ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5956–4]

Tennessee; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Tennessee has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Tennessee's revision consists of the provisions contained in rules promulgated between July 1, 1993 through June 30, 1994, otherwise known as RCRA Cluster IV. These requirements are listed in section B of this document. The Environmental Protection Agency (EPA) has reviewed Tennessee's application and has made a decision, subject to public review and comment, that Tennessee's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Tennessee's hazardous waste program revisions. Tennessee's application for program revision is available for public review and comment.

DATES: Final authorization for Tennessee's program revision shall be effective March 31, 1998, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Tennessee's program revision application must be received by the close of business, March 2, 1998.

ADDRESSES: Copies of Tennessee's program revision application are available during normal business hours at the following addresses for inspection and copying: Tennessee Department of Environment and Conservation, Division of Solid Waste Management, 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535; U.S. EPA Region 4, Library, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104; (404) 562–8190. Written comments should be sent to Narindar Kumar at the address listed below.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-3104; (404) 562–8440.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act (''RCRA'' or ''the Act''), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter ''HSWA'') allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive ''interim authorization'' for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–268 and 124 and 270.

B. Tennessee

Tennessee initially received final authorization for its base RCRA program effective on February 5, 1985. Tennessee has received authorization for revisions to its program on July 22, 1996, October 23, 1995, July 7, 1995, July 31, 1992, and August 11, 1987. In June 1995, Tennessee submitted a program revision application for additional program approvals. Today, Tennessee is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Tennessee's application and has made an immediate final decision that Tennessee's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Tennessee. The public may submit written comments on EPA's immediate final decision up until March 2, 1998.

Copies of Tennessee's application for these program revisions are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

Approval of Tennessee's program revisions shall become effective March 31, 1998, unless an adverse comment pertaining to the State's revisions discussed in this document is received by the end of the comment period.

If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a document containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision. EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Tennessee is today seeking authority to administer the following Federal requirements promulgated between July 1, 1993 through June 30, 1994.

Checklist	Federal requirement	FR promulgation date	HSWA or FR reference	State authority
125	Boilers and Industrial Furnaces; Changes for Consistency with New Air Regulations.	7/20/93	58 FR 38816	TCA 68–212–106(a); 68–212–107(a) & (d)(1,3,5–6) TRC 1200–1–11–.01(2)(b); .09(1)(a).
126	Test and Monitoring Activities	8/31/93	58 FR 46040	TCA 68–212–104(7); 68–212–106(a)(1); 68–212–107(d)(1); TRC 1200–1–11–.01(2)(b); .01(3)(c); .02(3)(a); .02(5)(a); .06(10)(a); .06(14)(a); .05(10)(a); .05(14)(a); .10(1)(a); .10(3)(a); .10(5)(a); .01(2)(b); .07(5)(b); .07(1)(e); .07(1)(j).
127	Boilers and Industrial Furnaces; Administrative Stay and Interim Standards for Bevel Residues.	11/9/93	58 FR 59598	TCA 68–212–106(a)(1); 68–212–107(a) & (d)(1)(3)(5)(6); TRC 1200–1–11–.09(1)(a).

Checklist	Federal requirement	FR promulgation date	HSWA or FR reference	State authority
128	Wastes From the Use of Chlorophenolic Formulations in Wood Surface Protection.	1/4/94	59 FR 458	TCA 68–212–104 (7); 68–212–106(a)(1); 68–212–107 (d)(1); TRC 1200–1–11–.01(2)(b); .02(5)(a).
129	Revision of Conditional Exemption for Small Scale Treatability Studies.	8/18/94	59 FR 8362 ..	TCA 68–212–104(7) & (16); 68–212–106(a) & (d)(1) & (6); TRC 1200–1–11–.02(1)(a).
130	Recycled Used Oil Management Standards: Technical Amendments and Corrections II.	3/4/94	59 FR 10550	TCA 68–212-.06(a)(1); 68–212–107(a) & (d)(1) (3) (5) & (6); TRC 1200–1–11–.11(1)(a).
131	Recordkeeping Instructions: Technical Amendment.	3/24/94	59 FR 13891	TCA 68–212–104(8); 68–212–106(a)(3); 68–212–107(d)(2) (5) & (6); TRC 1200–1–11–.06(33)(a); .05(31)(a).
132	Wood Surface Protection: Correction	6/2/94	59 FR 28484	TCA 68–212–104(7); 68–212–106(a)(1); 68–212–107(d)(1); TRC 1200–1–11–.01(2)(b).
133	Letter of Credit Revision	6/10/94	59 FR 29958	TCA 68–212–107(a) & (d)(3); 68–212–108(d); TRC 1200–1–11–.06(8)(m) 3 & 10.
134	Correction of Beryllium Powder	6/20/94	59 FR 31551	TCA 68–212–104(7); 68–212–106(a)(1); 68–212–107(d)(1) & (9); TRC 1200–1–11–.02(4)(a); .02(5)(a); .10(3)(a).

C. Decision

I conclude that Tennessee's application for these program revisions meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Tennessee is granted final authorization to operate its hazardous waste program as revised.

Tennessee now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Tennessee also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector. The Act excludes from the definition of a ''Federal mandate'' duties that arise from participation in a voluntary Federal program, except in certain annual federal entitlement programs of $500 million or more that are not applicable here. Tennessee's request for approval of a hazardous waste program or revisions to its authorized hazardous waste program is voluntary and imposed no Federal mandate within the meaning of the Act. Rather, by having its hazardous waste program approved, the State will gain the authority to implement the program within its jurisdiction, in lieu of EPA thereby eliminating duplicative State and Federal requirements. If a State chooses not to seek authorization for administration of a hazardous waste program under RCRA Subtitle C, RCRA regulation is left to EPA.

In any event, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year. EPA does not anticipate that the approval of Tennessee's hazardous waste program referenced in today's document will result in annual costs of $100 million or more.

EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector since the State, by virtue of the approval, may not administer the program in lieu of EPA and exercise primary enforcement. Hence owners and operators of treatment, storage and disposal facilities (TSDFs) generally no longer face dual Federal and State compliance requirements, thereby reducing overall compliance costs. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA had determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The agency recognizes that small governments may own and/or operate TSDFs that will become subject to the requirements of an approved State hazardous waste program. However, such small governments which own and/or operate TSDFs are already subject to the requirements in 40 CFR parts 264, 265,

270, and 280 and are not subject to any additional significant or unique requirements by virtue of this program approval. Once EPA authorizes a State to administer its own hazardous waste program and any revisions to that program, these same small governments will be able to own and operate their TSDFs under the approved State program, in lieu of the Federal program.

Certification Under the Regulatory Flexibility Act

EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. EPA recognizes that small entities may own and/or operate TSDFs that will become subject to the requirements of an approved State hazardous waste program. However, since such small entities which own and/or operate TSDFs are already subject to the requirements in 40 CFR parts 264, 265 and 270, this authorization does not impose any additional burdens on these small entities. This is because EPA's authorization would result in an administrative change (i.e., whether EPA or the State administers the RCRA Subtitle C program in that State), rather than result in a change in the substantive requirements imposed on small entities. Once EPA authorizes a state to administer its own hazardous waste program and any revisions to that program, these same small entities will be able to own and operate their TSDFs under the approved State program, in lieu of the federal program. Moreover, this authorization, in approving a state program to operate in lieu of the federal program, eliminates duplicative requirements for owners and operators of TSDFs in that particular state.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively approves the Tennessee program to operate in lieu of the federal program, thereby eliminating duplicative requirements for handlers of hazardous waste in the state. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

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, and Water supply.

Authority: This document 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)).

R.F. McGhee,

Acting Regional Administrator, Region 4.

[FR Doc. 98–2361 Filed 1–29–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–5938–5]

Commonwealth of Puerto Rico; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on the Commonwealth of Puerto Rico's application for program approval.

SUMMARY: The Commonwealth of Puerto Rico has applied for final approval of its underground storage tank program for petroleum and hazardous substances under subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended. The United States Environmental Protection Agency (EPA) has reviewed the Commonwealth of Puerto Rico's application and has made a final determination that the Commonwealth of Puerto Rico's underground storage tank program for petroleum and hazardous substances satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to the Commonwealth of Puerto Rico to operate its underground storage tank program for petroleum and hazardous substances.

EFFECTIVE DATES: Final approval for the Commonwealth of Puerto Rico shall be effective on March 31, 1998.

FOR FURTHER INFORMATION CONTACT: Madho Ramnarine Singh, Water Compliance Branch (DECA–WCB), U.S. EPA Region 2, 290 Broadway, New York, NY 10007–1866, Phone: (212) 637–4237 or Mr. Victor Trinidad, Caribbean Environmental Protection Division, Centro Europa Building, Suite 417, 1492 Ponce De Leon Avenue, Stop 22, Santurce, Puerto Rico 00907–4127, Phone: (787) 729–6951.

SUPPLEMENTARY INFORMATION:

I. Background

Section 9004 of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991c, authorizes EPA to grant approval to any State, which term includes the Commonwealth of Puerto Rico pursuant to section 1004(31) of RCRA, 42 U.S.C. § 6903(31), to operate its underground storage tank program in the State in lieu of the federal underground storage tank (UST) program. To qualify for approval, a State's program must be ''no less stringent'' than the federal program in all seven elements set forth at section 9004(a) (1) through (7) of RCRA, 42 U.S.C. 6991c(a) (1) through (7); include the notification requirements of section 9004(a)(8) of RCRA, 42 U.S.C. 6991c(a)(8); and provide for adequate enforcement of compliance with UST standards (section 9004(a) of RCRA, 42 U.S.C. 6991c(a)).

On January 17, 1996, EPA received the Commonwealth of Puerto Rico's formal application for approval of its underground storage tank program. In 1997 EPA received supplemental information as part of the Commonwealth's application. On August 6, 1997, EPA published a tentative determination announcing its intent to approve the Commonwealth of Puerto Rico program. Further background on the tentative decision to grant approval appears in the **Federal Register** at 62 FR 42222 (August 6, 1997).

Along with the tentative determination, EPA announced the availability of the application for public review and comment and the date of public hearings on the application and EPA's tentative determination. EPA requested advance notice for testimony and reserved the right to cancel the public hearing in the event of insufficient public interest. The public hearings were held on September 8, 1997 in the Public Hearing Room of the Puerto Rico Environmental Quality Board in Hato Rey, Puerto Rico, and on