technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f) and have determined that there are no factors in this case that limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction from further environmental documentation. Paragraph (34)(g) is applicable to this event because this rule establishes a safety zone.

Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add new temporary § 165.T09–016 to read as follows:

§ 165.T09–016 Safety Zone; Presque Isle Bay, Dobbins Landing, Erie, PA.

(a) *Location.* The following area is a temporary safety zone: All waters of Presque Isle Bay within an 800-foot radius around the fireworks launch platform located at 42°08′19″ N, 080°05′30″ W. These coordinates are based upon NAD 83.

(b) *Regulations.* (1) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Buffalo.

(2) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Buffalo, or his designated on-scene representative.

(c) *Effective time and date.* This section is effective from 10 p.m. through 10:30 p.m. (local) on June 21, 2005.

Dated: May 19, 2005.

K.C. Burke,

Commander, U.S. Coast Guard, Acting Captain of the Port Buffalo.

[FR Doc. 05–10941 Filed 6–1–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AZ–ND–127; FRL–7919–5]

Notice of Deficiency for Clean Air Operating Permits Program; Maricopa County, AZ

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deficiency.

SUMMARY: Pursuant to its authority under section 502(i) of the Clean Air Act, EPA is publishing this notice of deficiency for the Clean Air Act title V operating permits program of Maricopa County, Arizona. The notice of deficiency is based upon EPA's finding that Maricopa County's title V program does not comply with the requirements of the Clean Air Act or with the implementing regulations of the Operating Permit Program in two respects: permit fees and permit processing. With respect to permit fees, specific deficiencies include the following: Maricopa County has failed to demonstrate that its title V program requires owners or operators of Operating Permit Program sources to pay fees that are sufficient to cover the costs of the County's title V program, and has failed to adequately ensure that its title V program funds are used solely for title V permit program costs; and Maricopa County's fee rule and the implementation of this rule have contributed to delay in issuance of initial title V permits. With respect to permit processing, specific deficiencies include the following: Maricopa County has issued title V permits that do not assure compliance with all applicable requirements; Maricopa County's processing of permit revisions is deficient; and Maricopa County has not demonstrated that it is providing sufficient staffing. Publication of this action is a prerequisite for withdrawal of Maricopa County's title V program approval, but does not effect such withdrawal.

EFFECTIVE DATE: May 17, 2005. Because this Notice of Deficiency is an adjudication and not a final rule, the Administrative Procedure Act's 30-day deferral of the effective date of a rule does not apply.

FOR FURTHER INFORMATION CONTACT: Gerardo Rios, EPA, Region 9, Air Division (AIR–3), 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3974, or *r9airpermits@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

The Clean Air Act (CAA or Act) requires all State and local permitting authorities to develop operating permits programs that meet the requirements of title V of the Act, 42 U.S.C. 7661–7661f, and its implementing regulations, 40 CFR part 70. On November 15, 1993, the Arizona Department of Environmental Quality (ADEQ) submitted, on behalf of Maricopa County, a proposed title V program to the Administrator for approval. Maricopa County's title V program was granted final interim approval by EPA on November 29, 1996 and was granted full approval on November 30, 2001.

In March 2002, the Office of Inspector General (OIG) issued a report on the progress of title V permit issuance based on its evaluation of several selected state and local air pollution control agencies. In response to OIG's recommendations, EPA made a commitment in July 2002 to conduct comprehensive title V program evaluations throughout the nation. EPA Region 9 began its program evaluations in 2003, with Maricopa County Environmental Services Department (MCESD) as the second permitting agency on its program evaluation schedule. Region 9 informed MCESD of the start of the title V program evaluation in a letter, dated May 27, 2004, in which Region 9 also expressed existing concerns about MCESD's implementation of its title V permitting program. Over the next several months of EPA's title V program evaluation, Region 9 learned more details of MCESD's implementation practices and procedures, including many instances

in which MCESD failed to meet the requirements of title V of the Act and 40 CFR part 70.

Section 503(c) of the Act requires permitting authorities to act on all initial permit applications within three years of program approval, which would have been November 29, 1999 for Maricopa County. In a January 28, 2002 letter to EPA, MCESD stated that it had issued sixteen of its fifty-six initial title V permits. MCESD committed to issue its remaining forty initial permits by December 1, 2003, completing ten permits every six months. MCESD failed to meet each six month milestone for permit issuance as well as the December 1, 2003 deadline for all initial permits. As of April 15, 2005, MCESD still has not completed issuance of all initial title V permits and has a backlog of title V renewal permits as well.

For full details of EPA Region 9's findings, please see the report, ''Maricopa County Environmental Services Department Title V Operating Permit Program Evaluation,'' which is available at *http://www.epa.gov/region09/air/titlevevals.html.*

Maricopa County has recently initiated a number of changes to its title V program. One significant change has been the formation of a new Air Quality Department (AQD), separate from MCESD, within the Regional Development Services group of Maricopa County. This reorganization should allow Maricopa County to focus its resources on air quality in an area that has increasingly complex air permitting issues and, thus, requires a more concentrated effort. Though Maricopa County has initiated many improvements to its title V program since the start of EPA's program evaluation, EPA believes a NOD is necessary in light of the existing issues, and to ensure that those issues are adequately addressed going forward.

II. Description of Action

EPA is publishing a notice of deficiency for the Clean Air Act title V operating permits program for Maricopa County, Arizona. This document is being published pursuant to 40 CFR 70.10(b)(1), which provides that EPA shall publish in the **Federal Register** a notice of any determination that a title V permitting authority is not adequately administering or enforcing its title V operating permits program. The deficiencies being noticed today are in two main categories of (1) permit fees and (2) permit processing. The specific deficiencies are described more fully below.

A. Permit Fees

1. Maricopa County Has Not Demonstrated That It Collects Fees Sufficient To Fund Its Permit Program, Nor That It Uses Fees Solely for Program Costs

Pursuant to 42 U.S.C. 7661a(b)(3) and 40 CFR 70.9(a), a permitting authority's title V program must require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs, and the permitting authority must ensure that any fee collected be used solely for title V permit program costs. Although 42 U.S.C. 7661a(b)(3) and 40 CFR 70.9(b) require that a permitting authority's title V permit program include a fee schedule that results in the collection of sufficient fees to cover all title V permit program costs, permitting authorities have flexibility in developing the components of that fee schedule. See 40 CFR 70.9(b)(3).

a. Maricopa County has not demonstrated that its revised fee rule meets the requirements of title V and part 70.

Maricopa County's fee rule, as included in the County's 1993 initial title V program submittal, had an annual emissions-based fee which met the presumptive minimum prescribed in 40 CFR 70.9(b)(2)(i) for existing sources, in addition to an annual ''processing and inspection'' fee. Maricopa County later revised its fee rule in 1998, 2000, 2003, and 2004. Currently, permit fees are imposed based on a combination of an application fee, hourly-based processing fee, annual administrative fee, and annual emissions-based fee. The emissions-based fee is less than EPA's presumptive minimum. Since other components of the permit fees are not assessed on a per-ton basis, it is difficult to determine if the aggregate of the fees meets EPA's presumptive minimum. Maricopa County has never submitted any of its fee rule revisions to EPA as a program revision submittal or provided a demonstration to EPA, based on the current fee rule, that it collects title V fees sufficient to cover the title V permit program costs and that title V fees collected are used solely for title V permit program costs.

b. A clear accounting of costs is necessary

Maricopa County is not able to demonstrate that title V permit fees collected are sufficient to fund its title V program and that title V permit fees are used solely for title V program costs, because it does not have a clear accounting of costs incurred under title V (separate from costs incurred under other non-title V programs). Maricopa County is able to account for title V revenues quite accurately because payment of permit fees by each applicant is recorded in the permitting agency's Environmental Management System database. However, Maricopa County has more difficulty tracking title V costs.

Maricopa County maintains a single account for title V fees, non-title V fees, and enforcement penalties. Both title V and non-title V costs are paid from this account. Maricopa County title V permitting staff are required to log in the number of hours spent preparing title V permits. However, Maricopa County does not maintain an accounting of total salary costs for title V activities, nor has Maricopa County kept an accounting of other actual costs of the title V program such as training, equipment, and travel.

Maricopa County has provided EPA with workload assessments that project future costs by estimating an average number of hours required to write a permit in each source category (e.g., cement plants, compressor stations, lime plants, landfills) and an average number of permits issued per source category. Maricopa County's projections also use averages of salaries for a category of an entire group such as ''technical'' staff of the title V permitting group.

While this broad approach could be considered adequate for the purpose of projecting future costs, Maricopa County should be able to provide a more accurate, detailed accounting of actual title V revenues, costs, and expenditures to demonstrate that title V fees are not being directed to do non-title V work. For an accounting of costs, a direct approach, based on employee-specific salaries and the number of hours logged for title V activities for each employee would be more accurate.

Because Maricopa County has not instituted a system that provides a clear accounting of costs incurred for title V activities (separate from non-title V activities), it has been unable to detail its permit program costs and demonstrate that its title V revenues cover those program costs. Maricopa County has also been unable to demonstrate that title V revenues are used solely for title V program costs.

EPA would consider correction of this deficiency to include submittal of a demonstration that Maricopa County has the systematic ability to provide a detailed accounting of title V program costs separately from other program costs. This accounting should also provide a clear demonstration that total title V revenues are sufficient to fund total title V costs. The accounting

should also clearly show that title V revenues are used solely for title V costs.

2. Maricopa County's Fee Rule and the Implementation of This Rule Have Contributed to the Delay in Issuance of Initial Title V Permits

Maricopa County's fee rule, Rule 280, prevents the permitting authority from issuing a final initial title V permit, permit revision, or renewal permit if the source has not paid the balance of fees due. MCESD's Rule 280 section 301.1 states, ''Before issuance of a permit to construct and operate a source, an applicant shall pay to the Control Officer a fee billed by the Control Officer representing the total actual cost of reviewing and acting upon the application minus any application fee remitted.'' Maricopa County has encountered problems with issuing permits when sources refuse to pay their permit fee balances because they are dissatisfied with their proposed permits. It would appear that existing sources retain the initial application shield granted upon submittal of a complete application; thus, these sources can continue to operate without a title V operating permit. The problem is further exacerbated by the fact that Maricopa County has not enforced against those sources that refused to pay fees.

The end result is that issuance of certain title V permits can be delayed if sources refuse to pay fees, and the delay may extend until Maricopa County revises the permit conditions in question. The rule could cause similar problems during permit renewal. This situation is inconsistent with Maricopa County's obligation under the Act to have sufficient authority to issue permits and assure compliance with each applicable requirement, as well as its obligation to take final action on complete applications in a timely fashion, as specified in part 70.

EPA would consider correction of this deficiency to include a revision to Rule 280 and submittal of a standard set of policies and procedures. The rule revision should eliminate the possibility that a source could prevent Maricopa County from issuing a final permit by withholding fees. The standard set of policies and procedures would provide a procedure for addressing non-payment of permit fees through enforcement, collection activities, or other means.[1]

B. Permit Processing

1. Maricopa County Has Issued Title V Permits That Do Not Assure Compliance With All Applicable Requirements

Maricopa County issues combined preconstruction/operating permits, with the intention of meeting both the new source review (NSR) requirements contained in Maricopa County's approved State Implementation Plan (SIP) and the part 70 requirements contained in Maricopa County's approved title V program. Maricopa County's approved title V program contains Rule 200, which establishes permit requirements and describes the different types of permits, and Rule 210, which establishes the requirements for title V permitting in particular. Maricopa County's SIP, approved by EPA, contains rules for implementing its NSR program (both major and minor). In particular, SIP Rule 20 establishes the requirement for sources to obtain installation (preconstruction) permits for all new and modified sources, and SIP Rule 21 establishes the procedures for obtaining an installation permit.

Pursuant to 40 CFR 70.7(a)(1)(iv), title V permits must assure compliance with all applicable requirements, including NSR requirements. Maricopa County has, at times, implemented the title V rule, Rule 210, without proper consideration of the requirements of the NSR SIP Rule 20, resulting in the submittal to EPA of title V permits that do not contain all applicable requirements.

Sections 403 and 403.2 of Rule 210 allow title V sources to make certain changes without a permit revision if specific conditions are met.[2] SIP Rule 20, however, does not contain a similar exemption from installation permitting requirements. Specifically, SIP Rule 20 requires that ''any person erecting, installing, replacing, or making a major alteration to any machine, equipment, incinerator, device or other article which may cause or contribute to air pollution or the use of which may eliminate or reduce or control the emission of air pollutants, shall first obtain an Installation Permit from the Control Officer.''

Permitting authorities may issue combined NSR/title V permits. However, a source may not avoid a requirement to obtain a preconstruction permit by relying on the operational flexibility provisions of a title V permit.[3] Maricopa County's practice typically follows only the requirements of Rule 210 Section 403 without proper implementation of SIP Rule 20.

EPA would consider correction of this deficiency to include submittal of an implementation guidance document that ensures that Maricopa County's title V permits assure compliance with all applicable requirements, including SIP-approved NSR requirements. An implementation guidance document might include the following elements: (1) An explanation that Maricopa County's title V rules may not be used to avoid obtaining an otherwise-required preconstruction permit; (2) a demonstration that Maricopa County's title V permits assure compliance with SIP-approved preconstruction requirements; (3) a plan for evaluating applications and issuing permit revisions that include all applicable requirements, including any applicable preconstruction review requirements; (4) any necessary revisions to Maricopa's standard application form to ensure that pre-construction review requirements are addressed; and (5) guidance to affected sources advising them of Maricopa's new procedures for issuing preconstruction and operating permit revisions for title V sources, including the requirement to ensure that all preconstruction review required under the SIP occurs. Maricopa County might also consider rule changes that assure that all facility changes comply with preconstruction review requirements under the SIP.

2. Maricopa County's Processing of Permit Revisions Is Deficient

a. Incorrect processing of significant revisions as minor revisions

EPA has found that Maricopa County does not take adequate steps to ensure that significant permit revisions are not incorrectly processed as minor permit revisions. A change that requires a significant permit revision may not be implemented before the permit revision is subject to public notice and comment, approved by the permitting authority, and reviewed by EPA. Maricopa County's incorrect processing of significant revisions has allowed sources to bypass these requirements. Maricopa's Rule 210 Section 405.1 specifies the criteria by which changes

[1] It may be worth noting that if EPA takes over a fee program, EPA is required by the Act to charge a penalty of 50% of the fee amount, plus interest, on any unpaid permit fees. *See* 42 U.S.C. 7661a(b)(3)(C)(ii); 40 CFR 71.9(l)(2).

[2] These conditions, as listed in Maricopa County's Rule 210 Section 403.1, include the following: that the changes are not title I modifications, do not exceed emissions allowable under the permit, meet the criteria for processing as a minor title V permit revision, and do not violate applicable requirements.

[3] In addition, NSR permit conditions do not expire, so permitting authorities must ensure that NSR conditions remain in effect even after the expiration of a title V permit that incorporates the conditions.

at a source can be processed as a minor revision.[4]

b. Incorrect administrative processing of minor revisions

Maricopa County typically has not issued a separate revised permit document or technical support document when processing its minor permit revisions. EPA has found many minor permit revisions that do not contain any revision to the title V permit but, instead, the permittee's application is signed by an MCESD permit engineer and initialed by the title V supervisor. This application then serves as the permit revision.

The signed application does not contain an engineering analysis or revised permit conditions to support the application approval. This practice of issuing the signed permit application instead of a revised permit document compromises the enforceability of Maricopa County's permits.

This practice is also inconsistent with 40 CFR part 70, which requires the permitting authority to issue a revised permit and statement of basis. See 40 CFR 70.7(a)(1) and 70.7(a)(5).[5]

c. Policies and procedures on permit revisions

In order to address parts 2.a. and b. of the deficiency above, EPA would consider correction of the deficiency to include development and submittal of a standard set of policies and procedures on permit revision procedures for title V sources. EPA envisions that such a document would include the following elements: (1) Criteria for determining if a proposed revision is significant, minor or administrative; (2) procedures for developing appropriate permit conditions and statements of basis for significant and minor permit revisions; and (3) Maricopa's permit processing procedures from receipt of application to permit issuance.

3. Maricopa County Has Not Demonstrated That It Is Providing Sufficient Staffing

Section 502(b) of the Act, 42 U.S.C. 7661a(b), and 40 CFR 70.4 provide that a permitting authority must have adequate personnel to ensure that the permitting authority can carry out implementation of its title V program. As noted above, Maricopa County has experienced a significant delay in issuing initial title V permits. In addition, Maricopa County has had problems with the quality of the title V permits issued, specifically, ensuring that the permit assures compliance with all applicable requirements.

In 1993, Maricopa County submitted a workload assessment (WLA) with its title V program submittal. In the WLA, Maricopa County projected the number of hours required for each task of implementing its title V program, the corresponding number of full-time employees (FTE) required, and the corresponding costs based on salary averages. In 2003, Maricopa County updated its WLA to provide a basis for a change to its fee structure and fee amounts. The 2003 WLA found that the 1993 WLA had underestimated the initial assumptions for title V program implementation. As far as staffing needs, the 2003 WLA increased FTE projections, compared to 1993 projections, for all sections or groups. In particular, the 1993 WLA projected a need for 7 FTE ''air quality engineers'' in permitting and 26 total FTEs in the Permits & Compliance Section (these two functions were in one section at the time). The 2003 WLA projected a need for 21.3 FTEs for the Permits Section alone.[6] The 2003 WLA also stated that the Permits Section had, at that time, 13 FTEs and that, at this staffing level, ''the Section struggles to meet permit issuance timelines, keep up with rule revisions * * * and to implement community outreach.''

Maricopa County appears to acknowledge a history of being understaffed. The 2003 WLA states, when referring to the 1993 FTE projections, that Maricopa County was not able ''to fill all the positions because of high turnover and inability to find qualified applicants.'' In addition, Maricopa County has left the position of Permits Section Manager vacant for many years. As of the beginning of April 2005, the Permits Section has 9 permitting staffpersons, at least 11 FTEs short of its own projected need for ''technical'' staff. Maricopa County failed to meet all of its deadlines for issuing initial title V permits and, as of April 15, 2005, still has not issued all initial title V permits. In its 2003 WLA, Maricopa County admitted that it is understaffed and cannot meet permit issuance deadlines.

EPA would consider correction of this deficiency to include submittal to EPA of a strategy that Maricopa County will implement to hire and retain adequate staffing to successfully implement its title V program. The strategy could be based either on the 2003 WLA or an updated WLA, should include milestones with corresponding dates, and should describe contingency options to fill positions if Maricopa County is unable to meet these milestones.

C. Significant Action and Correction of Deficiencies

EPA would consider significant action within 90 days after the date of the NOD to be submittal of a workplan containing associated milestones for resolution of each deficiency, for review and approval by EPA. The workplan should clearly describe Maricopa County's proposed correction for each deficiency and a completion date no later than 18 months after the date of the NOD. The milestones in the workplan should include not only the completion of the resolution of each deficiency but also intermediate steps and corresponding dates.

Each subsection of this notice which contains a description of a deficiency also contains a suggested correction of the deficiency. EPA will also consider alternative resolutions proposed by Maricopa County to correct deficiencies. These alternative resolutions should be described in the workplan for the significant action submittal. After Maricopa County's submittal of the workplan, EPA intends to have an active role in tracking Maricopa County's progress towards correcting the deficiencies identified in this notice within the specified timeframes.

III. Federal Oversight and Sanctions

Part 70 provides that EPA may withdraw a part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of part 70 and the permitting authority fails to take corrective action. 40 CFR 70.10(c)(1). This section goes on to list a number of potential bases for program withdrawal, including inadequate fee collection and failure to comply with the requirements of part 70 in administering the program. 40 CFR 70.10(b) sets forth the procedures for withdrawal of program approval, and requires as a prerequisite to withdrawal that the permitting authority be notified of any finding of deficiency by the Administrator and that the notice be published in the **Federal Register**. Today's notice satisfies this requirement and constitutes a finding of program deficiency. If the permitting authority

[4] See Finding 5.5 of EPA's program evaluation report for specific examples.

[5] In addition, Maricopa County has made it a practice to have the permit engineer sign the minor permit revision application. Authorizations to approve minor permit revisions have not been delegated to the permit engineer from the Director. Thus, Maricopa County has not been following the proper administrative procedures for issuance of minor permit revisions.

[6] Out of the 21.3 FTEs, Maricopa County categorized 16.5 of these FTEs as ''technical.'' Since Maricopa County labeled another category as ''manager,'' EPA is inferring that the ''technical'' category includes only technical staff-level employees and does not include managers.

has not taken ''significant action to assure adequate administration and enforcement of the program'' within 90 days after the date of a notice of deficiency, EPA may withdraw approval of the permitting authority's program, apply either of the sanctions specified in section 179(b) of the Act, or promulgate, administer, and enforce a Federal title V program. 40 CFR 70.10(b)(2). Section 70.10(b)(3) provides that if a permitting authority has not corrected the deficiency within 18 months of the finding of deficiency, EPA will apply the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act.[7] In addition, section 70.10(b)(4) provides that, if the permitting authority has not corrected the deficiency within 18 months after the date of notice of deficiency, EPA must promulgate, administer, and enforce a whole or partial program within 2 years of the date of the finding.

This document is not a proposal to withdraw approval of Maricopa County's title V program. Consistent with 40 CFR 70.10(b)(2), EPA will wait at least 90 days before determining whether Maricopa County has taken significant action to correct the deficiencies outlined in this notice.

IV. Administrative Requirements

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of today's action may be filed in the United States Court of Appeals for the appropriate circuit within 60 days of June 2, 2005.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: May 17, 2005.

Wayne Nastri,

Regional Administrator, Region 9.

[FR Doc. 05–10995 Filed 6–1–05; 8:45 am]

BILLING CODE 6560–50–P

[7] Section 179(a) provides that unless such deficiency has been corrected within 18 months after the finding, one of the sanctions in section 179(b) of the Act shall apply as selected by the Administrator. If the Administrator has selected one of the sanctions and the deficiency has not been corrected within 6 months thereafter, then sanctions under both sections 179(b)(1) and 179(b)(2) shall apply until the Administrator determines that the permitting authority has come into compliance.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7920–6]

Alabama: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

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

DATES: This final authorization will become effective on August 1, 2005 unless EPA receives adverse written comments by July 5, 2005. If EPA receives such comments, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: middlebrooks.gail@epa.gov.*
- *Fax:* (404) 562–8439 (prior to faxing, please notify the EPA contact listed below).
- *Mail:* Send written comments to Gail Middlebrooks at the address listed below.

Instructions: Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov*, or e-mail. The Federal *regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comments. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit.

You can view and copy Alabama's application from 8 a.m. to 5 p.m. at the following addresses: Alabama Department of Environmental Management, 1400 Coliseum Blvd., Montgomery, Alabama 36130–1463; (334) 271–7700 and EPA Region 4, Library, 9th Floor, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104; (404) 562–8190.

FOR FURTHER INFORMATION CONTACT: Gail Middlebrooks, RCRA Services Section, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Region 4, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104; (404) 562–8494.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received Final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Alabama's applications to revise its authorized program meet all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Alabama Final authorization to operate its hazardous waste program with the changes described in the authorization application. Alabama has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the