

regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Because EPA's determination to approve of any revisions to Michigan's NPDES program resulting from the Executive Orders would merely recognize an internal reorganization of an existing approved NPDES State program, EPA has determined that such a determination would contain no regulatory requirements that might significantly or uniquely affect small governments.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) provides that, whenever an agency promulgates a final rule under 5 U.S.C. § 553, after being required to publish a general notice of proposed rulemaking, an agency must prepare a final regulatory flexibility analysis unless the head of the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. §§ 604 & 605. The Regional Administrator today certifies, pursuant to section 605(b) of the RFA, that approval of any revisions to Michigan's NPDES program resulting from Executive Orders would not have a significant impact on a substantial number of small entities.

The basis for the certification is that EPA's approval would simply result in an administrative change in the structure of the approved NPDES program, rather than a change in the substantive requirements imposed on any small entity in the State of Michigan. Such an approval would not affect the substantive regulatory requirements under existing State law to which small entities are already subject. Additionally, approval of the NPDES program modification would not impose any new burdens on small entities.

Paperwork Reduction Act

This preliminary determination contains no requests for information and consequently is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Dated: March 14, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97-7819 Filed 3-27-97; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 233

[FRL-5803-4]

Modification of Michigan's Assumed Program to Administer Section 404 Permitting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed approval; request for public comment.

SUMMARY: This document announces EPA's intention to approve modification of Michigan's assumed Clean Water Act Section 404 (Section 404) permitting program, specifically, to explicitly and formally recognize that a recent internal reorganization of Michigan's environmental agencies is consistent with the minimum requirements of the State Section 404 program regulations. EPA invites public comment on its approval of any modification of the State program that may have resulted from the reorganization.

DATES: Comments on this document must be received in writing by April 28, 1997.

ADDRESSES: Written comments on today's notice may be submitted to Jo Lynn Traub, Director, Water Division, Attn: Michigan Section 404 Program Modification, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. In the alternative, EPA will accept comments electronically. Comments should be sent to the following Internet Email address: pierard.kevin@epamail.gov. Electronic comments must be submitted in an ASCII file avoiding the use of special characters and any form of encryption. EPA will print electronic comments in hard-copy paper form for the official administrative record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Central time) April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Kevin Pierard, Chief, Watersheds and Non-Point Source Programs Branch, at the EPA address noted above or telephone at (312) 886-4448.

A copy of the supporting information for today's notice is available for review at: EPA, Region 5, 77 West Jackson Boulevard, 16th Floor, Chicago, Illinois; Library of Michigan, Government Documents Section, 717 West Allegan, Lansing, Michigan; Olson Library, Northern Michigan University, Harden Circle Drive, Marquette, Michigan; and Detroit Public Library Main Branch,

Sociology and Economics Department, 5201 Woodward Avenue, Detroit, Michigan. To arrange for access to the docket materials in Chicago, call (312) 886-4448 between 8 a.m. and 4:30 p.m. (Central time); in Lansing, call 517-373-9489 between 9 a.m. and 6 p.m. on Mondays through Saturdays and between 12 p.m. and 4 p.m. on Sundays (Eastern time); in Marquette, call 906-227-2260 between 8 a.m. and 12 a.m. on Mondays through Thursdays, between 8 a.m. and 9 p.m. on Fridays, and between 10 a.m. and 6 p.m. on Sundays (Eastern time); and in Detroit, call 313-833-1440 between 9:30 a.m. and 5:30 p.m. on Tuesdays and Thursdays through Saturdays, and between 1 p.m. and 9 p.m. on Wednesdays (Eastern time).

The supporting information for today's notice includes: a copy of Executive Order 1995-18 signed by the Governor of Michigan on July 31, 1995; copies of the correspondence from Michigan to EPA dated January 19, 1996, regarding the effects of the executive order on Michigan's Section 404 program; a statement of the Michigan Attorney General dated June 13, 1996; Program documents submitted to EPA in support of Michigan's original (1983) assumption request; the materials submitted by Michigan and considered by EPA in approving revisions to Michigan's Section 404 program on November 25, 1994; May 20, 1994, comments submitted by the National Wildlife Federation and Michigan United Conservation Club to EPA which EPA is treating as a petition to withdraw Michigan's Section 404 program; a June 14, 1996, letter from the Michigan Environmental Council to EPA regarding Michigan Public Act 132 of 1996; a February 4, 1997, letter and attached report from the Michigan Environmental Council to EPA requesting that EPA withdraw Michigan's Section 404 program; and EPA's preliminary finding of no substantial modification and preliminary approval of any revisions resulting from Executive Order 1995-18.

SUPPLEMENTARY INFORMATION: The State of Michigan assumed Federal Clean Water Act Section 404 permitting authority on October 16, 1984. Procedures for revision of State programs at 40 CFR 233.16 require that EPA review any revisions to state assumed Section 404 programs, determine whether such revisions are substantial, and approve or disapprove the revisions.

On July 31, 1995 Governor Engler of Michigan issued Executive Order 1995-18, which elevated the former Environmental Protection Bureau of the

Michigan Department of Natural Resources (MDNR) to full independent departmental status as the Michigan Department of Environmental Quality (MDEQ). MDEQ retained all of its environmental responsibilities and virtually all of the personnel formerly assigned to it as a bureau in the MDNR, including its statutory and regulatory obligations and responsibilities to administer Michigan's federally approved CWA section 404 program.

EPA announces today that has made preliminary determinations that the executive order did not make any substantial changes in Michigan's Section 404 program, and that any changes to the Michigan program resulting from the executive order should be approved. While not required to do so according to the State section 404 program regulations, EPA invites public comment concerning the Agency's conclusions, specifically, its preliminary determination that the executive order caused no substantial revisions to Michigan's Section 404 program, as well as EPA's preliminary decision to approve any revisions to Michigan's Section 404 program that resulted from the executive order. EPA may conduct a public hearing, if there is significant public interest based on requests received.

EPA notes that it currently has pending before it a May 20, 1994, petition to withdraw that was filed by the National Wildlife Federation (NWF) and Michigan United Conservation Clubs (MUCC), as well as a February 4, 1997, petition to withdraw that was filed by the Michigan Environmental Council (MEC). EPA has commenced informal investigations into the allegations in those Petitions to determine whether there is cause to commence withdrawal proceedings.

EPA further notes that MEC, by letter dated June 14, 1996, has raised concerns regarding the impact of Michigan's recent enactment of Public Act 132 of 1996 on Michigan's Section 404 program. In response to that letter, EPA is currently conducting an informal investigation into Michigan's Public Act 132 of 1996 and its potential impact on Michigan's federally delegated and authorized programs, including Section 404.

EPA's preliminary decision only addresses, and this notice is seeking comment only on, the impact of the executive order noted above on Michigan's Section 404 program. EPA's preliminary decision does not address the issues raised by NWF, MUCC and MEC in their Petitions or by MEC regarding Public Act 132 of 1996. EPA intends to address those issues in the

course of the separate informal investigations described above.

Regulatory Assessment Requirements

Executive Order 12866

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Office of Management and Budget (OMB) has exempted EPA action on State Section 404 programs from OMB review.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year.

If EPA finally determines that any revisions to Michigan's Section 404 program resulting from the executive order should be approved, EPA's determination would contain no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Instead, EPA's determination would merely recognize an internal reorganization of an existing assumed State Section 404 program. EPA has determined that such a determination would not contain any

Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Therefore, EPA's determination would not be subject to the requirements of section 202 of the UMRA.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Because EPA's determination to approve of any revisions to Michigan's Section 404 program resulting from the executive order would merely recognize an internal reorganization of an existing assumed State Section 404 program, EPA has determined that such a determination would contain no regulatory requirements that might significantly or uniquely affect small governments.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) provides that, whenever an agency promulgates a final rule under 5 U.S.C. § 553, after being required to publish a general notice of proposed rulemaking, an agency must prepare a final regulatory flexibility analysis unless the head of the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 604 & 605. The Regional Administrator today certifies, pursuant to section 605(b) of the RFA, that approval of any revisions to Michigan's Section 404 program resulting from the executive order will not have a significant impact on a substantial number of small entities.

The basis for the certification is that EPA's approval would simply result in an administrative change in the structure of the assumed Section 404 program, rather than a change in the substantive requirements imposed on any small entity in the State of Michigan. Such an approval would not affect the substantive regulatory requirements under existing State law to which small entities are already subject. Additionally, approval of the Section 404 program modification would not

impose any new burdens on small entities.

Paperwork Reduction Act

This preliminary determination contains no requests for information and consequently is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Dated: March 14, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97-7820 Filed 3-27-97; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 271

[FRL-5803-1]

Michigan: Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking and public comment period.

SUMMARY: Michigan has applied for final authorization of revisions to its hazardous management program under the Resource Conservation and Recovery Act on 1976, as amended, (hereinafter RCRA) resulting from Michigan Executive Order 1995-18 (EO 1995-18). The Environmental Protection Agency (EPA) has reviewed Michigan's application and has reached a proposed decision, subject to public review and comment, that the hazardous waste management program revisions resulting from EO 1995-18 satisfy the requirements necessary to qualify for final authorization. Thus, EPA believes it is appropriate to approve these Michigan hazardous waste management program revisions. Michigan's application for program revision is available for public review and comment.

DATES: All comments on this proposed rulemaking must be received by close of business on April 28, 1997.

ADDRESSES: Written comments on this document may be submitted to Ms. Judy Feigler, U.S. EPA, State Programs and Authorization Section, Waste, Pesticides and Toxics Division (DR-7J), 77 West Jackson Blvd., Chicago, IL 60604-3590. In the alternative, U.S. EPA will accept comments electronically. Comments should be sent to the following Internet E-mail address:

feigler.judith@epamail.epa.gov.

Electronic comments must be submitted in an ASCII file avoiding the use of special characters and any form of encryption. EPA will print electronic

comments in hard-copy paper form for the official administrative record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Central Time) April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Feigler at the EPA address noted above or telephone at (312) 886-4179.

Copies of the State of Michigan's final authorization revision application are available during normal business hours at the following addresses for inspection and copying: Library of Michigan, Government Documents Section, 717 West Allegan, Lansing, Michigan; Olson Library, Northern Michigan University, Harden Circle Drive, Marquette, Michigan; Detroit Public Library Main Branch, Sociology and Economics Department, 5201 Woodward Avenue, Detroit, Michigan; and Ms. Judy Feigler, U.S. EPA, State Programs and Authorization Section, Waste, Pesticides and Toxics Division (DR-7J), 77 West Jackson Blvd., Chicago, IL 60604-3590, or telephone (312) 886-4179. To arrange for access to the materials in Lansing, call (517) 373-9489 between 9 a.m. and 6 p.m. on Mondays through Saturdays and between 12 p.m. and 4 p.m. on Sundays (Eastern time); in Marquette, call (906) 227-2260 for current library hours; in Detroit, call (313) 833-1440 between 9:30 a.m. and 5:30 p.m. on Tuesdays and Thursdays through Saturdays, and between 1 p.m. and 9 p.m. on Wednesdays (Eastern time); and in Chicago, call (312) 886-4179 between 9 a.m. and 4:30 p.m. on Mondays through Fridays.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of RCRA, 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste management program. When either EPA's or a State program's controlling statutory or regulatory authority is modified or supplemented, or when certain other changes occur, revisions to State hazardous waste management programs may be necessary. The procedures that States and EPA must follow for revision of State programs are found at 40 CFR 271.21.

The State of Michigan initially received final authorization for its hazardous waste management program effective on October 30, 1986 (51 FR

36804-36805, October 16, 1986). Subsequently, Michigan received authorization for revisions to its program, effective on January 23, 1990 (54 FR 225, November 24, 1989); June 24, 1991 (56 FR 18517, April 23, 1991); November 30, 1993 (58 FR 51244, October 1, 1993); and April 8, 1996 (61 FR 4742, February 8, 1996). Michigan's Program Description, dated June 30, 1984, and addenda thereto dated June 30, 1986; September 12, 1988; July 31, 1990; August 10, 1992; and March 22, 1995, which is a component of the State's original final authorization and subsequent revision applications, specified that the Michigan Department of Natural Resources (MDNR) was the agency responsible for implementing Michigan's hazardous waste management program. The Program Description indicated that the Site Review Board (SRB) also had authority to approve or deny construction permit applications. The SRB was subsequently made a consultative body and the SRB's powers were transferred to the Director of the MDNR by Executive Order 1991-31, which took effect on September 2, 1993.

On July 31, 1995, the Governor of Michigan issued Executive Order 1995-18 (EO 1995-18), which became effective on October 1, 1995. On January 19, 1996, Michigan submitted materials for EPA to determine the impact of EO 1995-18 upon the authorized State hazardous waste management program. The materials consisted of a letter from the Michigan Attorney General's office setting forth the State of Michigan's analysis as to why the establishment of the new Michigan DEQ does not represent a transfer to a "new agency" pursuant to 40 CFR 271.21(c), a copy of EO 1995-18, updated letters of delegation and procedures regarding avoidance of conflict of interest in contested case proceedings. On June 13, 1996, Michigan submitted a supplemental statement of the Michigan Attorney General regarding the appraisal of the Attorney General of the impact of EO 1995-18 on Michigan's delegated environmental programs. In the supplemental statement, the Attorney General explained that the effect of EO 1995-18 was to elevate the former Environmental Protection Bureau of the Department of Natural Resources to full independent departmental status as the Department of Environmental Quality (DEQ). According to the Michigan Attorney General, "the DEQ retained all of its environmental responsibilities and virtually all of the personnel formerly assigned to it as a bureau of the DNR."