Mary Ann Chance

CONOCO

To Distribution

Date Jan. 6, 1981

For your information:

Enclosed is: FR 12/17/80 - "Hazardous Waste Disposal Facilities; Availability of Information"

FR 12/19/80 - "Louisiana: Phase I Interim Authorization of State Hazardous Waste Management Program"

FR 12/24/80 - "Texas: Phase I Interim Authorization of State Hazardous Waste Management Program"

FR 12/24/80 - "Availability of Provisional EPA Identification Numbers" (During spills and other unanticipated events.)

The following states have also been granted Interim Authorization under RCRA for Phase I:

North Carolina	12/18/80	- FR 83229-31
North Dakota	12/12/80	- FR 81758-59
Utah	12/12/80	- FR 81757-58

Mary Ann

Mary Ann Chance

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-6-FRL 1703-2]

Approval and Promulgation of Implementation Plans; Proposed Approval of New Mexico Variance for Phelps Dodge Corp., Playas, New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This notice proposes approval of a request from the State of New Mexico to revise its State Implementation Plan to include a variance for Phelps Dodge Corporation, Hidalgo Smelter in Playas, New Mexico.

The period of variance as requested by Phelps Dodge, appears reasonable and necessary for the installation of the new scrubbing system. The modeling analysis submitted indicates that the ambient air standards for the TSP will not be exceeded.

DATES: Comments must be received on or before January 16, 1981.

ADDRESSES: Submit comments to: Air Programs Branch, Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Jerry M. Stubberfield, Chief, Implementation Plan Section, Air and Hazardous Materials Division, Environmental Protection Agency, Region 6, Dallas, Texas 75270, (214) 767-1518.

SUPPLEMENTARY INFORMATION:

Background

Section 110(3)(A) of the Clean Air Act, amended 1977, directs the Administrator to approve revision of any implementation plan applicable to an air quality control region, if he determines the plan has been adopted by the State after reasonable notice and public hearings, and that it includes emission limitations, schedules, and timetables for compliance with such limitations and such other measures as may be necessary to insure attainment and maintenance of the air quality standards.

New Mexico State Variance

The variance under consideration for approval is for the Phelps Dodge, Hidalgo Smelter located in Playas, New Mexico. On January 11, 1980, after adequate notice and public hearing, the Variance Order from New Mexico Air Quality Control Regulation No. 506, *Non-Ferrous Smelters—Particulate Matter*, was granted to Phelps Dodge Corporation by the New Mexico Environmental Improvement Board.

On February 4, 1980, the New Mexico Environmental Improvement Division submitted to EPA a Variance Order from Air Quality Control Regulation 506 which will result in an average particulate emission of 1.02 grains per dry cubic foot. The requested period of variance is from June 1, 1979 to June 1, 1980. EPA's review of the variance has shown that the compliance schedule contains legally enforceable increments of progress, the plan demonstrates compliance with ambient standards and the dispersion modeling indicates that there will be no violation of ambient air quality standards. The control strategy consists of installation of a new gas scrubbing system to treat the off-gases from the electric slag cleaning furnace before discharge to the atmosphere. Based upon this review, EPA proposes to approve the variance granted by the State as a revision to the New Mexico State Implementation Plan.

Note.—Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized."

I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This notice of proposed rulemaking is issued under the authority of Section 110 of the Clean Air Act, as amended, 42 U.S.C. 7410.

Dated: December 2, 1980.

Frances E. Phillips,

Acting Regional Administrator.

[FR Doc. 80-39176 Filed 12-16-80; 8:45 am]

BILLING CODE 6560-26-M

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40 CFR Part 81

[A-5-FRL 1704-8]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations Ohio, Extension of Comment Period

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of Extension of Comment Period.

SUMMARY: The USEPA is giving notice that the comment period provided in the October 17, 1980 Federal Register (45 FR 68978) for the proposed redesignation, for carbon monoxide, of Summit and Lucas Counties, Ohio is being extended for Lucas County only, from November 17, 1980 to December 23, 1980.

DATE: Comments are now due on or before December 23, 1980.

ADDRESSES: SEND COMMENTS TO: Gary Gulezian, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Richard Clarizio, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6035.

SUPPLEMENTARY INFORMATION: In the October 17, 1980 Federal Register (45 FR 68978) the USEPA proposed to change the air quality designations for Summit and Lucas Counties, Ohio from nonattainment to unclassifiable for carbon monoxide. A thirty day public comment period, until November 17, 1980 was provided.

During the public comment period, USEPA received extensive comments on the proposed redesignation of Lucas County. In addition to these comments USEPA received a request to extend the period for submission of comments on the proposed redesignation of Lucas County, Ohio. No such request was made for Summit County, Ohio. USEPA has reviewed the request and has decided to extend from November 17, 1980 to December 23, 1980, the period for submission of comments on the redesignation of Lucas County, Ohio. Since no such request was made for Summit County, the public comment period is not being extended for this County. It should be noted that final rulemaking on the Summit County redesignation will appear in the Federal Register prior to and independent of final rulemaking on the Lucas County redesignation.

Dated: December 8, 1980.

John McGuire,

Regional Administrator.

[FR Doc. 80-39175 Filed 12-16-80; 8:45 am]

BILLING CODE 6560-26-M

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40 CFR Parts 264 and 265

[SWH-FRL 1703-1]

Hazardous Waste Disposal Facilities; Availability of Information

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of information and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is today making available

CCR 000040793

drafts of four Technical Resource Documents for public comment. These documents are being developed to assist in the implementation of 40 CFR Parts 264 and 265 regulations concerning hazardous waste disposal facilities (landfills, surface impoundments, and land treatment facilities). The Part 265 regulations are the interim status standards applicable to hazardous waste facilities in existence as of November 19, 1980 until the facilities are either closed or their permit application is acted upon. The Part 264 regulations are the permit standards applicable to new and existing hazardous waste facilities under permit. The Agency is developing a number of Technical Resource Documents to provide information on hazardous waste technologies and on techniques for evaluating facility designs and potential performance. These documents may be used as guidance by owners and operators of interim status facilities, particularly for closure and post-closure care considerations. These documents will also assist the owner/operator and permit officials to identify and evaluate technologies which can be used to control potential adverse effects on human health and the environment and to comply with the Part 264 regulations. The Technical Resource Document drafts being made available today are:

- Evaluating Cover System for Solid and Hazardous Waste (SW-867)
- Hydrologic Simulations on Solid Waste Disposal Sites (SW-868)
- Landfill and Surface Impoundment Performance Evaluation (SW-869)
- Lining of Waste Impoundment and Disposal Facilities (SW-870)

DATES: Comment on these reports are due no later than 90 days after the Part 264 disposal facility regulations are published in the Federal Register.

ADDRESSES: Comments should be addressed to Deborah Vallari, Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Communications should identify the regulatory docket (Section 3004) and document title. For example: "Section 3004: Manual for Evaluating Cover for Hazardous Waste".

Copies of these reports are available for reading at the EPA Library Public Information Reference Unit (Room 2404) and Subtitle C Docket Room (Room 2711), both located at 401 M Street, SW, Washington, D.C., and at all Regional Office Libraries during the hours of 9:00 a.m. to 4:30 p.m., Monday through Friday.

Single copies of these documents are also available from Ed Cox, Solid Waste Information, U.S. EPA, 26 West St. Clair Street, Cincinnati, Ohio 45268, (513) 684-5362. If available copies run out, the Agency may charge $0.20 per page for photocopying.

FOR FURTHER INFORMATION CONTACT: Les Otte, Office of Solid Waste (WH-564), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 755-9125.

SUPPLEMENTAL INFORMATION: On May 19, 1980, EPA published Interim Status Standards (40 CFR Part 265) for disposers of hazardous waste under Section 3004 of RCRA. In §§ 265.112(c) and 265.118(c) of those regulations, EPA requires the Closure and Post-Closure Plans for a disposal facility be approved by the EPA Regional Administrator. The objectives to be addressed in these plans are specified in §§ 265.111, 265.228, 265.280 and 265.310. It is expected that the Technical Resource Documents, together with other available information, will be used by the Regional Administrator to confirm the technical adequacy of the design in meeting the control objectives in the closure and post-closure plans.

Also on May 19, 1980 EPA published administrative portions of 40 CFR Part 264. In the near future EPA will publish disposal facility standards for Part 264.

The Agency is preparing an information package for permit officials responsible for hazardous waste landfills, surface impoundments and land treatment facilities under Section 3004. This package will consist of Permit Writer's Guidance Manuals and Technical Resource Documents. Permit Writer's Guidance Manuals are being developed to assist the permit official in evaluating site specific control objectives and will reference the Technical Resource Documents noticed today for specific technical information. The Technical Resource Documents will assist the permit official in reviewing applications by describing (1) technologies which applicants may propose to use and (2) techniques to evaluate technologies which applicants may propose to use to control potential adverse effects on human health and the environment. Additional Technical Resource Documents are being planned, as well as periodic review and update of the current documents.

The purpose of this notice is to announce the availability of four of the Technical Resource Documents for public comment on the accuracy and usefulness of the information presented. These documents are being noticed before the regulations are promulgated in order to allow more time for review. The technologies identified in these documents are generally not specifically required in the regulations, but are pertinent to designing facilities or evaluating designs for compliance with the regulations. This is not to be construed as a reopening of the comment period on the Agency's Section 3004 regulations; and commenters should limit their comments accordingly.

Dated: December 10, 1980.

Steffen W. Plehn,

Deputy Assistant Administrator for Solid Waste.

[FR Doc. 80-39212 Filed 12-16-80; 8:45 am]

BILLING CODE 6560-30-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-5749]

National Flood Insurance Program; Revision of Proposed Flood Elevation Determinations; Illinois

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Village of Burr Ridge, Du Page County, Illinois.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in the *Suburban Life* on September 6, 1980 and September 13, 1980, and at 45 FR 60454 on September 12, 1980, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above named community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program (202) 426-1460 or Toll Free Line (800) 424-8872 (In Alaska and Hawaii call Toll Free Line (800) 424-9080). Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the Village of Burr Ridge, Du Page County, Illinois, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the drafts of four Technical Resource Documents for public comment. These documents are being developed to assist in the implementation of 40 CFR Parts 264 and 265 regulations concerning hazardous waste disposal facilities (landfills, surface impoundments, and land treatment facilities). The Part 265 regulations are the interim status standards applicable to hazardous waste facilities in existence as of November 19, 1980 until the facilities are either closed or their permit application is acted upon. The Part 264 regulations are the permit standards applicable to new and existing hazardous waste facilities under permit. The Agency is developing a number of Technical Resource Documents to provide information on hazardous waste technologies and on techniques for evaluating facility designs and potential performance. These documents may be used as guidance by owners and operators of interim status facilities, particularly for closure and post-closure care considerations. These documents will also assist the owner/operator and permit officials to identify and evaluate technologies which can be used to control potential adverse effects on human health and the environment and to comply with the Part 264 regulations. The Technical Resource Document drafts being made available today are:

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- Landfill and Surface Impoundment Performance Evaluation (SW-869)
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DATES: Comment on these reports are due no later than 90 days after the Part 264 disposal facility regulations are published in the Federal Register.

ADDRESSES: Comments should be addressed to Deborah Vallari, Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Communications should identify the regulatory docket (Section 3004) and document title. For example: "Section 3004: Manual for Evaluating Cover for Hazardous Waste".

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Dated: December 10, 1980.

Steffen W. Plehn,

Deputy Assistant Administrator for Solid Waste.

[FR Doc. 80-39214 Filed 12-16-80; 8:45 am]
BILLING CODE 6560-30-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-5749]

National Flood Insurance Program; Revision of Proposed Flood Elevation Determinations; Illinois

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Village of Burr Ridge, Du Page County, Illinois.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in the *Suburban Life* on September 6, 1980 and September 13, 1980, and at 45 FR 60454 on September 12, 1980, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above named community.

ADDRESSES: See table below.

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SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the Village of Burr Ridge, Du Page County, Illinois, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the

40 CFR Part 123

[SW FRL 1708-2]

EPA / RCRA

Louisiana: Phase I Interim Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency, Region 6.

ACTION: Approval of State program.

SUMMARY: The purpose of this notice is to grant Phase I interim authorization to the State of Louisiana for its hazardous waste management program.

In the May 19, 1980, Federal Register (45 FR 33063), the Environmental Protection Agency (EPA) promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), to protect human health and the environment from the improper management of hazardous wastes. Included in these regulations, which become effective 6 months after promulgation, were provisions for a transitional stage in which States could be granted interim program authorization. The interim authorization program will be implemented in two phases corresponding to the two stages in which an underlying Federal program will take effect. On September 16, 1980, the State of Louisiana applied to EPA for Phase I interim authorization of its hazardous waste management program. On September 24, 1980, EPA issued in the **Federal Register** (45 FR 63302) a notice of the public comment period on the State's application. An additional 30 day comment period was noticed by Region 6 in the **Federal Register** on October 17, 1980 (45 FR 68979) to solicit comments on additional material received in connection with the State's application. All comments received during these comment periods have been noted and considered, as discussed below.

The State of Louisiana is hereby granted interim authorization to operate the RCRA Subtitle C hazardous waste management program in accordance with section 3006(c) of RCRA and implementing regulations found in 40 CFR 123 Subpart F.

EFFECTIVE DATE: December 19, 1980.

FOR FURTHER INFORMATION CONTACT: Rena M. McClurg, Solid Waste Branch, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270, (214) 767-2645.

SUPPLEMENTARY INFORMATION: On July 3, 1980 the first draft application for Phase I interim authorization under RCRA in the nation was submitted to me by the State of Louisiana. This draft application reflected a program which was put into effect almost a year before the RCRA regulations were published in the **Federal Register.** In our comments to the State on the material presented in the draft application, we identified four major problem areas which had to be addressed in the State's final application. These areas were (1) whether the universe of hazardous waste covered by State regulations were substantially equivalent to the universe covered under RCRA, (2) whether the draft Memorandum of Agreement (MOA) complied with the requirements of the model MOA prepared by EPA, Region 6, (3) whether the State's interim status standards for treatment, storage and disposal facilities were substantially equivalent to RCRA standards and were enforceable against all facilities whether or not they were permitted, and (4) the lack of adequate detail in the Program Description Section of the draft application.

On September 24, 1980, I had noticed published in the **Federal Register** inviting the public to offer comments on the Louisiana Application for Phase I Interim Authorization of its Hazardous Waste Management Program at a public hearing to be conducted by Region 6 on October 23, 1980. This notice also invited the public to submit written comments on the Louisiana application to Region 6 by October 30, 1980. After this notice appeared in the **Federal Register** EPA received amendments to the application from the State. In order to provide an opportunity for the public to comment on these new materials a second notice was published in the **Federal Register** on October 17, 1980. This notice invited written public comment on the additional materials by November 17, 1980.

A lengthy and spirited public hearing, conducted by Region 6 was held on the evening of October 23, 1980, in Baton Rouge, Louisiana. Nineteen presentations were made at this hearing. In addition, between September 23, 1980, the beginning of the first public comment period and November 17, 1980, the close of the second public comment period, Region 6 received thirty-six written comments on the Louisiana application. All comments, if they complied with the time constraints of the **Federal Register** notices, whether presented at the hearing or in writing, were reviewed and considered in reaching a decision on the Louisiana Application for Interim Authorization.

Of the fifty-five public comments reviewed by Region 6 (19 at the hearing, 36 in writing) on the Louisiana Application for Phase I Interim Authorization, 27 commenters favored granting the State Phase I authorization, 22 commenters opposed granting the State Phase I authorization. 5 commenters supported granting Phase I authorization subject to specific conditions and 1 commenter neither supported nor opposed authorization. The subject matter of the comments ranged the gamut from the very general to the extremely particular, from specific procedural challenges to broad program evaluations. To simplify summary of the comments and their responses similar comments are grouped together for one response. Where one commenter addressed more than one issue the summary and response is given according to the subject matter of the issue. As a result a commenter who raised several issues should find the response to each issue he or she raised in the section covering that issue and not in a single section covering all the issues raised by him or her. The summary is presented generally in the order of subjects which received the most comment first and those receiving fewer comments presented last. However this format is adhered to loosely to permit related comments to be presented in sequence.

Comment—Nineteen commenters stated that they found Louisiana's Hazardous Waste Management Program to be substantially equivalent to the Federal Program under RCRA and the regulations published in 40 CFR Part 123, Subpart F. Based upon this finding they concluded that EPA should grant the State Phase I Interim Authorization.

Response—EPA agrees with this assessment of the standard it must apply under RCRA and 40 CFR 123 Subpart F. RCRA Section 3006(c) states "The Administrator shall, if the evidence submitted (in a State application) shows the existing State program to be substantially equivalent to the Federal program under this subtitle, grant interim authorization to the State to carry out such program in lieu of the Federal program * * *." The intent of Congress as manifested in this section was twofold: First, Congress wished to maximize State participation in the Federal hazardous waste program; Second, Congress wished to allow the States a period of time to develop a program which was equivalent and consistent with the Federal program. Consequently, it created a unique status of temporary authorization which permits a State to operate the Federal program while at the same time it is furthering the development of that program for final authorization.

Nevertheless, to receive interim authorization a State must demonstrate

CCR 000040796

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[WH-FRL 1700-7]

State and Local Assistance; Grants for Construction of Treatment Works

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation is to establish the amount of construction grant funds to be allotted to each State due to the fact that the State of Ohio did not obligate $23,902,130 million dollars of its Fiscal Year 1978 funds (35.910-2(c)) and to make known the procedure by which the reallotment was determined.

It is essential that this regulation be published as section 205(b)(1) of the Clean Water Act requires that allotted amounts not obligated by the end of the initial allotment availability period "* * * shall be immediately reallotted by the Administrator in accordance with regulations promulgated by him * * *". Therefore, through this regulation, the requirements of the Act are fulfilled and the public is apprised of the additional amounts available to the States for grants for the construction of municipal wastewater treatment facilities.

EFFECTIVE DATE: December 19, 1981.

FOR FURTHER INFORMATION CONTACT: Harold P. Cahill, Jr., Director, Municipal Construction Division, Office of Water Program Operations, (202) 426-8986.

SUPPLEMENTARY INFORMATION: At the close of the fiscal year 1978 allotment availability period (September 30, 1979), all States and Territories except Ohio had fully obligated their fiscal year 1978 allotments. Because issues arose regarding the interpretation of EPA policy on the method for determining amounts which would be subject to reallotment at the close of the fiscal year, the reallotment of unobligated funds as of September 30, 1979 had to be delayed. These issues were resolved and it was determined that $23,902,130 of Ohio's fiscal year 1978 allotment was subject to reallotment.

To distribute the $23,902,130 in accordance with the requirements of sections 205(c) and 205(e) of the Clean Water Act the following procedure was used.

1. Applicable percentages (see § 35.910-8(a)) to reflect the absence of an allotment for the State of Ohio, were computed and applied to the $23,902,130.

2. Since section 205(e) of the Clean Water Act requires that no State shall receive less than one half of one percent of an allotment, .5 percent of the reallotment amount was computed ($119,511), and the 11 States whose allotment was less than this amount had their share raised to $119,511. By so doing, the reallotment total rose from $423,902,130 to $24,169,048; an increase of $1,314,621. Since a supplemental of $1,314,621 would not be provided, a recomputation was necessary so that, in raising 11 States to the .5 percent minimum, the overall total would not exceed the $23,902,130 reallotment amount. This was calculated as follows:

a. An allotment for each of the eleven States which were to receive .5 percent of reallotment amount if total is $23,902,130 instead of $24,169,048 was first determined.

$$\frac{X}{119,511} = \frac{\$23,902,130}{\$24,169,048} = .983956$$

$$X = .988956 \times \$119,511$$

$$X = \$118,190$$

b. Allotments for the 44 remaining States/Territories after each of the 11 States, originally receiving less than .5 percent, receive $118,190 was then computed in the following manner:

(1) The total allotment for the 11 States was first calculated. 11 x $118,190 or $1,300,090.

(2) The total allotment for the 44 States/Territories was calculated next. $23,902,130 less $1,300,090 or $22,602,040.

(3) The applicable percentages for 44 States/Territories were converted to 100 percent and applied to the $22,602,040.

This is a technical amendment affecting Agency procedure and will be made effective immediately upon publication.

Dated: December 9, 1980.

Douglas M. Costle,

Administrator.

Accordingly, 40 CFR Subpart E is amended by adding new § 35.910-11 to read as follows:

§ 35.910-11 Reallotment of deobligated funds of fiscal year 1978.

(a) Of the 4.5 billion appropriated by Pub. L. 95-240 for fiscal year 1978, $23,902,130 remained unobligated as of September 30, 1979 and thereby became subject to reallotment.

(b) The reallotment was computed by applying the percentages in § 35.910-8(a), adjusted to account for the absence of Ohio and readjusted to comply with the requirements of § 35.910(d) establishing a minimum allotment of .5 percent.

(c) These funds are added to the fiscal year 1980 allotments and will remain available through September 30, 1981 (see §§ 35.910-2(b) and 35.910-8).

(d) The $23,902,130 is allotted as follows:

State	Amount
Alabama	$324,543
Alaska	118,190
Arizona	196,050
Arkansas	189,880
California	2,009,369
Colorado	232,191
Connecticut	279,819
Delaware	118,190
Dist. of Columbia	118,190
Florida	969,582
Georgia	490,796
Hawaii	200,367
Idaho	126,146
Illinois	1,312,681
Indiana	690,486
Iowa	327,945
Kansas	282,494
Kentucky	308,490
Louisiana	319,072
Maine	169,428
Maryland	701,874
Massachusetts	746,891
Michigan	1,049,975
Minnesota	472,380
Mississippi	244,147
Missouri	630,710
Montana	118,190
Nebraska	139,198
Nevada	118,190
New Hampshire	222,653
New Jersey	902,590
New Mexico	118,190
New York	2,684,060
North Carolina	600,590
North Dakota	118,190
Oklahoma	234,496
Oregon	327,686
Pennsylvania	1,102,234
Rhode Island	132,719
South Carolina	297,352
South Dakota	118,190
Tennessee	391,364
Texas	1,102,708
Utah	118,190
Vermont	118,190
Virginia	495,392
Washington	447,046
West Virginia	452,493
Wisconsin	492,983
Wyoming	118,190
Guam	18,606
Puerto Rico	296,561
Virgin Islands	9,561
American Samoa	15,573
Tr. Terr. of Pac. Islds	35,102
N. Mariana Islds	3,450
Total	20,902,130

[FR Doc. 80-39521 Filed 12-18-80; 8:45 am]

BILLING CODE 6560-29-M

the "substantial equivalence" of its program to the Federal program. Once a state has demonstrated substantial equivalence "the Administrator shall grant interim authorization", applying this standard, as elaborated in 40 CFR Part 123 Subpart F. EPA has concluded that Louisiana has met the test of substantial equivalence and should receive Phase I interim authorization.

Comment—Seventeen commenters supported authorization of the Hazardous Waste Management Program in the State of Louisiana because the burden placed upon the regulated community of functioning under a dual regulatory system was clearly not the intent of RCRA. As a corollary they asserted that if authorization were denied to the State and a double system imposed, the cost of operating dual programs would be great and would undoubtedly be passed on to the consumer.

Response—While EPA recognizes that the policy of RCRA Section 3006 favors the authorization of State programs in part to relieve a burden on the regulated community, EPA disagrees with the contention that Congress intended this to be a standard for the granting of interim authorization of a State program. If a State program cannot evidence substantial equivalence to the Federal program then, under RCRA, interim authorization cannot be granted, notwithstanding the burdens placed upon the regulated community. That is not to say, however, that eliminating the burden of a dual regulatory system should not or does not operate as an incentive for the States and EPA alike to help achieve the substantial equivalence of a State program. The incentive to operate a cost-effective national hazardous waste management program, which eliminates costly dual operations through the participation of the States, should provide and equally strong impetus for States to meet the requirements of interim authorization.

Comment—Two commenters stated they had been inspected by the State but not by the Federal Government. They felt that this illustrated the State's ability to operate a hazardous waste management program, and therefore, supported authorization.

Response—EPA agrees that Louisiana has demonstrated a capacity to operate a State program in hazardous waste management. EPA also agrees that, provided the State meets the standards for State program requirements under RCRA, the appropriate division of labor is for the State to operate the program and for EPA, through its oversight responsibilities, to supervise the State to assure compliance with the laws.

regulations and policies of the Federal program.

Comment—Eleven commenters felt that the State of Louisiana lacks the commitment to responsibly operate the Federal hazardous waste program. This opinion was based on the past performance of the State in the air, water and hazardous waste programs.

Response—The basis for EPA's decision to authorize a State's hazardous waste program for Phase I is not past effectiveness but substantial equivalence with the Federal program. EPA had suggested, in its proposed regulations on approving state programs, that past performance or track record be used as a criteria for approval. That proposal was deleted from the final regulations governing the interim authorization approval process. EPA has taken the position that the approval decision must be primarily concerned that the program perform in an effective and comprehensive manner in the future.

Accordingly, whatever limitations or problems existed with Louisiana environmental programs in the past, EPA considers the following future indicators of primary importance: (1) The Department of Natural Resources (DNR) now operates under comprehensive new legislation in the hazardous waste management program; (2) Regulations and policies implementing this new legislation have been passed and are substantially equivalent to the RCRA Phase I regulations; (3) The solid and hazardous waste, air, water and nuclear environmental programs were reorganized from their respective departments into one department under one office which should improve program administration, consistency and coordination of these environmental programs. Moreover, the DNR has begun to enforce its state regulations as evidenced by commencement of some administrative permit adjudications and enforcement actions. Notwithstanding the testimony at the October 23, 1980, public hearing which questioned the adequacy of the state program in times past, EPA believes that in the overall, DNR is making progress in overcoming those alleged deficiencies to the extent that DNR should be given an opportunity to operate what is otherwise a substantially equivalent program. EPA also recognizes that Phase I authorization is a test-run which it will evaluate through its oversight role, and can withdraw if the State does not meet its commitments.

Comment—Ten commenters wanted Phase I Interim Authorization denied because the State lacked the ability to adequately enforce a hazardous waste program. Personnel, funding and equipment were cited as reasons for poor enforcement on the part of the Louisiana hazardous waste program.

Response—EPA believes that, while these comments reflect a negative view of the States track record, the State program requirements set forth in the application provide the basis for new commitment to enforce a comprehensive program. Before Act 334 of 1978 and Act 449 of 1979 were passed, Louisiana had very little authority over the disposition of hazardous waste. These statutes and their regulations provide the State of Louisiana with comprehensive authority to enforce its hazardous waste program. The reorganization of the State's environmental programs into one office under one department should improve the administration of this program and enhance its capacity to conduct a rigorous enforcement program.

The Louisiana program is now funded, in part, by fees collected for hazardous waste facility permits. This has enabled the State program to offer competitive salaries to environmental program staff and has vastly improved the quality of personnel in the State program. DNR should also be able to upgrade its equipment inventory as well under the new funding system.

EPA, through oversight responsibility must monitor the State's enforcement program. The MOA and the RCRA grant-in-aid entered into by the State and EPA, establish the procedure for oversight and the terms of the State's accountability for compliance monitoring and enforcement. These agreements enable EPA to track the State's enforcement process and determine if the State is meeting specific commitments which it agreed to accomplish. The RCRA grant-in-aid awarded to the Department of Natural Resources will function like a contract between the State and EPA. EPA agrees to pay the State if the State performs certain program activities. If through EPA's oversight and grant review it determines that the State is not meeting its commitments funding and authorization can be withdrawn. Also, under RCRA Section 3008(a)(2) EPA can commence enforcement actions for violations of RCRA in authorized States

Comment—Ten commenters opposed the granting of Phase I Interim Authorization to the State because the State program lacks funding and personnel to adequately operate the program.

Response—EPA has required a State applying for interim authorization to demonstrate the amount of funding and staff available for operation of the program. This information is a part of the State application and is a major factor to be evaluated by EPA in reaching a decision whether or not to authorize the State program. In order to apply a uniform national standard for evaluating the adequacy of State funds committed to hazardous waste management, EPA has published in its "Guidance Manual on Interim Authorization" an estimate of the staffing requirements necessary for each state program to operate a federal program in their State. These staffing projections were based on the size of the State and the amount of waste generated in the State. They were also divided into separate projections for Phase I programs and Phase II programs.

Under EPA's criteria for adequate staffing it is estimated that Louisiana should have 24 positions to operate a Phase I program. EPA believes that the State of Louisiana has demonstrated in its application that it will have adequate funds to pay for more staff than EPA requires for Phase I program management. The Office of Environmental Affairs has allocated 32 full time positions for the hazardous waste program. Of the positions allocated, 28 positions are filled and 4 are currently vacant. In addition, the Department of Public Safety provides 12 full time positions to their hazardous waste unit which were established by this Department especially to deal with hazardous waste transportation.

The Office of Conservation and the Department of Agriculture have also designated staff to conduct their part of the hazardous waste management program. The total number of positions is in excess of EPA's staffing projections for the State program. Consequently EPA is constrained to find the program inadequately staffed for Phase I authorization. However, it will be EPA's responsibility in the exercise of its oversight role, to insure after the State is authorized that it maintains adequate funding and staff to operate the program according to the commitments set out in the application.

Comment—Five commenters opposed authorization and stated their preference for EPA to retain control of the hazardous waste management program in the State of Louisiana.

Response—EPA believes the Louisiana program is substantially equivalent to the Phase I Federal program. Without a demonstration that information supplied by the State in its application fails to meet the test of substantial equivalence, EPA has no discretion to deny Phase I authorization to the State solely because there is a preference for Federal, as opposed to State, management of the program. Consequently, EPA believes that all else being equal, if the State meets the test for authorization EPA must authorize and cannot opt to manage the program within the State itself.

Notwithstanding the granting of Interim Authorization, EPA retains a substantial degree of control. First, the MOA, which is part of Interim authorization expressly reserves to EPA the right to inspect any hazardous waste management facility, generator or transporter which it believes is not in compliance with RCRA, the right to act unilaterally where it believes there is an imminent and substantial endangerment to health and the environment and other regulatory options. Also, there is statutory authority (See Sec. 3006(e), RCRA) for withdrawal of Interim Authorization where EPA finds the program is not being administered in accordance with the substantial equivalence standard.

Comment—A number of commenters stated a preference for delegation of the hazardous waste program to the State, but felt that the Federal Government should retain control of the program until the State has acquired more experience in operating environmental programs.

Response—EPA believes that it cannot withhold Phase I Authorization because of lack of experience of the State agency. One of the Congressional purposes in enacting the two stage authorization process in RCRA was to allow states, whose programs were not equivalent to the RCRA program, to begin operating a federally-sanctioned program while making necessary changes to reach equivalence with the Federal program. While the Office of Environmental Affairs is new to the State of Louisiana, comprehensive hazardous waste management programs are new or just in the process of being organized in almost all the States in the nation. Louisiana has more experience in this area than most States. Because this lack of experience is the state of the art in the nation, Congress decided that hazardous waste management experience was not to be a criteria upon which EPA could base a decision to grant or deny interim authorization.

Comment—Five commenters stated that Louisiana's small generator exemption was a burden and expense to the regulated community. They requested that Louisiana adopt a specific quantity for small generator exemptions. The State's ability to deal with exemptions on a case by case basis was questioned. The commenters felt that this process would cause a drain on the State's funds and affect the overall function of the hazardous waste program.

Response—EPA has the power to grant Phase I authorization to State hazardous waste management programs only to the extent that the State program is equivalent or substantially equivalent to the Federal program (See 40 CFR 123.121(g)(2)). Under RCRA Section 3009 a state is not preempted from exercising its authority to require standards which are more stringent than the Federal requirements. EPA does not have the authority to limit a State in its authority to mandate more stringent standards. Only the state legislative and administrative process can address issues arising out of such standards. Consequently, issues affecting small generators, who would be exempted from regulation under the federal program, but not exempt from the State program, must be addressed through appropriate State authorities.

Comment—Five commenters challenged Louisiana's use of two divergent extraction procedure toxicity tests, the Federal EP toxicity test and the state test which incorporates the Sax Manual. The commenters maintained that the use of two different test procedures was confusing and although it was designed to provide more stringent standards than the federal EP toxicity standard, in reality the requirement of both methods is repetitious, excessive, and unnecessary. In addition, the Sax Manual itself was challenged for being neither quantitative nor qualitative enough to be used as a reasonable test of hazardous toxicity.

Response—The use of the EP toxicity test to determine hazardous toxicity is an element of the Louisiana definition which is essential to the finding that the State's universe of regulated wastes is substantially equivalent to that of the Federal program. The Sax Manual is not considered substantially equivalent to the EP toxicity test. Accordingly, the two procedures may not be used in the alternative and the Sax Manual is not approved as a part of the Louisiana Phase I, Interim Authorization program. However, to the extent that use of the Sax Manual *in addition to* the EP toxicity test might allow regulation of toxic wastes not covered by the Federal program, its use is considered to provide a more stringent hazardous toxicity standard.

While EPA would not authorize the Louisiana program to include this more stringent standard (40 CFR 123.121(g)(1)), neither does EPA have the authority to limit the State in its use. (For further details on this point see discussion under previous comments).

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Comment—One commenter stated that the use of two toxicity extraction procedures tests and the use of both EPA and Louisiana hazardous waste lists was inconsistent with federal program requirements. As such it was sufficient basis for disapproval of the Louisiana program. The commenter cited 40 CFR 123.128(a) and 40 CFR 123.32 as authority for his recommendation to deny authorization.

Response—(See discussion to the previous two comments for authority of the State under RCRA to establish more restrictive program requirements).

40 CFR 123.32 cited by the commenter is a requirement specific to final authorization and does not apply to the Louisiana application for Phase I authorization under consideration at this time. Regulations specifically outline interim authorization requirements for Phase I and Phase II in 40 CFR Part 123, Subpart F. 40 CFR 123.128(a) requires that a State program can be authorized only if it controls a universe of hazardous waste which is nearly identical to that of the Federal program. This requirement is established as a minimum standard at this time. Any state program requirement which exceeds a federal program requirement is determined, at this point in the state authorization process, as solely within the authority of the State to require and enforce. The commenter's point is well-taken when considering the Louisiana application for final authorization at some future time. At that time the State and EPA will have to review all State requirements not only for equivalence with their federal counterparts but also for consistency with the total federal regulatory scheme.

Comment—One commenter stated that Louisiana hazardous waste transportation regulations were not stringent enough and should forbid transportation of hazardous waste by rail, highway, or over water.

Response—An absolute prohibition against the transportation of hazardous waste over water, rail or highway is neither required by the Federal program nor required for finding that a State program is substantially equivalent to the Phase I RCRA program. In fact, such a prohibition would render it impossible to move most hazardous waste to sites where it can be properly disposed, treated, or stored.

EPA's regulatory program (and those of states having substantially equivalent schemes) is believed to strike a balance between the dangers of human health and the environment attached to the transport of hazardous waste and the dangers of not transporting the waste to appropriate, regulated facilities designed to achieve safe disposal.

Comment—Four commenters objected to the State agency's policy of constraints on public participation in the agency's enforcement process.

Response—These comments were based upon past experience by citizens who wished to intervene in agency enforcement proceedings and not with the new provisions of the State application on this subject. EPA believes that the assurances provided by the State, in its application, in compliance with 40 CFR 123.128(f)(2)(ii)(b), add important procedures to enhance the rights of the public to participate in the State enforcement process. These assurances as they are administered by the State, should meet some of the objections raised by the commenters. EPA oversight should help to assure that these program requirements are met. EPA invites the public to comment on the State's performance on this and other state program requirements, to assist in the required semi-annual state program evaluation.

Comment—The Louisiana Department of Agriculture's legal authority to regulate waste pesticides and pesticide containers and the authority of the Department of Natural Resources to delegate its authority over waste pesticides and pesticide containers were challenged. The commenter also stated that the Attorney General's explanation did not clearly demonstrate this authority.

Response—The Attorney General of Louisiana has certified to EPA in the State application that the laws of the State of Louisiana provide adequate authority to carry out the program set forth in the "Program Description." Part of the Program Description includes the detailed coordination between DNR and the Department of Agriculture as it relates to the disposal of waste pesticides. Sections 1623 A, B, C, of the Louisiana Pesticide Control Act give the Agriculture Commission extensive powers over pesticide management. Additionally, Sections 1603 and 1602(1) of the Louisiana Pesticide Law give the commissioner additional powers over the conditions and restrictions governing the use and handling of pesticides. Consequently, EPA relies on the opinion of the Attorney General of Louisiana that DNR has the authority to coordinate the regulation of waste pesticides with the Department of Agriculture as set forth in its regulations.

Comment—Three commenters objected to permits which the State might issue if the State were granted Phase I Interim Authorization.

Response—Phase I Interim Authorization does not include the issuance of RCRA permits. The State may choose to continue its permit issuance procedures for existing facilities but new facilities cannot begin operation until a RCRA permit is obtained. This will not occur until the State is authorized for Phase II; only then will they have the authority to issue RCRA permits.

Comment—One commenter made specific reference to the Agency's neglect in not following the proper regulations to provide adequate public notice of the public hearing held on October 23, 1980. The commenter cited three reasons to support the allegation of improper public notice: (1) Failure by EPA to comply with 40 CFR 25.1–25.5 in publishing the notice for the Phase I Interim Authorization Hearing, (2) Improper interpretation by EPA that 40 CFR 123 notice requirements negated 40 CFR 25 notice requirements, and (3) Failure by EPA to meet the notice requirements of 40 CFR 123.

Response—EPA believes it complied with the applicable regulations in noticing the hearing on Louisiana's application for Interim Authorization. EPA regulations (40 CFR Part 25), contain general public participation requirements for RCRA, as well as other environmental legislation. The Preamble to Part 25 defers public participation requirements for RCRA until publication of the Consolidated Permit Regulations, 40 CFR Parts 122–123. These regulations are now effective and Section 122.1(e), *Public Participation* states "This rule establishes the requirements for public participation in EPA and State permit issuance, enforcement, and related variance proceedings; *and in the approval of State RCRA*, UIC, NPDES, and 404 programs. *These requirements carry out the purposes of the public participation requirements of 40 CFR Part 25 (Public Participation), and supersede the requirements of that Part as they apply to actions covered under Parts 122, 123, and 124.*" (emphasis added) (See following comment regarding proper notice of hearing for a discussion of item 3.)

Comment—Eleven commenters stated they had not received adequate or proper notice of the time, place, and purpose of the hearing. In addition, six of the nineteen commenters requested that a second hearing be held and properly noticed to allow the participants to prepare presentations for a second hearing.

Response—EPA was required to give thirty (30) days notice of the October 23, 1980, public hearing in three ways. These are (1) by publication in the

Federal Register, which was done, (2) by publication in enough of the largest newspapers in the state to attract statewide attention, which was done, and (3) by mailing to the persons on the state agency mailing list and to other persons believed to be interested.

The third requirement was complied with in the following ways. EPA mailed a timely notice of the hearing to in excess of 5,000 persons on its mailing lists, acting in the belief that a current state agency mailing list was included therein. It turns out that a small proportion of those on the most recent state list are included in the list to whom EPA sent notice.

In addition to the foregoing notices, the DNR mailed to all on the state mailing list approximately sixteen days prior to the hearing, its Hazardous Waste Bulletin which contained a notice of the Interim Authorization hearing. This notice contained the information required in the EPA regulations (40 CFR 123.135(a)).

Comment—Several commenters stated that the substance of the application was not available in a prepared summary and available for the public to use in preparation for the hearing. They stated that this placed them at a disadvantage and compromised their ability to comment on the State application.

Response—EPA's regulations governing procedures for approval of a State's application require notice of receipt of the application and the availability of it for inspection and copying (See 40 CFR 123.135(a)). There is no requirement to summarize the application. There are many good reasons for the absence of such a requirement. This could result in public comment, not on the state's application but to the summary. This would erode the purpose of the public comment process which is public involvement in the evaluation of the application.

The length and complexity of the Louisiana application would require that a summary would necessarily be subjective. While many might agree that such a summary would be reasonable, undoubtedly some would not. No attempt to summarize the application would be satisfactory to all. Therefore, EPA has concluded that it is in the best interest of the public comment process not to summarize the application.

The State of Louisiana is hereby granted interim authorization to operate the RCRA Subtitle C hazardous waste management program in accordance with section 3006(c) of RCRA and implementing regulations found in 40 CFR 123 Subpart F.

Dated: December 19, 1980.

Adlene Harrison,

Regional Administrator.

[FR Doc. 80-39481 Filed 12-18-80; 8:45 am]

BILLING CODE 6560-30-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[FCC 80-706]

Stern Electronics, Inc.; Sega Enterprises, Inc.; Atari Inc.; Petitions to Stay the January 1, 1981 Date When Coin Operated Electronic Games Require Certification

AGENCY: Federal Communications Commission.

ACTION: Stay of compliance date for final rule.

SUMMARY: In response to several petitions from manufacturers of coin operated electronic games, the Commission stayed the certification for requirements for these games pending resolution of two petitions for rulemaking to reclassify these games as Class A computing devices. Coin operated games manufactured after January 1, 1981 must carry the interim label warning that they have not been tested and may cause interference to radio and TV reception.

EFFECTIVE DATE: December 4, 1980. The date when coin-operated electronic games must be certified is stayed from January 1, 1980 until October 1, 1981.

FOR FURTHER INFORMATION CONTACT: Herman Garlan or Sydney Bradfield, Office of Science and Technology (202-653-8121 or 202-653-8131).

SUPPLEMENTARY INFORMATION:

In the matter of Stern Electronics Inc., Sega Enterprises Inc., Atari Inc.: Petitions to stay the January 1, 1981 date when coin operated electronic games require certification (§ 15.834(a)).

Order Staying the January 1, 1981 Compliance Date for Coin Operated Electronic Games

Adopted: December 4, 1980

Released: December 10, 1980.

1. The Commission has before it the above mentioned petitions requesting a stay of the date for which certification is required for coin-operated electronic games.

2. Electronic games are considered Class B computing devices under the Commission's new rules in Part 15 which are designed to control the interference potential of digital electronic equipment (defined as computing devices) to radio communications. The rules were adopted on September 19, 1979 and released on October 11, 1979.[1] The effective date of the rules was changed and certain other non-technical changes were made to the rules on reconsideration. The revised rules were adopted on March 27, 1980 and released on April 11, 1980.[2]

3. Under these rules for computing devices, the Commission established two classes of computing devices, which are related to how the equipment is marketed. Equipment marketed for use in a commercial, business or industrial environment is defined as a Class A device. Equipment marketed for use in a residential environment, notwithstanding use in a business environment, is a Class B device. Separate radiated and conducted limits were adopted for each class of equipment. The rules also specify the equipment authorization procedure to be used to determine compliance. Finally, they provide a labelling procedure to make the purchaser aware of whether the device complies with our rules and the interference potential of the equipment.

4. Among other things, these rules specifically classify electronic games as Class B computing equipment (§ 15.4(p)) and require that such electronic games manufactured after January 1, 1981 be certificated by the Commission (§ 15.834(a)).[3]

The Stern Petition to Stay

5. On September 12, 1980, Stern Electronics Inc. by its attorneys, filed a *Petition for Extension of Effective Date* in § 15.834(a) from January 1, 1981 to October 1, 1981 for coin operated electronic games. It was put on public notice on September 24, 1980. Stern asks for this extension to allow time to resolve the uncertainty concerning the applicability of the computer rules to coin operated electronic games. Moreover, Stern points out that the Commission has not yet specified the measurement procedure to be used to determine compliance. In this connection neither Stern nor other manufacturers of coin operated games have had sufficient equipment or facilities to ensure compliance. Finally,

[1] First Report and Order in Docket 20780, adopted September 18, 1979, released October 11, 1979, 44 FR 59530, October 18, 1979

[2] Order Granting in Part Reconsideration in Docket 20780, adopted March 27, 1980, released April 9, 1980, 45 FR 24154, April 9, 1980.

[3] Certification is one of the procedures used in the Commission's equipment authorization program which is described in Part 2 Subparts I, J, K and L of our rules (47 CFR Part 2 Subpart I, J, K and L).

Constant Controls Forecast Summary—Schedule A.1

General

* * * * *

Line 03—Sustaining Capital. Enter for each year from 1980 through 1986, the amounts reported on Schedule C.2., Line 07.

* * * * *

Line 05—Adjusted Cash Flow Projections. Enter for each year from 1980 through 1986 the difference between amounts reported on Line 01 and 04.

* * * * *

Line 06—Discount Factors. Enter the discount factor for each year from 1980 through 1986 corresponding to the weighted cost of capital as furnished by EPA or estimated by the applicant pursuant to the instructions under section 2.5.

Line 07—Present Value of Future Cash Flows. Enter for each year from 1980 through 1986 the product of Line 05 times Line 06.

Line 08—Terminal Value. Enter under the total column, the estimated terminal value of the smelter. This shall be computed by capitalizing the forecasted net income (Schedule C.1, Line 25) for operations in 1986 by the historical cost of capital as furnished by EPA. Specifically, multiply net income for the last year-by-year forecast by 9.2.

* * * * *

Line 11—Present Value of Future Cash Flows. Enter the sum of amounts previously reported on Line 07 for 1980 through 1986.

Appendix A—[Amended]

2. By revising the first sentence of 40 CFR Part 57, Appendix A, Schedule C.1, line 18 (published at 45 FR 42561, col. 2) to read as follows:

Line 18—Pollution Control Facility Depreciation and Amortization. Report the estimates of depreciation and amortization charges associated with the smelter's existing investment in constant controls pollution control equipment and facilities.

* * * * *

[FR Doc. 80-40306 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-33-M

40 CFR Part 60

[AD-FRL 1710-2]

Standards of Performance for New Stati nary Sources; Revised Reference Methods 13A and 13B; Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; corrections.

SUMMARY: When the final revisions to Appendix A Methods 13(a) and 13(b) were published in the June 20, 1980 Federal Register (45 FR 41852), certain inadvertent and typographical errors were made. The purpose of this action is to correct these errors.

EFFECTIVE DATE: December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Shigehara, Emission Measurement Branch (MD-19), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2237.

SUPPLEMENTARY INFORMATION: The following corrections to Appendix A should be made in the Federal Register document 80-18658, Friday, June 20, 1980, appearing on pages 41855, 41857, and 41858:

1. *Page 41855:* a. First column, paragraph 6.1.1.2, third line: Add a comma after "paper," as * * * "[e.g., paper, organic membrane). * * *"

b. Second column, paragraph 7.1, third line: Change "text" to "test."

c. Second column, paragraph 7.2, thirteenth line: Add "s" to "backward."

2. *Page 41857:* a. Second column, in paragraph 9.1 ninth line from top: Change the word "collected" in the definition of V_d to "as diluted." The definition of V_d should read, "Volume of distillate as diluted, ml."

b. Third column, in paragraph 9.1 footnote at bottom: Add "U.S." before "Environmental Protection Agency."

3. *Page 41858:* a. First column, in paragraph 7.2.1 sixth line from bottom: Change "termperature" to "temperature."

b. Second column, in paragraph 7.2.1 sixth line from top: Add "deionized" after "with".

c. Second column, in paragraph 7.2.1 Equation 13B-1: Change "T_t" to "V_t".

d. Third column, paragraph 9.2, fourth line: Change Fluroide" to "Fluoride."

Dated: December 16, 1980.

David G. Hawkins,

Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 80-39770 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-26-M

40 CFR Part 123

[SW-6-FRL 1711-7]

Texas: Phase I Interim Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency

ACTION: Approval of State program.

SUMMARY: The purpose of this notice is to grant Phase I Interim Authorization to the State of Texas for its hazardous waste management program.

In the May 19, 1980, Federal Register (45 FR 33063), the Environmental Protection Agency (EPA) promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), to protect human health and the environment from the improper management of hazardous wastes. Included in these regulations, which become effective 6 months after promulgation, were provisions for a transitional stage in which states could be granted interim program authorization. The interim authorization program will be implemented in two phases corresponding to the two stages in which an underlying Federal program will take effect.

On October 6, 1980, the State of Texas applied to EPA for Phase I Interim Authorization of its hazardous waste management program. On October 16, 1980, EPA issued in the Federal Register (45 FR 63302) a notice of the public comment period on the State's application. All comments received during this comment period have been noted and considered, as discussed below.

The State of Texas is hereby granted interim authorization to operate the RCRA Subtitle C hazardous waste management program in accordance with section 3006(c) of RCRA and implementing regulations found in 40 CFR Part 123 Subpart F.

EFFECTIVE DATE: December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Beverly Foster, Solid Waste Branch, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270 (214) 767-2645.

SUPPLEMENTARY INFORMATION: On August 4, 1980 the State of Texas submitted to me its draft application for Phase I Interim Authorization under RCRA. This draft application reflected a hazardous waste management program which was operated by the State of Texas for over 10 years before the RCRA regulations were published in the Federal Register. During our review of the Texas draft application, we realized that the number of problems identified in the Texas program resulted from the fact that it predated the RCRA regulatory scheme for hazardous waste management and simply represented a different approach to regulating this problem. I wish to commend the State of Texas for the enormous effort expended in its final application, which resulted in the reshaping of its program into one which is substantially equivalent to the Federal program. The Texas effort should serve as an example to all of a significant State contribution to the realization of effective National hazardous waste management.

In our comments on the Texas draft application, we identified major problems within each of the required components of a State application for

Phase I Interim Authorization. We indicated that the Program Description lacked sufficient information in the following areas:

(1) Coordination between the Texas Department of Water Resources (TDWR), the Texas Department of Health (TDH), and the Attorney General (AG) in the administration of the State's permit program, enforcement program, and rulemaking process;

(2) Implementation of a program for public participation in the enforcement process;

(3) Procedures to be followed in the management of the State's manifest system and coordination of manifest program management between TDH, TDWR, the AG, the Texas Department of Public Safety (TDPS) and any other agencies participating in the program;

(4) Demonstration of the adequacy of existing and projected resources for Phase I, Phase II, and Final Authorization for each Department following the requirements established in the "Guidance Manual for State Interim Authorization"; and

(5) Declaration of the intention of the State to include or exclude control of disposal of hazardous waste in underground injection wells in the State's application for Phase I Interim Authorization.

Our comments pointed out that the Texas regulations, enacted by TDWR and TDH to detail hazardous waste managment programs did not demonstrate substantial equivalence with the Federal program in the following areas:

(1) Interim status standards for hazardous waste treatment, storage and disposal facilities were neither self-executing against all existing facilities nor sufficiently broad in scope to meet the Federal program standards;

(2) Manifest system requirements did not adequately provide for return of undelivered shipments or for the completion of the manifest tracking cycle by placing responsibility on the facility to send a signed manifest back to the generator; and

(3) The definition of the universe of hazardous waste contained exclusions and classifications which were not "nearly identical" to that of the Federal program.

The AG's Statement did not demonstrate substantial equivalence with the Federal program of the State statutory and regulatory authority in the following areas:

(1) Jurisdiction over a nearly identical universe of hazardous wastes;

(2) Operation of the manifest system;

(3) Standards for transporters of hazardous wastes;

(4) Standards for storage, treatment and disposal facilities;

(5) Public participation in the enforcement process; and

(6) Sharing of State program information with EPA without restriction.

The Memorandum of Agreement (MOA) submitted with the Texas draft application did not meet the requirements of the Region 6 model MOA. The Texas draft MOA was deficient particularly in the areas of compliance monitoring, enforcement and sharing of information with EPA.

The Authorization Plan accompanying the Texas draft application did not meet the requirements of 40 CFR 123.125. It did not sufficiently detail the statutory and regulatory changes which the State must make to qualify for Phase II and Final Authorization. Schedules for drafting, introducing and publishing proposed legislative and regulatory changes were not included. In addition, the plan failed to include a projection of resources which would be available and a plan for obtaining them to meet the requirements for Phase II and Final Authorization.

On October 6, 1980 Texas submitted its final application for Phase I Interim Authorization. The final application evidenced attention to the details of the extensive EPA comments on the draft application. Each of the five major problem areas, identified in the comments on the draft Program Description, were resolved in the final application. Extensive information added to the State's introductory section entitled "State Program Description" set forth mechanisms and procedures for interagency coordination of activities in the areas of enforcement, compliance monitoring, permitting, rulemaking, and operation of the State manifest system. A Memorandum of Understanding among TDH, TDWR, and the AG, addressed the requirements for public participation in enforcement and provided the assurances necessary to satisfy the Federal regulation.

Clarification was provided indicating that Texas would not ask to include control of disposal of hazardous waste in underground injection wells in its Phase I Interim Authorization application. Material was included which detailed existing staff and funds as well as plans and projections for future resource needs. While Texas has complied with EPA's personnel requirements for Phase I by dedicating the positions necessary to operate its program, EPA intends, in its oversight capacity to insure that the State meets its commitments to fill vacancies and maintain a full staff.

The State's final application included amendments to the regulations of TDH and TDWR which eliminated all problems raised by EPA comments on the regulations included in the draft application. The Texas regulatory scheme is now nearly identical to the Federal program for Phase I. Consequently, there is no longer any question of the substantial equivalence of Texas' regulatory control of the universe of hazardous waste, the operations of the manifest system, and the immediate enforceability of interim status standards equivalent in scope to the Federal standards for treatment, storage and disposal facilities.

The Attorney General's Statement submitted as part of the Texas final application incorporated changes in the State's regulations, certified that these regulatory changes were duly adopted and would become effective prior to authorization and included additional clarifying material. These additions resolved all major issues concerning this component of the Texas application. New regulations coupled with clarifying comments satisfied all questions related to the authority of the State to regulate the universe of hazardous waste, manifest system, and interim status standards for hazardous waste facilities in a fashion substantially equivalent to the Federal program.

New material added to the Attorney General's Statement demonstrated Texas' compliance with Federal requirements for public participation in enforcement. Reference was made to the Memorandum of Understanding among TDH, TDWR, and the AG (described above in the Program Description discussion) for the details on how compliance would be achieved. Comments on new State regulations, which deal with the sharing of State program information with EPA, satisfied any concerns that there might be unacceptable restrictions on EPA's access to State program information.

The MOA incorporated almost all of the provisions of the Region 6 model MOA. The major problems which were identified in the comments on the draft MOA were resolved. However, certain limitations on the extent of informal enforcement proceedings before formal action would be required, were not included. While EPA would prefer that this enforcement procedure be established in the MOA, we find that the enforcement procedures set forth in the Program Description generally satisfy this requirement. However, in its oversight capacity, EPA intends to review State enforcement program requirements to determine State compliance and the need for future revision of the MOA.

The Authorization Plan, submitted in the Texas final application, underwent substantial revision. These revisions covered details and schedules for State regulatory and legislative changes necessary for final authorization. Necessary information on resource projections and future budget submissions were also included. With the addition of these new materials no further questions remained on the sufficiency of the State's Authorization Plan.

Responsiveness Summary

On October 16, 1980, I had a notice published in the **Federal Register** inviting the public to offer comments on the Texas Application for Phase I Interim Authorization of its Hazardous Waste Management Program at a public hearing to be conducted by Region 6 on November 18, 1980. This notice also invited the public to submit written comments on the Texas application to Region 6 by November 25, 1980.

Region 6 held the public hearing on the Texas Application for Phase I authorization on the evening of November 18, 1980, in Austin, Texas. Twenty-eight presentations were made. In addition, Region 6 received sixteen written comments on the Texas application before the close of the public comment period on November 25, 1980. Three of the sixteen written comments were submitted as supplements to comments presented at the public hearing. All comments, if they complied with the time constraints of the **Federal Register** notice, whether presented at the hearing or in writing, were reviewed and considered in reaching a decision on the Texas application for Phase I Interim Authorization.

Of the forty-four public comments received by Region 6 (28 at the hearing and 16 in writing) on the Texas application, 38 commenters favored granting the State Phase I authorization, 2 commenters supported granting Phase I authorization with reservation and subject to specific conditions, 1 commenter opposed granting the State Phase I authorization, and 3 commenters neither supported nor opposed authorization. The subject matter of the comments ranged from very general to quite specific. To simplify summary of the comments and their responses, similar comments are grouped together for one response. Where one commenter addressed more than one issue, the summary and response to each issue can be found under the subject matter of the issue rather than by commenter. The summary is presented generally in the order of subjects which received the most comment first and those receiving fewer comments presented last. However, this format is adhered to loosely to permit related comments to be presented in sequence. All comments received by EPA are responded to in the following discussion.

Comment—Twenty-two commenters supported authorization of the Hazardous Waste Management Program in the State of Texas because the burden placed upon the regulated community of functioning under a dual regulatory system was clearly not the intent of RCRA. As a corollary they asserted that if authorization were denied to the State and two systems existed side-by-side, the cost of operating the two programs would be great and would undoubtedly be passed on to the consumer.

Response.—While EPA recognizes that the policy of RCRA Section 3006 favors the authorization of State programs in part to relieve a burden on the regulated community, EPA disagrees with the contention that Congress intended this to be a standard for the granting of interim authorization of a State program. If a State program cannot evidence substantial equivalence to the Federal program then, under RCRA, interim authorization cannot be granted, notwithstanding the burdens placed upon the regulated community. That is not to say, however, that eliminating the burden of a dual regulatory system should not or does not operate as an incentive for the States and EPA alike to help achieve the substantial equivalence of a State program. The incentive to operate a cost-effective national hazardous waste management program, which eliminates expensive dual operations through the participation of the States, should provide an equally strong impetus for States to meet the requirements of interim authorization.

Comment—Twenty-two commenters stated that EPA should grant the State Interim Authorization because Texas has had over ten years of experience in solid waste management. The commenters contended that Texas' long experience has resulted in an excellent record of performance in regulating the storage, transportation, and disposal of hazardous wastes. In addition, the State has provided adequate funds and has developed a highly qualified staff to operate an effective and efficient program. Several of these commenters emphasized their belief that State government rather than the Federal government is the more appropriate jurisdiction to run the hazardous waste management program because it is more sensitive to local needs and is better prepared to identify local problems.

Response—While EPA can and does note the past effectiveness of Texas in conducting an active solid waste management program since the passage of the State Solid Waste Disposal Act of 1969, it cannot use this as the primary basis for granting Phase I authorization. The primary basis for EPA's decision to authorize a State's hazardous waste program for Phase I is not past effectiveness but substantial equivalence with the Federal program. EPA had suggested, in its proposed regulations for evaluating State programs, that past performance or track record be used as a criterion for approval. That proposal was deleted from the final regulations governing the interim authorization approval process because EPA believes that future program effectiveness is more important than track record. While past performance can be considered in support of the decision to grant Phase I authorization, EPA has taken the position that the approval decision must be primarily concerned that the program perform in an effective and comprehensive manner in the future. EPA agrees that Texas has demonstrated the capacity to operate an excellent State program in hazardous waste management. However, EPA's decision to authorize Texas is based first on the substantial equivalence of the Texas program to the Federal program. Texas' past performance bolsters EPA's primary finding. EPA also agrees that if the State meets the standards for State program requirements under RCRA, the appropriate division of labor for effective national hazardous waste management, is for the State to operate the program and for EPA, through its oversight responsibilities, to supervise the State to assure compliance with the laws, regulations and policies of the Federal program.

Comment—Two commenters in the prior comment, while supporting the Texas application, expressed concern that the State program have adequate funding to support the program in the future.

Response—EPA has required a State applying for interim authorization to demonstrate the amount of funding and staff available for operation of the program. This information is a part of the State application and is a major factor to be evaluated by EPA in reaching a decision whether or not to authorize a State program. In order to apply a uniform national standard for evaluating the adequacy of State funds

CCR 000040804

committed to hazardous waste management. EPA has published in its "Guidance Manual on Interim Authorization" an estimate of the staffing requirements necessary for each State program to operate a Federal program in their State. These staffing projections were based on the size of the State and the amount of waste generated in the State. They were also divided into separate projections for Phase I programs and Phase II programs.

Under EPA's criteria for adequate staffing, it is estimated that Texas should have 62 positions to operate a Phase I program. The TDWR, which operates approximately 70% of the State program, has allocated 41 full time positions for hazardous waste management and all of those positions are currently filled. The TDH, which operates approximately 30% of the State program, has allocated 21 full time positions for their municipal hazardous waste program. Of these 21 positions allocated by TDH, 12 positions are filled and TDH is actively recruiting 9 additional staff members. While TDWR and TDH have allocated positions which equal EPA's staffing projections for the State program, only 85% of these positions are now filled. EPA would prefer that all of these positions be filled at this time, however, it is satisfied that the current recruitment efforts of TDH are such that they should be fully staffed within a short time after the program is authorized. Consequently, EPA believes that the State of Texas has demonstrated in its application that it provides funds sufficient to meet EPA's staffing requirements for Phase I program management. Nevertheless, it will be EPA's responsibility, in the exercise of its oversight role, to insure, after authorization, that Texas maintains adequate funding and staff to operate the program according to the commitments made in the application.

Comment—Twelve commenters endorsed State authorization because they found the Texas' Hazardous Waste Management Program set forth in the State's application for Phase I Interim Authorization to be substantially equivalent to the Federal Program under RCRA and the regulations published in 40 CFR 123, Subpart F.

Response—EPA agrees with this assessment of the Texas application and the standard it must apply under RCRA and 40 CFR 123 Subpart F in evaluating Phase I authorization. RCRA Section 3006(c) states "The Administrator shall, if the evidence submitted (in a State application) shows the existing State program to be substantially equivalent to the Federal program under this subtitle, grant interim authorization to the State to carry out such program in lieu of the Federal program. . . ." The intent of Congress as manifested in this section was twofold: First Congress wished to maximize State participation in the Federal hazardous waste program. Second, it wished to allow the States a period of time to develop a program which was equivalent and consistent with the Federal program. Consequently, Congress created a unique status of temporary authorization which permits a State to operate the Federal program while at the same time the State is furthering the development of that program for Final Authorization.

Nevertheless, to receive interim authorization, a State must demonstrate the "substantial equivalence" of its program to the Federal program. Once a State has demonstrated substantial equivalence "the Administrator shall grant interim authorization", applying this standard, as elaborated in 40 CFR Part 123 Subpart F. EPA has concluded that Texas has met the test of substantial equivalence and should receive Phase I Interim Authorization.

Comment—One commenter supported State authorization with one reservation because he believed the State enforcement record left something to be desired. This commenter stated that, although he found that the Texas Interim Authorization application appeared to be substantially equivalent to the Federal Phase I requirements, he was concerned that Texas lacked the commitment to adequately enforce its regulations.

Response—EPA's primary concern, in evaluating a State's application for Phase I authorization, must be that the State has the authority and capacity to carry out a program which is substantially equivalent to the Federal Program, including the authority and capacity of a State to enforce this program. EPA believes that the Program Description, MOA, and State regulations set forth in the Texas application for Phase I authorization outline a State enforcement program which meets Federal requirements for Phase I authorization. However, EPA believes, that, through its statutory oversight responsibility, it has the obligation to insure that Texas meets the terms set forth in the State's application to actively enforce its regulations.

The MOA and the RCRA grant-in-aid entered into by the State and EPA, establish the procedure for oversight and the terms of the State's accountability for compliance monitoring and enforcement. These agreements enable EPA to track the State's enforcement process and determine if the State is meeting specific commitments which it agreed to accomplish. The RCRA grant-in-aid awarded to the State agencies will function like a contract between the State and EPA. EPA agrees to pay the State if the State performs certain program activities. If through EPA's oversight and grant review it determines that the State is not meeting its commitments, funding and authorization can be withdrawn. Also, under RCRA Section 3008(a)(2) EPA, on its own motion, can commence enforcement actions for violations of RCRA in authorized States.

Comment—One commenter supported the State's attempt to seek authorization of the hazardous waste program, as long as EPA maintained an active oversight role.

Response—Notwithstanding the grant of Phase I Interim Authorization, EPA retains a substantial degree of control of the State program. (See discussion under the previous comment.)

Comment—Three commenters supported Phase I Interim Authorization for Texas but recommended that authorization be conditioned upon the State's providing additional assurances which would resolve problems of coordination between the many agencies which have jurisdiction over some part of hazardous waste management in Texas. One commenter was concerned in particular that the divided jurisdiction among Texas agencies would lead to program gaps and lack of coordination in the areas of (1) oil and gas wastes, (2) State manifest system management, and (3) regulating of municipal facilities which accepted industrial wastes.

Response—EPA agrees with this commenter that clarification of the jurisdiction of Texas State agencies and coordination among these agencies is essential to the effective administration of hazardous waste management in Texas. In its comments on the Texas draft application EPA asked for detailed analysis of the jurisdiction of relevant State agencies and a description of how coordination would be achieved among them. The Texas final application contains a section in the Program Description which sets forth the jurisdictions of these State agencies and the procedures through which they will coordinate management of the State manifest system, the issuance of State permits, the carrying out of State compliance monitoring and enforcement programs, the management of emergency response programs and other aspects of State program administration. The AG's Statement submitted with the State's final application, contains a discussion of the jurisdiction of TDWR and The Texas Railroad Commission in the area of oil and gas wastes. EPA is satisfied that this discussion establishes that the jurisdiction of the Texas Railroad Commission covers areas which are currently excluded from its regulatory authority under 40 CFR Part 261. EPA is equally satisfied that TDWR has jurisdiction over hazardous wastes resulting from the refining of oil which is the equivalent of the jurisdiction required by 40 CFR Part 261. Consequently, EPA finds that for the purposes of Phase I Authorization, the Texas application has adequately provided for coordination between those State agencies with jurisdiction over areas currently covered by the Federal program.

Comment—One commenter recommended that EPA withhold Phase I Interim Authorization because the TDH regulations, which were included as part of the State's application, may not be valid. This commenter suggested that the TDH rules were published in the Texas Register in violation of State procedure and case law.

Response—EPA requires in 40 CFR 123.125 that the Attorney General's Statement, submitted as part of a State's application for Phase I authorization, certify that State regulations authorizing State program requirements which are substantially equivalent to the Federal program are lawfully adopted at the time the Statement is submitted and are in full force and effect at the time the program is authorized. The Attorney General of Texas has so certified the regulations in the State's application. EPA will not challenge that opinion unless it is on its face incorrect. However, if for any reason the Texas regulations are declared to be invalid, EPA can withdraw its Phase I authorization.

Comment—Four commenters expressed grave concern for the proper siting of hazardous waste management facilities in Texas.

Response—EPA agrees that the issue of proper siting for hazardous waste management facilities to prevent health hazards and environmental degradation while ensuring adequate storage, treatment, and disposal capacities is one of the key concerns in the regulatory process. EPA is devoting considerable study to this issue and is encouraging the States to begin planning to ensure proper locations for new facilities. This issue will be addressed when the hazardous waste facility permitting regulations (Phase II) become effective. Because this issue is not a part of the Federal Program requirements at this time, it was not considered in the review of the Texas application for Phase I Interim Authorization. However, it will be subject for review and comment when Texas submits its application for Phase II authorization.

Comment—Two commenters, who supported authorization, anticipated a problem because Texas did not apply for interim authorization of the Underground Injection Control (UIC) Program under RCRA. They stated that if delegation of the UIC Program under the Safe Drinking Water Act (SDWA) is delayed significantly beyond mid-1981, industry may be burdened by a dual regulatory system over underground injection wells.

Response—There will be a dual regulatory program covering hazardous waste injection wells in Texas. Existing wells are subject to EPA interim RCRA standards and also all applicable State standards. After publication of the Phase II RCRA regulations, existing and new hazardous waste injection facilities will be required to obtain RCRA permits in addition to State permits. Texas could, however, apply for EPA authorization over hazardous waste injection facilities in their RCRA Phase II interim authorization application.

Comment—Two commenters supported Phase I Interim Authorization but questioned whether the Texas program could remain consistent with the Federal program as it issues amendments and revisions to the Federal regulations.

Response—Authorized State programs are required to remain in substantial equivalence with the Federal program as it is revised by new regulations. RCRA, 40 CFR Part 123 Subpart A states that "Any approved program which requires revision because of a modification to [Part 123.13] or to 40 CFR Parts 122, 124, 260, 261, 262, 263, 264, 265, or 266 shall be so revised within one year of the date of promulgation of such regulations, unless a State must amend or enact a statute in order to make the required revision in which case such revision shall take place within two years."

Comment—Two commenters questioned authorization of Texas because of the problems which they have encountered with a chemical dump site in their area. They also were dissatisfied with the performance of TDWR and EPA in connection with resolving the problems they believe have been caused by the site.

Response—EPA recognizes the seriousness of problems which were discussed by the commenters. However, EPA cannot deny interim authorization because of past performance of the State program (See discussion above). Nevertheless, EPA believes that the facility standards which have been adopted by Texas and included in its application, as well as additional permit standards which will be published in the future by EPA, will, when followed by the facility and enforced by the State, alleviate the problems described.

Comment—Several commenters stated that the substance of the application was not available in a prepared summary and available for the public to use in preparation for the hearing. They stated that this placed them at a disadvantage and compromised their ability to comment on the State application.

Response—EPA's regulations governing procedures for approval of a State's application require notice of receipt of the application and the availability of it for inspection and copying (See 40 CFR 123.135(a)). There is no requirement to summarize the application. There are many good reasons for the absence of such a requirement. This could result in public comment, not on the State's application but to the summary. This would erode the purpose of the public comment process which is public involvement in the evaluation of the application.

The length and complexity of the Texas application would require that a summary necessarily by subjective. While many might agree that such a summary would be reasonable, undoubtedly some would not. No attempt to summarize the application would be satisfactory to all. Therefore, EPA has concluded that it is in the best interest of the public comment process not to summarize the application.

Comment—Two commenters raised questions on the adequacy of the Texas program to provide for public participation. One commenter asked how the public would be guaranteed that they would have a voice in an authorized State program. The other commenter questioned why there was no provision for public participation in the State's regulations. This commenter also recommended that notices be placed in the Texas Register of State permits issued and EPA's draft evaluation of the State program.

Response—EPA believes that RCRA, the Federal regulations and the Texas application provide for a number of important avenues for public participation in hazardous waste management. Consequently, EPA finds that the Texas program, with its new program commitments, satisfies the Federal requirements in this area.

Under RCRA, Section 7002, any person may commence a civil action on his own behalf against any goverment

CCR 000040806

instrumentality or any person who is alleged to be in violation of permits, regulations, conditions, etc. Also, there is provision to award costs of litigation (including reasonable attorney fees, civil expert witness fees) to any party if the court deems such an award is appropriate. As a result, any person, whether in an authorized or unauthorized State, may sue to enforce compliance with statutory and regulatory standards. There are two caveats: that such an action requires notice before it is commenced, and that it cannot be commenced if EPA or a State is diligently prosecuting the same action. However, if EPA has begun an action then the citizen may intervene as a matter of right.

In addition, to meet EPA requirements for Phase I authorization the Texas application includes provisions for public participation in its enforcement process. These provisions are referred to in the Attorney General's Statement and a Memorandum of Understanding (MOU) among TDWR, TDH and the AG attached to the application. The MOU contains assurances that the parties will provide for public participation in the State enforcement proces by receiving and responding to citizen complaints, not opposing permissive intervention where it is authorized by State law, and by providing notice of a proposed settlement and a 30 day public comment period on proposed settlements of judicial actions begun to enforce State program requirements. EPA oversight should help to assure that these program requirements are met.

In the Memorandum of Agreement (MOA), included in the Texas application, EPA establishes when and how it will conduct mid and end year evaluations of the State program. EPA indicates that it will receive and consider all public comments submitted on State program performance in conjunction with the mid and end year evaluations. Region 6 is currently developing procedures for notice and public involvement in the State program evaluation process. Notwithstanding the lack of formal procedures, EPA invites the public to comment on the State's performance on this and other State program requirements to assist in the exercise of its oversight responsibilities.

Dated: December 24, 1980.

Frances E. Phillips,

Acting Regional Administrator.

[FR Doc. 80-40151 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-30-M

40 CFR Part 180

[PP 9F2197/R283; PH-FRL 1712-1]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Oxyfluorfen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of the herbicide oxyfluorfen [2-chloro-13-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] in or on the raw agricultural commodities almonds, almond hulls, stone fruits [apricots, nectarines, peaches, plums (fresh prunes)], and grapes; and in or on the meat, fat and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep; eggs; and milk at 0.05 part per million (ppm). This regulation was requested by Rohm & Haas Co., Inc. This regulation establishes the maximum permissible levels for residues of oxyfluorfen in or on the above raw agricultural commodities.

EFFECTIVE DATE: Effective on December 24, 1980.

ADDRESS: Written objections may be submitted to the Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-351, 401 M St. SW., Washington, D.C. 20240. (202-755-1397).

SUPPLEMENTARY INFORMATION: EPA issued notices that were published in the Federal Register of September 3, 1980 (45 FR 58497 and 58500) that Rohm & Haas Co. Inc., Independence Mall, West Philadelphia, PA 19105, had filed a petition (PP 9F2197) with the EPA. This petition proposed that tolerances be established for the residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] in or on the raw agricultural commodities almonds, almond hulls, stone fruits [apricots, nectarines, peaches, plums (fresh prunes)], grapes; and in or on the meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep; eggs; and milk at 0.05 ppm. No comments or request for referral to an advisory committee were received in response to this notice of proposed rulemaking.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the proposed tolerances included a rat oral lethal dose (LD_{50}) with an LD_{50} greater than 5.0 grams (g) per kilogram (kg) of body weight (bw); a rat cytogenetic test (negative); a host mediated assay (negative); the Ames test (negative); a rat teratology study with no terata at 1,000 mg/kg of bw (highest dose) and a no-observable-effect level (NOEL) of 100 mg/kg of bw; a three-generation rat reproduction study with a NOEL of 10 ppm; a 26-week progress report of a 2-year dog feeding study; a 90-day rat feeding study with a NOEL of 1,000 ppm; a 24-month rat feeding study (chronic toxicity/oncogenicity) with a NOEL of 40 ppm; and a 20-month mouse feeding study (chronic toxicity/oncogenicity) with a NOEL at 2 ppm.

Based on the mouse chronic feeding study with a NOEL of 2 ppm and a 100-fold safety factor the acceptable daily intake (ADI) for humans is 0.003 mg/kg of bw/day. The maximum permissible intake (MPI) is 0.1800 mg/day for a 60 kg person. No permanent tolerances have been previously established for the pesticide. The proposed tolerances have a theoretical maximal residue contribution (TMRC) of 0.0352 mg/day in a 1.5 kg diet, or 19.57 percent of the MPI.

To reinforce the present findings, the petitioner submitted a complete draft study on a 2-year dog feeding study prior to September 22, 1980 and has agreed to conduct a second teratology study with a nonrodent species.

The nature of the residue of the pesticide is adequately delineated, and an adequate analytical method (a gas chromatographic procedure using an electron capture detector) is available for enforcement purposes.

One of the solvents used in the production of technical oxyfluorfen, perchloroethylene <0.1 percent, has been shown to produce liver tumors in mice. The agency is presently assembling available information pertaining to perchloroethylene, which has wide usage outside of pesticide applications. This review will assess the health significance of perchloroethylene and is not complete at this time. The evidence on tumor production, however, does initiate a presumption against registration pursuant to 40 CFR 162.11(a)(3)(ii) for the proposed uses of oxyfluorfen. After intensive review, the agency has made a preliminary finding that potential benefits associated with the use of oxyfluorfen outweigh risks from perchloroethylene. The benefits of oxyfluorfen will be discussed in a document to be available at a later date.

CCR 000040807

An applicator risk analysis was performed to determine the risk associated with perchloroethylene resulting from applications of oxyfluorfen for all uses proposed. The maximum worst-case risk of tumor development from exposure to perchloroethylene via these uses is calculated to be one incident of tumor development in 10,000,000 applicators. The actual risk may be lower than this theoretical calculation since the actual levels of perchloroethylene in air may be lower than theoretical estimates due to air movement or other climatic factors.

The petitioner produces technical oxyfluorfen containing less than 200 ppm perchloroethylene. Based on the toxicology testing (all tested oxyfluorfen involved included perchloroethylene at less than 0.1 percent), the small risk cited above, and benefit analyses discussed in the position document, the agency has made a preliminary conclusion that the proposed registration of oxyfluorfen containing less than 200 ppm of perchloroethylene will not cause an unreasonable adverse effect on the environment.

The pesticide is considered useful for the purpose for which tolerances are sought, and it is tentatively concluded that the tolerances for oxyfluorfen residues in or on the raw agricultural commodities almonds, almond hulls, grapes, stone fruits, meat byproducts of cattle, goats, hogs, horses, poultry, and sheep; eggs; and milk at 0.05 ppm established by amending 40 CFR Part 180 will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the Federal Register, file written objections with the Hearing Clerk, EPA, Rm. M-3708 (A-110), 401 M St., SW., Washington, 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulations deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. If a hearing is granted, the objections must be legally sufficient to justify the relief sought.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". This proposed rule has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Effective date: December 24, 1980.

(Sec. 408(e) 68 Stat. 514, (21 U.S.C. 346a(e)))

Dated: December 18, 1980.

Robert V. Brown,

Acting Deputy Assistant Administrator for Pesticide Programs.

Therefore, Subpart C of 40 CFR Part 180 is amended by adding a new § 180.381 to read as follows:

§ 180.381 Oxyfluorfen; tolerances for residues.

Tolerances are established for residues of the herbicide oxyfluorfen (2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene) and its metabolites containing the diphenyl ether linkage in or on the following raw agricultural commodities:

Commodity	*Part per million*
Almonds	0.05
Almond hulls	0.05
Grapes	0.05
Cattle, fat	0.05
Cattle, mbyp	0.05
Cattle, meat	0.05
Eggs	0.05
Goat, fat	0.05
Goat, mbyp	0.05
Goat, meat	0.05
Hogs, fat	0.05
Hogs, mbyp	0.05
Hogs, meat	0.05
Horses, fat	0.05
Horses, mbyp	0.05
Horses, meat	0.05
Milk	0.05
Poultry, fat	0.05
Poultry, mbyp	0.05
Poultry, meat	0.05
Sheep, fat	0.05
Sheep, mbyp	0.05
Sheep, meat	0.05
Stone fruits [apricots, nectarines, peaches, plums, (fresh prunes)]	0.05

[FR Doc. 80-40118 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-32-M

40 CFR Parts 262 and 263

[SW FRL 1701-2]

Availability of Provisional EPA Identification Numbers

AGENCY: Environmental Protection Agency.

ACTION: Rule-related notice.

SUMMARY: The Environmental Protection Agency (EPA) has established a procedure for rapid issuance of EPA identification numbers to hazardous waste generators and transporters during spills and other unanticipated events. Hazardous waste generators and transporters who did not obtain EPA identification numbers through standard procedures may, during emergencies and other unusual circumstances, need to obtain them quickly if it is necessary to transport hazardous waste off-site. EPA is taking this action to provide a mechanism for EPA Regional Offices to rapidly issue identification numbers in such instances. The intended effect of this action is to streamline the transport of hazardous waste to authorized hazardous waste management facilities by reducing procedural delays.

FOR FURTHER INFORMATION CONTACT: For general information on this notice contact Rolf P. Hill or Amy Mills, Office of Solid Waste, WH-563, U.S. Environmental Protection Agency, Washington, D.C. 20460 (202) 755-9150.

For information on implementation of the procedure described in this notice, contact EPA regional office listed below:

Region I—Business hrs.: (617) 223-0240 or (617) 223-0241; Non-business hrs., emergencies only: (617) 223-7265

Region II—All hrs.: (212) 264-0503

Region III—Business hrs.: Shirley Bulkin, (215) 597-4269; Non-business hrs., emergencies only: (215) 597-9898

Region IV—All hrs.: (404) 881-4062

Region V—Business hrs.: Y. J. Kim, (312) 353-2917; Non-business hrs., emergencies only: (312) 353-2318

Region VI—All hrs.: Fred Woods (214) 767-2720

Region VII—All hrs.: (816) 374-3778

Region VIII—Business hrs.: Jim Rakers, (303) 837-6258; Non-business hrs., emergencies only: (303) 837-3880

Region IX—Business hrs.: Bill Wilson, (415) 556-1407; Nonbusiness hrs., emergencies only: (415) 556-6254

Region X—Business hrs.: (206) 442-1260

SUPPLEMENTARY INFORMATION: 40 CFR 262.12 and 263.11 of the hazardous waste management regulations promulgated pursuant to the Resource Conservation and Recovery Act (RCRA), require generators and transporters of hazardous waste to have EPA identification numbers. Each shipment of hazardous waste must be accompanied by a manifest which includes, among other information, the EPA identification numbers of the generator and each transporter. A generator or transporter who did not obtain an EPA identification number during the notification period can obtain one by applying on EPA Form 8700-12. In the event of a spill or other unanticipated incident, however, a person may need to obtain a number very quickly. For instance, if a person were to *become* a hazardous waste generator or transporter as the result of a spill of hazardous waste, and the EPA identification number and manifest waiver provision of § 263.30(b) were not applied, he would need a number before ansporting the waste off-site. In such ses, obtaining, filling out, and submitting Form 8700-12, and then waiting for Agency action on it would be too time-consuming. In order to avoid this unnecessary delay in issuing EPA identification numbers which could cause public or environmental problems, EPA has established a special procedure for rapid issuance of these numbers. EPA Regional Offices will issue provisional identification numbers to generators and transporters during emergencies or other unusual circumstances when necessary for rapid transportation of hazardous waste to an authorized hazardous waste management facility. A generator or transporter involved in such circumstances may telephone his Regional Office for a provisional identification number. The Regional Office will issue a provisional number orally or in writing, and may condition the use or duration of that number. Applicants who receive provisional numbers will be mailed a blank Form 8700-12 which must be completed and returned to EPA within ten calendar days. The Agency may subsequently issue a final EPA identification number to these applicants.

Dated: December 9, 1980.

uglas M. Costle,

Administrator.

[FR Doc. 80-40176 Filed 12-23-80 8:45 am]

BILLING CODE 6560-36-M

DEPARTMENT OF THE INTERIOR

Bureau f Land Management

43 CFR Public Land Order 5790

[CA-3648]

California; Partial Revocation of Reclamation Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This action will restore 70.77 acres of public lands to operation of the public land laws, including the mining laws. An additional 20.25 acres are privately owned and not subject to disposition under the public land laws. This order partially revokes a Water and Power Resources Service (formerly the Bureau of Reclamation) order which withdrew lands for the proposed Central Valley Project.

EFFECTIVE DATE: January 20, 1981.

FURTHER INFORMATION CONTACT: rie M. Getsman, California State Office, 916-484-4431.

By virtue of the authority contained in Section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751 (43 U.S.C. 1714), it is ordered as follows:

1. Departmental Order of July 7, 1938, withdrawing lands for the Central Valley Project is hereby revoked so far as it affects the following lands:

Mount Diablo Meridian

T. 33 N., R. 4 W.

Sec. 30, Lot 1 and SE¼NW¼.

The area aggregates approximately 91.02 acres in Shasta County.

2. Of the lands described in paragraph 1, 20.25 acres, located in the SE¼NW¼, are privately owned and not subject to disposition under the public land laws.

3. At 10 a.m., on January 20, 1981, the public lands shall be open for operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. All valid applications received at or prior to 10 a.m., on January 20, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

4. The public lands will open to location under the United States mining laws at 10 a.m., on January 20, 1981. They have been open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands shall be addressed to the Bureau of Land Management, U.S. Department of the Interior, Room E-2841, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

Guy R. Martin,

Assistant Secretary of the Interior.

December 15, 1980.

[FR Doc. 80-40294 Filed 12-23-80; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5792

[R-1169]

California; Revocation of Air Navigation Site Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will restore 40 acres of public lands to operation of the public land laws, including the mining and mineral leasing laws.

EFFECTIVE DATE: January 24, 1981.

FOR FURTHER INFORMATION CONTACT: Marie M. Getsman, California State Office 916-484-4431.

By virtue of the authority contained in Section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The departmental order of April 7, 1933, withdrawing the following described land as Air Navigation Site No. 84, is hereby revoked:

San Bernardino Meridian

T. 7 N., R. 6 W.,

Sec. 20, S½SE¼NE¼ and S½SW¼NE¼.

Containing 40 acres in San Bernardino County.

2. At 10 a.m. on January 24, 1981, the land shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on January 24, 1981, shall be considered simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on January 24, 1981, the lands will be open to location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Bureau of Land Management, Room E-2841, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

Guy R. Martin,

Assistant Secretary of the Interior.

December 18, 1980.

[FR Doc. 80-40295 Filed 12-23-80; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5793

[M 44591 SD]

South Dakota; Withdrawal for National Forest Electronic Site

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 25 acres of national forest lands from mineral location and entry and reserves them for the protection of the Terry Peak Electronic Site.

EFFECTIVE DATE: December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Edgar D. Stark, Montana State Office, 406-657-6291.

By virtue of the authority contained in Section 204(a) of the Federal land Policy and Management Act of October 21, 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described national forest lands are hereby withdrawn from