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order to avoid reversion of the RCRA program to EPA.

B. End of Interim Authorization Application Period

Section 123.122(c)(1) provides that a State may apply for interim authorization until the end of the 6th month after the effective date of the last Phase II component. The interim authorization application period will close on July 26, 1983.

EPA is amending this provision elsewhere in today's **Federal Register** by adding that "the Regional Administrator may extend the application period for good cause." The preamble to this amendment notes that "EPA intends that this extension only be granted on a case-by-case basis to States which have made a good faith effort to meet the application deadline and which can submit a complete application within a reasonable period of time".

C. States With Partial Interim Authorization

Section 123.122(c)(4), as amended elsewhere in today's **Federal Register,** requires States which have received partial interim authorization (i.e., interim authorization for Phase I alone or Phase I and some components of Phase II) to apply for *all* of Phase II within 6 months of the effective date of the last component of Phase II. This deadline will occur on July 26, 1983. Section 123.137 contains the related stipulation that State programs with partial interim authorization which fail to submit an amended application for all of Phase II which meets the requirements of the Federal program by the above deadline will terminate and responsibility for RCRA implementation will revert to EPA.

Alternatively, State programs with partial interim authorization can avoid program reversion to EPA by applying for and receiving final authorization by the above deadline. In addition, today's amendments to these two sections provide that the Regional Administrator may extend the deadline for good cause. This extension is intended to be granted in the same amanner as the extension to the application deadline discussed earlier.

D. Deadline for State Enabling Legislation

RCRA Section 3006(c) provides that interim authorization may be granted to those States which have "in existence a hazardous waste program pursuant to State law" no more than 90 days after the "promulgation of regulations under Sections 3002, 3003, 3004, and 3005." EPA interprets this provision to mean that, at a minimum, a State must have basic enabling legislation for the program in place, i.e., basic statutory authority to regulate hazardous waste, in order to be eligible for interim authorization.

The deadline by which the State enabling legislation must be in place is found in § 123.125(a). This section is amended elsewhere in today's **Federal Register** to tie the deadline to the final Phase II component, which establishes the last major elements of the Federal program. This section is revised to provide that: "The State Attorney General or independent legal counsel must certify that the enabling legislation for the State's program was in existence within 90 days of the announcement of the last component of Phase II." This deadline will occur on October 25, 1982.

Most States which have received interim authorization for Phase I will have already demonstrated adequate authority and thus satisfied the enabling legislation requirement. Unauthorized States which desire to apply for interim authorization can satisfy the requirement by certifying that the necessary legislation was in place at any time prior to the date given above.

V. Compliance With Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The notice published today is not major because it will not result in an effect on the economy of $100 million or more and will not result in an increase in costs or prices. It will not result in any of the other significant adverse effects addressed in the Executive Order. The notice announces the last component of Phase II interim authorization, the beginning of final authorization, and several deadlines in the interim authorization process. These announcements are based on and carry out regulations promulgated under RCRA.

This notice was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

VI. Authority

Sections 1006, 2002(a) and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6905, 6912(a) and 6926.

List of Subjects in 40 CFR Part 123

Hazardous materials, Indians-lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Dated: July 9, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-19471 Filed 7-23-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 264

[SW-FRL 2173-1]

Hazardous Waste Management System; Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: Elsewhere in today's **Federal Register,** EPA announces that States may commence the application process for final authorization. As described in that announcement, EPA plans to add permitting standards for several processes which are not currently covered by the Part 264 standards for owners and operators of hazardous waste management facilities. Section 123.13(e) requires States with final authorization to make revisions to their programs "within one year of the date of promulgation of such [Federal] regulations, unless a State must amend or enact a statute . . . in which case such revision shall take place within two years." Under the current regulations, until a State makes those revisions, neither EPA nor that State has the authority to issue RCRA permits to facilities covered by those new permitting standards, including new facilities which need a RCRA permit in order to commence operation (and, in some cases, construction).

To remedy this problem, EPA is today amending its hazardous waste management regulations to enable certain facilities located in States with final authorization to obtain a federally-issued RCRA permit during the time preceding the State's authorization for those new standards. EPA is also today clarifying the applicability of new permit standards in States with Phase II interim authorization.

The Agency expects that this amendment will result in savings to the regulated community by enabling new facilities subject to these post-authorization standards to obtain a RCRA permit and begin operation before the State adopts equivalent new

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standards. New facilities are expected to operate with a higher level of environmental protection than older, more conventional facilities. Therefore, this amendment will have a positive environmental impact by allowing these new facilities to obtain RCRA permits sooner than they would otherwise be able.

DATES: *Effective date:* January 26, 1983.

Comment date: EPA will accept public comment on this amendment until September 24, 1982.

ADDRESS: Comments should be sent to the Docket Clerk (Docket 3004—Additions to federal regulations after state authorization), Office of Solid Waste (WH-562), Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Terrance Grogan, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 382-2224; or the RCRA Hotline toll-free at (800) 424-9346 or in Washington, D.C. at 382-3000.

SUPPLEMENTARY INFORMATION:

I. Background

On February 26, 1980, and May 19, 1980, EPA published regulations pursuant to the Resource Conservation and Recovery Act of 1976, as amended (RCRA), establishing the first phase of a comprehensive program for the handling and management of hazardous waste (45 FR 33066-33285, now codified in 40 CFR Parts 260-265). These regulations require, among other things, that facilities which treat, store, or dispose of hazardous waste must obtain a permit from EPA or an authorized State. The permit must be based on standards promulgated by EPA in 40 CFR Part 264.[1]

Section 3006 of RCRA allows a State which seeks to administer and enforce a hazardous waste program to obtain authorization from EPA to run the program in lieu of the Federal Government. EPA will authorize a State if it determines that the State's program is "equivalent" to and "consistent" with (in the case of final authorization), or "substantially equivalent" to (in the case of interim authorization), the Federal program. The authorized State can then issue and enforce permits for the treatment, storage, or disposal of hazardous waste, under RCRA.[2]

On May 19, 1980, EPA promulgated regulations which spell out in detail, among other things, the requirements for States to receive authorization to administer the RCRA permit program in lieu of the Federal permit program. (See 45 FR 33377, codified in 40 CFR Part 123).

Elsewhere in today's **Federal Register**, EPA is promulgating permitting standards for land disposal facilities, which represent the last major piece of the RCRA hazardous waste program. However, EPA intends to add permitting standards for processes not currently covered by the Part 264 standards. For example, the Part 264 standards do not currently cover treatment and storage of hazardous waste in certain types of underground tanks; thermal treatment of hazardous waste in devices other than incinerators; or treatment of hazardous waste by chemical, physical or biological methods (other than in tanks, surface impoundments or land treatment units).

Adding Part 264 permitting standards to the Federal regulations after States have obtained final authorization raises the following problem under the existing regulations. Section 123.13(e) provides that State programs approved for final authorization must make revisions required by changes to the Federal RCRA program "within one year of the date of promulgation of such [new or modified] regulation, unless a State must amend or enact a statute in order to make the required revision in which case such revisions shall take place within two years." This language provides a clear and orderly process for maintaining the "equivalence" of State programs that have received final authorization. However, there may still be a one or two year gap between the time new standards are promulgated by EPA, and the time that the State adopts and is authorized for equivalent standards.

The problem arises when a person plans to build a new facility (or expand an existing one) with processes covered by the new Part 264 standards during this one or two year period in a State with final authorization.[3] Such a person could not receive a RCRA permit for these processes from the authorized State during this period. This is because the State's RCRA authorization includes only those portions of the Federal program for which the State has been judged to have equivalent and consistent standards. State programs cannot operate "in lieu of" this new part of the Federal program until they have received authorization for those new Part 264 standards.

In addition, the person could not receive a federally-issued RCRA permit if he or she is located in a State with final authorization, because § 264.1(f) as currently worded provides that the requirements of Part 264 do not apply to a person who treats, stores or disposes of hazardous waste in a State with a RCRA hazardous waste program authorized under Part 123.[4] (This provision was originally promulgated on the assumption that by the time of final authorization, Part 264 standards would be in place for all categories of facilities.)

The owner or operator of a new facility could therefore face a period of time in which he cannot obtain a RCRA permit from either the authorized State or the Federal government. This effectively places a ban on the operation (and, in some cases, construction) of the facility. EPA did not intend to impose this de facto ban, and believes it is undesirable. These new facilities may provide needed additional treatment, storage, and disposal capacity at a higher level of environmental protection than older, more conventional facilities.

The Agency is today amending § 264.1(f) to rectify this problem. Under this amendment, Part 264 will apply to these facilities until the State receives final authorization for the new standards. Facilities subject to these new standards may therefore obtain a federally-issued RCRA permit during that limited period of time. They will not have to wait until the State in which they are located adopts equivalent and consistent standards.

The language of § 264.1(f) is also being amended to clarify the applicability of Part 264 in States with Phase II interim authorization under RCRA § 3006(c).[5] This amendment ensures that States authorized for any of the Phase II components will operate the RCRA permit program in lieu of EPA for facilities covered in their authorized components. For example, if a facility conducted incineration of hazardous wastes, and the facility was located in a State with interim authorization for Phase II, Component B (the component covering incinerators), then it would not

[1] Portions of 40 CFR Part 264 were promulgated on May 19, 1980 (45 *FR* 33154), January 12, 1981 (46 *FR* 2802), and January 23, 1981 (45 *FR* 7667). The major missing piece of the RCRA performance standards was the land disposal regulations, until their promulgation elsewhere in today's Federal Register.

[2] States may issue hazardous waste permits under State law in any case, whether or not they are authorized under RCRA.

[3] Facilities in existence on November 19, 1980, may qualify for interim status when the new standards are promulgated. See Section 3005(e) of RCRA and 40 CFR Part 122.22(a).

[4] Part 264 does currently apply to underground injection, if the authorized State program does not cover it. See 40 CFR § 264.1(f).

[5] For a discussion of Phase II interim authorization, see amendments to Part 123 published on January 26, 1981, 46 FR 8298, and the announcement of Phase II Component C elsewhere in today's Federal Register.

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be subject to Part 264, and the State's "substantially equivalent" standards would operate in lieu of the Federal standards.

However, Part 264 will apply to the permitting of new processes (e.g., underground tanks) added to the coverage of Part 264 after the announcement of Component C. Since Component C is the last Phase II component, interim authorization would not be available for permitting these new processes. EPA would retain permitting responsibility for such new processes in States with interim authorization, since the processes would not be included in the State's authorization for Phase II. States would receive authorization to operate the RCRA permit program in lieu of EPA for such new processes as part of final authorization, under the provisions in § 123.13(e) described above.

EPA requests comments on the approach taken in this amendment for both final and interim authorization. In particular, comments are solicited on alternatives to Federal permit issuance in authorized States during the period between addition of new RCRA permit standards and State authorization for equivalent and consistent standards.

II. Interim Final Promulgation

EPA believes that the use of advance notice and comment procedures for this amendment to the applicability section of 40 CFR Part 264 would be impracticable and contrary to the public interest, and therefore finds that good cause exists for adopting this change in interim final form (see 5 U.S.C. § 553(b)(B)).

This amendment is designed to make the language of § 264.1(f) consistent with the Agency's original intent in promulgating that section. EPA never intended a situation where a facility could not obtain a RCRA permit from either EPA or an authorized State after the appropriate Part 264 standards were promulgated. The current language of § 264.1(f) was based on the assumption that Part 264 standards would be in place for all categories of facilities by the time of final authorization. However, this did not happen, and thus certain new facilities could face a temporary ban on operation (and, in some cases, construction) in States with final authorization due to current regulatory language. Today's amendment rectifies this situation by allowing continued operation of the RCRA permitting process, as originally intended.

This interim final amendment will take effect in six months, at the same time that final authorization can take effect. This timing ensures that the RCRA permitting process will not be disrupted in States with final authorization.

EPA will accept comments on this amendment for 60 days, and will make any further changes deemed necessary as a result of those comments.

III. Executive Order 12291

Under Executive Order 12291, (46 FR 12193, February 19, 1981), EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. A major rule is defined as a regulation which is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation is not major because it will not result in an effect on the economy of $100 million or more nor will it result in a major increase in costs or prices to consumers, industry or government entities. There will be no adverse impact on the ability of the U.S. based enterprises to compete with foreign based enterprises in domestic or export markets. Because this amendment is not a major regulation, no Regulatory Impact Analysis is being prepared.

This amendment was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*, whenever an agency is required to publish a rulemaking, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, I hereby certify that this regulation, if issued in final form, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 264

Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal.

Dated: July 9, 1982.

Anne M. Gorsuch,

Administrator.

Title 40 CFR Part 264 is amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 264 reads as follows:

Authority: Secs. 1006, 2002(a), and 3004, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, (42 U.S.C. §§ 6905, 6912(a), and 6924).

2. Section 264.1(f) is revised to read as follows:

§ 264.1 Purpose, scope and applicability.

* * * * *

(f) The requirements of this part do not apply to a person who treats, stores, or disposes of hazardous waste in a State with a RCRA hazardous waste program authorized under Subparts A and B of Part 123 of this chapter, or in a State authorized under Subpart F of Part 123 of this chapter for the component or components of Phase II interim authorization which correspond to the person's treatment, storage or disposal processes; except that this part will apply:

(1) As stated in paragraph (d) of this section, if the authorized State RCRA program does not cover disposal of hazardous waste by means of underground injection; and

(2) To a person who treats, stores or disposes of hazardous waste in a State authorized under Subparts A and B of Part 123 of this chapter, at a facility which was not covered by standards under this part when the State obtained authorization, and for which EPA promulgates standards under this part after the State is authorized. This paragraph will only apply until the State is authorized to permit such facilities under Subparts A and B of Part 123 of this chapter.

* * * * *

[FR Doc. 82-19470 Filed 7-23-82; 8:45 am]
BILLING CODE 6560-50-M