly if a State's rules must subsequently be changed to establish equivalence to their Federal counterparts.

In 1993 and 1996, EPA revised some of the Federal Land Disposal Restriction rules (LDRs) to be less stringent than the original LDR rules. This occurred after Montana had already adopted the original LDR rules. Montana adopted the less stringent LDR rules in December 1999, but has not yet applied to EPA for authorization. When Montana applies for authorization of the less stringent LDR rules and if we find that Montana's LDR rules are equivalent to EPA's, we will authorize those rules in a later **Federal Register** action. Because Montana's current application contains other rules which were not made less stringent by EPA, we believe it is more expedient to authorize Montana's application now rather than wait until Montana submits an application containing the less stringent rules.

(3) *Comment:* The comment noted that StATS (EPA's data base containing the status of Federal rule adoptions for each State) shows that Montana has not yet adopted EPA's less stringent LDR rules. The comment also noted that Montana has in reality already adopted the less stringent LDR rules and found it rather odd and confusing that EPA plans to authorize Montana for some rules that are no longer effective.

EPA's response: At the time this comment was prepared, it may have been true that StATS incorrectly displayed the status of Montana's rule adoptions. However, as of June 30, 2000, StATS correctly displayed the adoption status of the rules in question.

For the second half of this comment, we refer the reader to comment number 2 above and add the following information: Whenever EPA modifies a rule, regardless of whether the change is to a less or a more stringent version, the lag between State adoption and EPA authorization may cause EPA to find itself authorizing a State for a rule which has already been changed. The apparent confusion will be cleared up when Montana submits an authorization update application which includes the less stringent LDR rules.

(4) *Comment:* Montana is unable to retain sufficient, multi-discipline trained, permanent staff to administer the Corrective Action program.

EPA's Response: As part of our review of Montana's hazardous waste program, we conducted Capability Assessments in 1994 and 2000 which examined precisely this question. These Capability Assessments are available through a Freedom of Information Act request or they may be viewed at the EPA Montana Office in Helena, Montana or at the EPA Region 8 office in Denver, Colorado.

EPA's 1994 Capability Assessment revealed that Montana had experienced some of the difficulties described in the comment. However, EPA's 2000 Capability Assessment revealed that Montana's Department of Environmental Quality (DEQ) and the Montana Legislature implemented several important changes since the time period described in the comment. These changes resulted in significant improvements in retention of qualified staff. The current staff and management within the DEQ hazardous waste program collectively have many years of experience in a variety of relevant technical and environmental program areas. We believe that the current mix of skills, experience, and retention in DEQ's hazardous waste program is sufficient to implement the Corrective Action program.

(5) *Comment:* EPA should clarify that Montana has no authority to enforce HSWA rules until the State adopts them. (The comment referred to EPA's statement in the Immediate Final Rule that EPA and Montana have agreed to joint permitting and enforcement for those HSWA requirements for which Montana is not yet authorized.)

EPA's response: Under a previous long-standing agreement, EPA and Montana have agreed that, when necessary, the agencies will issue a single, jointly-prepared permit document containing the signatures and authorities of both agencies. This agreement addresses the potential situation in which Montana would not yet be sufficiently authorized to issue the entire permit by itself. Under this arrangement, Montana issues the permit requirements for which it is authorized and EPA issues those permit requirements for which Montana is not authorized. The single joint permit would have in it all of the relevant Federal and State requirements and would substantially reduce the possibility of conflicting and duplicative requirements that might exist if EPA and Montana issued their permits separately. Montana and EPA would each oversee the permittee's implementation of their respective permit requirements.

Under this agreement, each agency retains its own independent enforcement authority. EPA may enforce requirements of Federal law, including requirements of the authorized program and any HSWA requirements for which Montana has not yet been authorized. Montana may enforce any requirement of State law.

Although the preamble in the Immediate Final Rule could have been more clear, EPA did not contemplate that Montana could enforce HSWA rules before it had adopted them as State rules.

(6) *Comment:* EPA should clarify that it cannot enforce non-HSWA requirements until Montana is authorized to administer them. (The comment referred to EPA's statement in the Immediate Final Rule that it retains authority to enforce RCRA requirements and suspend or revoke permits after authorization occurs.)

EPA's response: EPA may enforce Federally-issued HSWA rules in any State as soon as they are effective. EPA may enforce non-HSWA requirements in a base-authorized State like Montana after it is authorized for State-issued requirements equivalent to the Federal non-HSWA requirements. EPA's preamble statement discussed the enforcement authority which EPA retains after the State is authorized. Although it could have been more clear, EPA's statement did not refer to the enforcement of unauthorized non-HSWA rules.

(7) *Comment:* The commenters objected to EPA's assertion that EPA retains authority to take enforcement actions regardless of whether the State has taken its own actions. They state that under the decision in ''Harmon'' EPA has no authority under RCRA to bring an enforcement action against a company that has settled with a State agency for the same violations.

EPA's Response:

Effect of Authorization on Federal and State Enforcement

Authorization does not affect the authority of the Federal or State governments to take enforcement actions in the State. RCRA authorizes the Federal government to enforce the Subtitle C hazardous waste program independent of State enforcement and States continue to have the authority to enforce pursuant to State law.

EPA's longstanding interpretation of RCRA,[5], that EPA may take an

[5] *See, e.g., In re Martin Elec., Inc.,* 2 E.A.D. 381, 385, 1987 WL 109670, at *3 (CJO 1987), holding that ''even if a State's enforcement action is adequate, such State action provides no legal basis for prohibiting EPA from seeking penalties for the same RCRA violation. EPA's decision whether to defer to a prior State action is a matter of enforcement discretion and policy.'' This interpretation is also is embodied in regulatory text that makes clear EPA's view that it retains

Continued

enforcement action regardless of whether a State with an authorized program has taken action, is based on the language of RCRA and Congress' intent at the time of enactment and subsequent amendment.

RCRA 3008(a) grants EPA the power to enforce RCRA Subtitle C requirements in all States, regardless of authorization. 42 U.S.C. 6928(a). The only restriction placed on EPA's ability to bring an enforcement action in a State with an authorized program is that EPA give notification to a State prior to issuing an order or commencing a civil action. Similarly in RCRA 3008(a)(3) and (c), Congress recognized that authorization does not supplant Federal enforcement when it gave EPA the power to revoke a permit whether ''issued by the Administrator or the State'' after giving notification to the State. Congress dispensed with even the notification requirement in the enforcement provisions creating criminal RCRA violations, leaving Federal power to enforce those laws despite authorization. *See, U.S.* v. *MacDonald & Watson Waste Oil Co.,* 933 F.2d 35 (1st Cir. 1991). Similarly, Congress granted EPA broad enforcement powers to issue orders or initiate civil actions to require Corrective Action at interim status facilities in RCRA 3008(h), without imposing any limitations connected to authorization.[6]

Nothing in RCRA 3006 modifies Federal enforcement authority. The section does not address Federal authority and, as discussed above, the ''in lieu of'' provision in RCRA 3006(b) operates only to substitute authorized State-issued hazardous waste requirements for Federally-issued equivalents as requirements of Subtitle C. RCRA 3006(d) also does not address Federal enforcement. Although States must have adequate enforcement authority to become authorized, RCRA 3006(b), the State enforcement provisions themselves are not part of the State hazardous waste program that becomes authorized to operate in lieu of the Federal program. This is clear from the language and structure of the statute, because the enforcement section of RCRA, as explained above, explicitly contemplates Federal enforcement in States with authorized programs. Thus, Congress clearly did not intend that State enforcement would operate in lieu of Federal enforcement in such States. Rather, Congress expressly established the standards governing Federal enforcement in States with authorized programs in the enforcement section of RCRA. In short, RCRA 3006(b) addresses what gets enforced, not who may take enforcement actions.

The provision which is titled ''Effect of State permit '' provides that any action taken by a State under an authorized program has the ''same force and effect'' as an action of EPA's Administrator. This provision ensures that State-issued permits have the same force and effect as permits issued by EPA. Absent this provision there could have been some doubt as to whether a facility operating under a permit from a State with an authorized program had complied with the requirement in RCRA 3005(a) that each TSD facility have a RCRA permit.

Harmon Industries

In *Harmon,* the Eighth Circuit held that RCRA precluded EPA from pursing a civil action for violation of RCRA against a company when Missouri, a State with an authorized program, had signed an agreement with the same company that resolved claims based on violations of Missouri regulations, and a State court had embodied the settlement in a consent decree. In dicta, the court stated that EPA's enforcement rights are ''triggered only after State authorization is rescinded or the State fails to initiate an enforcement action.'' *Harmon,* 191 F.3d at 899.

It is the Federal government's position that the court did not correctly interpret the law in *Harmon.*[7] The decision conflicts with the better interpretation of RCRA, discussed previously, which authorizes EPA to maintain an enforcement action despite action by a State with an authorized hazardous waste program. The court disregarded the plain meaning of RCRA 3008(a) which conditions EPA's authority to take enforcement actions only upon notification to States with an authorized program, with no other limitations.[8] The Eighth Circuit also misinterprets RCRA 3006 based upon its unsupported conclusion that the ''administration and enforcement of the hazardous waste program are inexorably intertwined.'' *See, U.S.* v. *Power Engineering Co.,* No. 97–B–1654, slip op at 15–17 (concluding that RCRA does not intertwine administration and enforcement). RCRA 3006(b) simply provides that once authorization takes place, selected State-issued requirements replace selected Federally-issued requirements as the controlling body of Federal hazardous waste requirements in that State. It does not affect Federal enforcement authority.

Similarly, *Harmon* fails to recognize, as discussed previously, that RCRA 3006(d) addresses State permits, clarifying that any permit issued by a State with an authorized program must be given the ''same force and effect'' of a permit issued by EPA. As the Colorado district court noted in *Power Engineering,* slip op. at 19, EPA's interpretation ''is the most reasonable because it both gives effect to every word of the statute, and does not necessitate 'harmonizing' Section 6928 by adding restrictions on the EPA's enforcement power not found in the plain language of that section.''

EPA also believes the *Harmon* court's conclusion that, under the principles of res judicata, EPA is bound by a State court suit is contrary to the Supreme Court's decision in *Montana* v. *U.S.,* 440 U.S. 147 (1979). EPA authorization of a State hazardous waste program is not sufficient to bring EPA into privity with the State or otherwise establish an agency relationship. *Power Engineering,* slip op at 29 (Harmon rests on ''unsupported expansion of the doctrine of res judicata and provides no basis for precluding Federal enforcement based on ''attenuated connection'' of authorization).

Finally, the *Harmon* decision is fundamentally flawed because it fails to recognize the Federal/State relationship that Congress established in RCRA. It has long been a Federal goal and EPA policy to encourage and support State

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enforcement authority in authorized States. *See* U.S. Response to Defendants' Cross-Motion for Summary Judgment, *Power Engineering,* which EPA incorporates into this comment response together with the other U.S. briefs place in the record of this authorization decision. *See also U.S.* v. *Power Engineering Co.,* No. 97–B–1654, slip op. at 20–23 (ID. Colo. Nov. 24, 2000), concluding that regulations reflect EPA's position that the ''only restrictions on its authority to bring enforcement actions are those *explicitly* stated in the RCRA.''

[6] Congress also granted EPA broad inspection authority without limitations related to authorization. In RCRA 3007(a), Congress granted representatives of both EPA and States with authorized programs, access to enter and inspect the records of places where hazardous waste activities occur. RCRA 2002(c) authorizes EPA to conduct investigations of RCRA's criminal provisions. Similarly, RCRA 3013 authorizes EPA to order monitoring, analysis, and testing but imposes no limitations related to authorization. *See, Wyckoff Co.* v. *EPA,* 796 F.2d 1197 (9th Cir. 1986).

[7] The Administrator of EPA, through the Department of Justice, as well as the Solicitor General, have stated that the Eighth Circuit did not correctly interpret RCRA. See Petition for Rehearing En Banc filed in *Harmon* on November 15, 1999, and the U.S. Brief in Opposition to Petition for Writ of Certiorari in *Smithfield Foods, Inc.* v. *U.S.* filed July 2000.

[8] Congress has already considered, and rejected an explicit prohibition against EPA enforcement unless the State failed to bring an action *Legislative History of the Solid Waste Disposal Act,* 102d Cong., 1st Sess. At 370 (Comm. Print 1991). In addition, Congress demonstrated its intent not to prevent EPA enforcement when it amended RCRA in 1980 to eliminate the requirement that EPA give States with authorized programs thirty days notification prior to initiating action. *Id.* at 896.

administration of the RCRA hazardous waste management program. At the same time, RCRA directs EPA to ensure that hazardous wastes are managed nationally in a responsible manner. Recognizing both the States' interest in program administration and the national interest in consistent and effective implementation of the RCRA program, RCRA provides for independent State and Federal authority in States with authorized programs. EPA must maintain the ability to enforce RCRA in a manner that ensures equal levels of protection from hazardous waste contamination for the entire nation. Although EPA rarely takes an enforcement action when a State has taken an action with respect to the same violator,[9] there are numerous circumstances where national interests must be protected. For example, EPA must be able to act where a particular violator operates facilities in several States, all with varying degrees of noncompliance. To rely on State-by-State actions to address such patterns of illegal activity would likely not result in a comprehensive remedy addressing corporate-wide mismanagement and penalties commensurate with the scope of illegal behavior. In addition, EPA may know of a pattern of non-compliance by different companies nationwide that threatens to erode part of the RCRA program and may therefore place a high priority on an enforcement action against a type of violation that is lower on the State's list of priorities. EPA's authority also may be required to address situations where a facility's illegal behavior in one State results in environmental contamination in a neighboring State. Similarly EPA must protect national interests in maintaining a level playing field to ensure that law abiding facilities are not at a competitive disadvantage to facilities that choose to violate the law. EPA enforcement helps ensure that disparate enforcement priorities between States do not disadvantage those companies that operate in States with rigorous environmental enforcement. *See Power Engineering,* slip op at 27–28.

Rather than foster cooperative efforts between EPA and the States, *Harmon* offers an unreasonable statutory interpretation which creates an incentive for competition between Federal and State governments. Some courts would erroneously use the *Harmon* rationale, to suggest that either sovereign is prohibited from bringing an action as a result of the action of the other sovereign. *See e.g., Treacy* v. *Smithfield Foods Inc.,* Chancery No. 97–80, Final Order (Cir. Ct. Isle of Wight Co., Jan 5, 2000).

The suggestion in *Harmon* that, where the State has acted, EPA must withdraw authorization to take a civil enforcement action is a drastic, impractical, and lengthy remedy. At least one court already has agreed that program withdrawal is an inappropriate remedy, stating that ''wholesale withdrawal of State enforcement authority is a drastic measure warranted only by drastic circumstances'' such as where there is ''clear evidence that the entire State program has fallen into disrepair,'' *CLEAN* v. *Premium Standard Farms, Inc.,* slip op. at 52, 2000 U.S. Dist. LEXIS 1990 (W.D. Mo. Feb 23, 2000) (citing Clean Water Act legislative history from 1972). Use of such a measure, when faced with a case-specific need for action, is unworkable within the State-Federal partnership scheme.

Conclusion

Because the *Harmon* court does not have the authority to impose its interpretation outside the Eighth Circuit and because it is proper for EPA to continue to exercise its enforcement authority consistent with its interpretation of RCRA, EPA is not adopting the court's interpretation of RCRA in the State of Montana.[10] EPA therefore stands by its statement that after authorization of Montana's hazardous waste program EPA may continue to ''take enforcement actions regardless of whether the State has taken its own actions.''

C. Administrative Requirements

The Office of Management and Budget (OMB) 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 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 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). 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.

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

[9] During fiscal years 1992 through 1994, EPA took action after the conclusion of a State action in 30 cases under RCRA, the Clear Air Act, and the Clean Water Act combined. During fiscal years 1994 and 1995, EPA took such action in a total of 18 cases. During fiscal year 1996, EPA filed its own actions following State action in four cases. *Statement of Steven A. Herman, Assistant Administrator, OECA, USEPA, Before the Environment and Public Works Committee,* U.S. Senate, June 10, 1997, available in LEXIS, Legis, Library, Congressional Hearings file, and in Westlaw at 1997 WL 309230 *13. By comparison, States took 8,643 enforcement actions in fiscal year 1992; 11,881 in fiscal year 1993; 11,250 in fiscal year 1994; 9,785 in fiscal year 1995; 9,306 in fiscal year 1996; and 10,515 in fiscal year 1997. *Enforcement and Compliance Assurance Accomplishments Report,* FY 1997, EPA–300–R–98–003, July 1998, page 2–1 and Table A–6.

[10] *Harmon,* however, is final and is binding on EPA in that particular case.

Unanticipated Taking'' 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.*).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian country, Intergovernmental relations, Incorporation by reference, Penalties, Reporting and record keeping 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: December 14, 2000.

Patricia D. Hull,

Acting Regional Administrator, Region 8.

[FR Doc. 00–32843 Filed 12–22–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50638; FRL–6592–8]

RIN 2070–AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 40 chemical substances which were the subject of premanufacture notices (PMNs) and subject to TSCA section 5(e) consent orders issued by EPA. Today's action requires persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing of the substance for a use designated by this rule as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs to prevent any unreasonable risk of injury to human health or the environment. EPA is promulgating this SNUR using direct final procedures.

DATES: The effective date of this rule is February 26, 2001 without further notice, unless EPA receives adverse comment or notice of intent to submit adverse comment before January 25, 2001. This rule shall be promulgated for purposes of judicial review at 1 p.m. (e.s.t.) on January 9, 2001.

If EPA receives adverse comment or notice before January 25, 2001 that someone wishes to submit adverse or critical comments on EPA's action in establishing a significant new use rule (SNUR) for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR before the effective date for the substance for which the comment or notice of intent to comment is received and will issue a proposed SNUR providing a 30-day period for public comment.

ADDRESSES: Comments or notice of intent to submit adverse or critical comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–50638 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: James Alwood , Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1857; e-mail address: alwood.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this rule. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Chemical manufacturers	325	Manufacturers, importers, processors, and users of chemicals
Petroleum and coal product industries	324	Manufacturers, importers, processors, and users of chemicals

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in title 40 of the Code of Federal Regulations (CFR) at 40 CFR 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. You may also obtain copies of the notice of availability documents for the 850 (62 FR 16486, April 15, l996) (FRL–5363–1) and 870 (63 FR 41845, August 5, l998) (FRL–5740–1) series OPPTS harmonized test guidelines at this same site. To access these documents, on the Home Page, select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and