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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R07-RCRA-2008-0830; FRL-9205-3]

Nebraska: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), allows the Environmental Protection Agency (EPA) to authorize States to operate their hazardous waste management programs in lieu of the Federal program. Nebraska has applied to EPA for final authorization of the changes to its hazardous waste program under 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.

DATES: This Final authorization will become effective on September 24, 2010.

FOR FURTHER INFORMATION CONTACT: Lisa Haugen, EPA Region 7, AWMD/RESP, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551-7877, or by e-mail at haugen.lisa@epa.gov.

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, a State must change its program accordingly 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, the State must change its program because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

Nebraska initially received final authorization on January 24, 1985, effective February 7, 1985 (50 FR 3345),

to implement the RCRA hazardous waste management program. EPA granted authorization for changes to Nebraska's program on October 4, 1985, effective December 3, 1988 (53 FR 38950); June 25, 1996, effective August 26, 1996 (61 FR 32699); April 10, 2003, effective June 9, 2003 (68 FR 17553); and October 4, 2004, effective December 3, 2004.

On April 29, 2008, Nebraska submitted a final complete program revision application, seeking authorization of its changes in accordance with 40 CFR 271.21. On December 30, 2008, EPA published both an Immediate Final Rule (73 FR 79661) granting Nebraska final authorization for these revisions to its Federally-authorized hazardous waste program, along with a companion Proposed Rule announcing EPA's proposal to grant such a final authorization (73 FR 79761). EPA announced in both documents that the Immediate Final Rule and the Proposed Rule were subject to a thirty-day comment period. The public comment period ended on January 29, 2009. EPA received written comments from one commenter during the public comment period. Today's action responds to the comments EPA received and publishes EPA's final determination granting Nebraska final authorization of its program revisions. Further background on EPA's Immediate Final Rule and its tentative determination to grant authorization to Nebraska for its program revisions appears in the aforementioned **Federal Register** notices. The issues raised by the commenter are summarized and responded to as follows.

B. What were the comments and responses to EPA's proposal?

The comments did not address specific concerns with EPA's approval of the additional RCRA regulatory provisions in Nebraska's authorized hazardous waste program; rather the comments address a previous rule promulgated by EPA. The commenter's arguments relate specifically to EPA's promulgation of the Zinc Fertilizer Rule on July 24, 2002 (67 FR 48393). Specifically, the commenter argued that the Phase IV Land Disposal Restriction (LDR)—which is more stringent than the Zinc Fertilizer Rule—resulted from an “affirmative finding of safety” when zinc-containing hazardous wastes were disposed in Subtitle C landfills, so it is counterintuitive to claim that the same zinc-containing hazardous wastes can now “safely” be used as fertilizer. For the reasons set forth below, we do not agree with the commenter.

EPA promulgated all of the rules included in Nebraska's revision pursuant to the authority granted to EPA by Congress under RCRA. Those rules, including the Zinc Fertilizer Rule, were finalized after full consideration of any and all comments submitted in a timely manner. By adopting the rule promulgated by EPA, Nebraska revised its hazardous waste program to be equivalent to and consistent with the Federal program. Pursuant to 42 U.S.C. 6926(b), EPA has the authority to authorize State programs that are equivalent to and consistent with the Federal program. The comments submitted speak directly to the Federal rule and not to EPA's authorization of Nebraska's program revisions. Therefore, we have determined that there is no basis to deny authorizing approval based on these comments.

In addition, the commenter argues that exempting zinc-containing hazardous wastes from regulation as solid waste is not supported by Nebraska Revised Statute 75-362. This comment is not relevant to this action. The criteria for authorization of a State hazardous waste program are set forth at section 3006 of RCRA, 42 U.S.C. 6926(b). In reviewing an application under this section, EPA considers whether the State program (1) is equivalent to the Federal program under subchapter III, which governs hazardous waste; (2) is consistent with Federal or “State programs applicable to other States”; and (3) provides adequate enforcement of compliance with the requirements of subchapter III of RCRA. As part of this review, EPA considers whether the State is imposing requirements less stringent than those authorized under subchapter III respecting the same matter as governed by such regulation. The commenter's argument with regard to Nebraska Revised Statute 75-362 falls outside the scope of our review of Nebraska's application for the hazardous waste rules authorized herein. Therefore, the comment regarding Nebraska Revised Statute 75-362 is not relevant to this action.

C. What decisions have we made in this rule?

Based on EPA's response to public comments, the Agency has determined that approval of Nebraska's RCRA program revisions should proceed. EPA has made a final determination that Nebraska's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Nebraska final authorization to operate its hazardous waste program

with the changes described in its application for program revisions. Nebraska is responsible for carrying out the aspects of the RCRA program described in its approved program applications, subject to the limitations of the Hazardous and Solid Waste Amendments (HSWA) of 1984. New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement any such HSWA requirements and prohibitions in Nebraska, including issuing HSWA permits, until the State is granted authorization to do so. For further background on the scope and effect of today's action to approve Nebraska's RCRA program revisions, please refer to the preambles of EPA's December 30, 2008, Proposed and Immediate Final Rules at 73 FR 79761 and 73 FR 79661 respectively.

D. Statutory and Executive Order Reviews

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 13175, "Consultation and Coordination With Indian Tribal Governments" (65 FR 67249, November 9, 2000). 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, "Federalism" (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, "Protection of Children From Environmental Health Risks and Safety Risks" (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 that may affect children. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

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, "Civil Justice Reform" (61 FR 47729, 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, "Government Actions and Interference with Constitutionally Protected Property Rights" (53 FR 8859, March 15, 1988) by examining the takings implications the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" 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.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S.

Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective September 24, 2010.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping 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: September 13, 2010.

Karl Brooks,

Regional Administrator, Region 7.

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GENERAL SERVICES ADMINISTRATION

41 CFR Part 300-80

[FTR Amendment 2010-03; FTR Case 2010-304; Docket 2010-0016; Sequence 1]

RIN 3090-ZA01

Federal Travel Regulation (FTR); Relocation Expenses Test Programs

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: This final rule updates the Federal Travel Regulation (FTR) to reflect statutory changes that extended the authority for relocation expenses test programs for Federal employees, made by the passage of Public Law 111-112 on November 30, 2009.

DATES: *Effective Date:* This final rule is effective September 24, 2010.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat (MVCB), Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Henry Maury, Office of Governmentwide Policy (M), Office of Travel, Transportation and Asset Management (MT), General Services Administration at (202) 208-7928 or e-