mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's proposed rule would not significantly or uniquely affect the communities of Indian tribal governments. EPA is proposing disapproval of a State rule revision, which will have no impact on the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because EPA's proposed disapproval of the State request under section 110 and subchapter I, part D of the Clean Air Act, would not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements would remain in place after this disapproval. Federal disapproval of the State submittal would not affect State-enforceability. Moreover, EPA's disapproval of the submittal would not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the disapproval action being proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. The proposed disapproval would not change existing requirements and would include no Federal mandate. If EPA were to disapprove the State's SIP submittal, pre-existing requirements would remain in place and State enforceability of the submittal would be unaffected. The action would impose no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, would result from this proposed action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this proposed action. Today's proposed action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 30, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 99-26200 Filed 10-6-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 264

[FRL-6452-9]

RIN 2050-AB80

Corrective Action for Solid Waste Management Units at Hazardous Waste Management Facilities

AGENCY: Environmental Protection Agency.

ACTION: Partial withdrawal of rulemaking proposal.

SUMMARY: The Environmental Protection Agency (EPA) is announcing our decision to withdraw most provisions of the Notice of Proposed Rulemaking (NPRM) for corrective action for solid waste management units (SWMUs) at hazardous waste management facilities (also known as the 1990 Subpart S proposal) published on July 27, 1990. The only exceptions to this decision relate to two jurisdictional issues and those elements of the proposed rule that were promulgated as a final rule on February 16, 1993. The jurisdictional issues relate to the definition of "facility" for corrective action purposes and the question of who is responsible for corrective action when there is a transfer of facility property. We plan to withdraw most of the proposed rule because we have determined that such regulations are not necessary to carry out the Agency's duties under sections 3004(u) and (v). Additionally, attempting to promulgate a comprehensive set of RCRA regulations at this time could unnecessarily disrupt the 33 State programs already authorized to carry out the Corrective Action Program in lieu of EPA, as well as the additional State programs currently undergoing review for authorization. This decision will end uncertainty related to this rulemaking for State regulators and owners and operators of hazardous waste management facilities.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F-1999-CASW-FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that you make an appointment by calling (703) 603-9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. (See the Supplementary Information section for information on accessing them.)

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424-9346 or TDD (800) 553-7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412-9810 or TDD (703) 412-3323. For more detailed information on specific aspects of this action, contact Barbara Foster, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 (703) 308-7057, e-mail address: foster.barbara@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The index and the following supporting materials are available on the Internet: (1) Letter from Mark Gordon, Chair, ASTSWMO Corrective Action and Permitting Task Force, to Michael Shapiro, January 9, 1997; (2) Memorandum from Steven A. Herman and Elliott P. Laws to RCRA/CERCLA National Policy Managers entitled Coordination between RCRA Corrective Action and Closure and CERCLA Site Activities, September 24, 1996; (3) Memorandum from Elliott P. Laws and Steven A. Herman to RCRA/CERCLA Senior Policy Managers entitled "Use of the Corrective Action Advance Notice of Proposed Rulemaking as Guidance", January 17, 1997; and (4) Letter from Mark Gordon, Chair, ASTSWMO Corrective Action and Permitting Task Force, to EPA RCRA Docket #F-96-CA2P-FFFFF, July 30, 1997. Follow these instructions to access the information electronically:

WWW: http://www.epa.gov/correctiveaction
FTP: ftp.epa.gov
Login: anonymous
Password: *foster.barbara@epamail.epa.gov*
Files are located in /pub/epaoswer

I. Authority

The provisions of the 1990 proposed rule were proposed under the authority of sections 1003, 1006, 2002(a), 3004(a), 3004(u), 3004(v), 3005(c) and 3007 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6902, 6905, 6912(a), 6924(a), (u) and (v), 6925(c), and 6927.

II. Background

In the 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), Congress expanded EPA's authority to address cleanup at permitted RCRA hazardous waste management facilities by providing new corrective action authority under RCRA sections 3004(u) and (v). Section 3004(u) requires that RCRA regulations and permits require corrective action as necessary to protect human health and the environment at facilities seeking a permit. Section 3004(v) extended the requirement to releases beyond the facility boundary. EPA codified this broad authority in RCRA section 3004(u) essentially verbatim at 40 CFR 264.90(a)(2), 264.101, 270.60(b), and 270.60(c) in a final rule published on July 15, 1985 (50 FR 28702). EPA later did the same for section 3004(v) on December 1, 1987 (52 FR 45785).[1]

On July 27, 1990 (55 FR 30798), EPA published a NPRM detailing substantive and procedural requirements under 40 CFR Part 264 Subpart S to implement the corrective action program. The Agency promulgated a few elements of the 1990 proposal on February 16, 1993 (58 FR 8658). These elements included final provisions for Corrective Action Management Units (CAMUs) and Temporary Units, and a definition of "facility" for corrective action. The remainder of the 1990 proposal has not been made final. However, EPA and authorized States began using the proposed rule and preamble as the primary guidance for the corrective action program soon after it was published.

RCRA section 3006(g) called for the corrective action requirements imposed by sections 3004(u) and 3004(v) to take effect in all States at the same time they would take effect federally, regardless of the State's authorization status. The statute further directed the Agency to carry out those requirements until the State is granted authorization to do so. To date, EPA has authorized 33 States to implement the requirements of sections 3004(u) and (v) in lieu of EPA. To determine whether the State program was "equivalent" to the Federal program, EPA referred to the Federal regulations pertaining to corrective action, the guidance provided by the 1990 Subpart S proposal, and other Agency guidance.

On May 1, 1996 (61 FR 19432), the Agency published an ANPRM. In the 1996 ANPRM, EPA introduced its new "Subpart S Initiative," which was designed to identify and implement improvements to the protectiveness, responsiveness, speed, and efficiency of the corrective action program. The Agency also discussed corrective action implementation and the evolution of the program since 1990, and set forth its goals and strategy for the future of the corrective action program. The 1996 ANPRM provided guidance on areas of the program not addressed by the 1990 proposal, and replaced the 1990 proposal as the primary guidance for much of the corrective action program (*see* memorandum from Elliott P. Laws and Steven A. Herman to RCRA/CERCLA Senior Policy Managers entitled "Use of the Corrective Action Advance Notice of Proposed Rulemaking as Guidance", January 17, 1997, located in the docket for this action). Finally, in the 1996 ANPRM, the Agency requested comment on the future direction of the corrective action program, including resolution of the 1990 proposal.

III. Decision To Withdraw the Majority of the Notice of Proposed Rulemaking

As part of the Subpart S Initiative, the Agency assessed the issue of whether to promulgate a final Subpart S rule (*see* 61 FR 19455-6 asking for comment on the appropriate "balance between guidance/policy documents and regulations" for implementing RCRA corrective action authorities). As was discussed in the ANPRM (*see* 61 FR 19432 at 19440), the Agency has long recognized that no one approach to corrective action is likely to be appropriate at all sites. The diversity of facilities subject to RCRA corrective action, the degree of investigation and subsequent corrective action necessary to protect human health and the environment varies greatly across facilities. Because of this, some facilities require no cleanup at all or only minor corrective action, while others are as complex and highly contaminated as sites on the CERCLA National Priorities List (Superfund sites). Thus, in drafting the 1990 proposal, the Agency sought to create a rule that, although it contained extensive procedures for making corrective action decisions, would

[1] In the December 1, 1987 final rule, the Agency also promulgated corrective action permit application requirements and modified corrective action requirements for underground injection wells.

accommodate the need to vary those procedures based on site-specific circumstances. It has been the Agency's experience, however, that the Subpart S proposal as guidance has, at times, been implemented prescriptively and the intended flexibility underused. Commenters on the ANPR echoed the Agency's assessment on this point.

Therefore, the Agency concluded, if we were to proceed with a final rule instituting a comprehensive regulatory scheme for RCRA corrective action, it would be appropriate to rethink the general approach to writing a set of comprehensive regulations. In particular, since the instances of program inflexibility could be attributed, at least in part, to rule language that heavily emphasized standard processes for making corrective action decisions, the Agency reasoned that it would be appropriate to recraft the proposed RCRA regulations to take the focus off process and place it on results.[2]

Likewise, many commenters urged the Agency to reject the approach of the 1990 proposal in favor of a more "holistic" and flexible approach. However, commenters also urged the Agency not to go forward with any final rule without first reproposing the entire program, to provide opportunity for public comment on the overall approach. The Agency agrees with commenters that, if we were to go forward with regulations significantly different from the 1990 proposal, fairness would dictate an additional round of public comment.

Therefore, before proceeding anew down the resource-intensive path of promulgating a comprehensive rule, we decided it was appropriate to reevaluate the pros and cons of proceeding with a comprehensive rule, especially since the program has been conducted without one for 14 years, and the landscape of the RCRA corrective action program has changed significantly over that time. Having engaged in this analysis, we have decided not to promulgate a final rule for the corrective action program at this time. Instead we will continue to rely on existing regulations (including those provisions of the Subpart S proposal already promulgated), supplemented by current and planned guidance and enhanced training, to implement the corrective action program. We chose this approach for several reasons.

First, one of our primary objectives for promulgating a comprehensive rule in 1990 was to "establish standards to which States seeking authorization for RCRA section 3004(u) corrective action must demonstrate equivalence" (55 FR 30800). While it is true that detailed regulations can make authorization determinations somewhat easier, circumstances have changed in the years since publication of the proposal. We now believe that it is not necessary to promulgate additional regulations to review State programs. To date, EPA has authorized 33 State programs to implement the corrective action program in lieu of the Federal government. The authorization process consists of extensive up-front review of State programs, using existing regulations supplemented by existing guidance (including, most recently, the ANPRM and portions of the 1990 proposal that were not superceded) outlining what types of corrective action are generally "necessary to protect human health and the environment." There have been no legal challenges to these determinations, and EPA has not instituted withdrawal proceedings for any State corrective action program it has authorized. Thus, EPA has found in practice that the current regulations, supplemented by current and planned guidance, provide us an adequate foundation to authorize State programs, and that additional regulations are not necessary at this time.

Second, we are concerned additional regulations might disrupt State programs that are authorized to date. We recognize that new regulations, whether detailed substantive and procedural or performance standards, would, at least, raise the possibility of reanalysis of these authorized State programs. This would create unnecessary uncertainty in these programs that would very likely slow their progress. Similar concerns have been expressed by the States (*see* letter from Mark Gordon, Chair, ASTSWMO Corrective Action and Permitting Task Force to RCRA Docket #F-96-CA2P-FFFFF, July 30, 1996, located in the docket for this **Federal Register** notice). Given the limited added benefit of additional regulations, we do not believe the potential disruption to State programs is warranted.

Third, in addition to providing a basis for evaluating State programs, another objective in promulgating a comprehensive corrective action rule in 1990 was to establish national consistency in the corrective action program. We have become increasingly aware that corrective action sites differ in significant respects and that consistent application of rules and standards at all sites is not always appropriate. For areas of the program where consistency from site-to-site is generally important (*e.g.*, cleanup levels), we have been successful in using guidance and training to promote appropriate consistency. Thus, rather than issuing a rule to achieve consistency at all sites, we believe it would be more appropriate to develop guidance and training to promote consistency, where appropriate. Such guidance and training would apply not only within the corrective action program, but also with other cleanup programs as well (*see* memorandum from Steven A. Herman and Elliott P. Laws to RCRA/CERCLA National Policy Managers entitled Coordination between RCRA Corrective Action and Closure and CERCLA Site Activities, September 24, 1996).

Fourth and finally, promulgation of a corrective action rule is not necessary to ensure that affected parties have a chance to influence our corrective action decisions. The comments we received on the 1990 proposal and the 1996 ANPRM have informed this decision, as well as the content of Agency guidance and other initiatives undertaken (such as the training initiative discussed in footnote 3). Perhaps more important, however, is the fact that we provide RCRA owners and operators and the public with ample procedures to raise any objections (*e.g.*, through permit appeals) to each decision the Agency makes with respect to corrective action—whether it be the number of reports required of the facility, the area and materials that are subject to corrective action requirements, or the levels to which the facility must be cleaned.

For the reasons stated above, we have decided to withdraw all of the proposed rulemaking except for those provisions that already have been made final and those provisions relating to two jurisdictional issues—*i.e.*, the definition of "facility" for corrective action purposes, and provisions concerning corrective action responsibilities upon transfer of facility property. More specifically we preserve the discussions concerning these issues beginning at 55 FR 30808 (as supplemented by additional discussion and request for comment in the 1996 ANPRM beginning at 61 FR 19442 and 19460, and any other relevant discussions in either notice) and 55 FR 30845 and 30882 (as supplemented by additional discussion and request for comment in the 1996 ANPRM at 61 FR 19463, and any other relevant discussions in either notice). We have singled out these two

[2] For example, among the options considered by the Agency in the 1996 ANPR was a "performance standards" approach (*see* 61 FR 19432 at 19456). Under this approach, the Agency would craft a rule establishing performance standards or goals with very little detail concerning procedures.

jurisdictional issues because, unlike others discussed in the 1990 proposal (*e.g.*, definitions of release,[3] hazardous waste or hazardous constituents, and solid waste management unit), these are issues about which the Agency expressed concern regarding the status quo, or raised questions that have not been definitively addressed by the Agency. (*See e.g.*, 61 FR 19460—"EPA's definition of facility for purposes of corrective action has been problematic in some situations" and 61 FR 19463—"The 1990 proposal identified two options: requiring the permittee to complete corrective action even on parcels sold to others, and requiring the purchaser of the parcel to complete the corrective action.") We continue to believe that these issues should be addressed.

Over the years, EPA has published a number of major corrective action guidance documents and in 1990 proposed detailed corrective action regulations (*see* 55 FR 30798, July 27, 1990.) As discussed in the 1996 ANPRM, many of these documents, including the 1990 proposal, continue to provide useful information and guidance for corrective action implementation. However, the 1996 ANPRM updates our position on many of the issues discussed in the 1990 proposal, and should be considered the primary corrective action implementation guidance. In addition, we intend to provide any necessary additional guidance to assist program implementers. We believe that by focusing our resources on developing guidance and training,[4] rather than a final rule, we can provide sufficient guidelines for the areas of the program not governed by procedural regulations, but in a more flexible format.

It should be noted that nothing in this action modifies or affects those regulations promulgated to date to govern the corrective action program. It also should be noted that the Agency may, at some time in the future, decide that additional regulations would improve the corrective action program. Should the Agency decide to promulgate additional regulations on issues other than the jurisdictional issues described in this action, however, we would propose them in the **Federal Register** for public comment.

Dated: September 30, 1999.

Carol M. Browner,

Administrator.

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[3] We believe it is important to emphasize in this action that we continue to adhere to the 1996 ANPRM interpretations of the term of "release." In the 1996 ANPRM, we reiterated our longstanding position on the definition of "release" for corrective action (*see* 61 FR 19442). There, we cited language from the preamble of the 1985 HSWA codification rule (50 FR 28702, July 15, 1985) stating that the definition of "release" for corrective action should be at least as broad as the definition of release under CERCLA—thus, EPA interpreted the term "release" to mean "any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment." In the ANPR, we also cited language from the preamble of the 1990 proposal, stating that the definition of release also includes abandoned or discarded barrels, containers, and other closed receptacles containing hazardous wastes or constituents and that it could include releases that are permitted under other authorities, such as the Clean Water Act.

[4] Some commenters suggested that the inflexibility of some corrective action program implementers could be attributed, at least in part, to the failure of implementers to use available flexibility, rather than to limitations in the regulations and guidance issued by the Agency. To address these concerns, the Agency has launched an extensive training initiative, directed at EPA Regions and the States, which should address this concern. The training is designed to direct implementers to focus the corrective action program on obtaining key results, rather than adherence to an unnecessarily prescriptive process. The Agency believes that, by better focusing on results, implementers will be better able to prioritize investigation and remediation resources, and to utilize innovative methods to achieve protective results effectively, efficiently, and quickly.