[FRL–5609–6]

Underground Injection Control Program Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; American Ecology Environmental Services Corporation (AEESC)

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition modification.

SUMMARY: Notice is hereby given that modification of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to AEESC, for the Class I injection wells located at Winona, Texas. As required by 40 Part CFR 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by AEESC, of the specific restricted hazardous waste identified in the exemption modification, into the Class I hazardous waste injection wells at the Winona, Texas facility specifically identified in the modified exemption, for as long as the basis for granting an approval of this exemption remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued June 12, 1996. The public comment period closed on July 29, 1996. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of August 30, 1996.

ADDRESSES: Copies of the modified petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Ken Williams, Acting Chief, Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–7165.

William B. Hathaway,

Director, Water Quality Protection Division (6WQ).

[FR Doc. 96–23655 Filed 9–13–96; 8:45 am]

BILLING CODE 6565–50–P

[FRL–5550–7; Region 8]

South Dakota; Final Determination of Adequacy of State's Municipal Solid Waste Permit Program Over Non-Indian Lands for the Former Lands of the Yankton Sioux, Lake Traverse (Sisseton-Wahpeton) and Parts of the Rosebud Indian Reservation

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on application of the State of South Dakota for program adequacy determination.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR Part 258). RCRA Section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate ''permit'' programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribe permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by Part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill Criteria will apply to all permitted and unpermitted MSWLFs.

The State of South Dakota applied for a determination of adequacy under Section 4005 of RCRA for jurisdiction over non-Indian lands for the Yankton Sioux Reservation, Lake Traverse (Sisseton-Wahpeton) Reservation and parts of the Rosebud Indian Reservation lying within Gregory, Tripp, Lyman and Mellette Counties. EPA has reviewed South Dakota's application and has made a final determination that the South Dakota application is adequate for all lands, *other than Indian Country as defined in 18 U.S.C. Section 1151*, that were formerly within the 1867 Lake Traverse Reservation boundaries and for all lands in Gregory, Tripp, Lyman and Mellette Counties that were formerly within the 1889 Rosebud Sioux Reservation boundaries. EPA believes that the State of South Dakota has not sufficiently demonstrated that the Yankton Sioux Reservation was disestablished by Act of Congress (26 Stat. 286, 314), and thus, the lands within the exterior boundaries of the Yankton Sioux Reservation remain Indian Country.

South Dakota's application for program adequacy determination and the all comments received in regard to that application are available for public review and comment.

EFFECTIVE DATE: September 16, 1996.

ADDRESSES: Copies of South Dakota's application for adequacy determination are available from 8:00 a.m. to 4:00 p.m. at the following addresses for inspection and copying: South Dakota Department of Environment and Natural Resources, Office of Waste Management, Foss Building, 523 East Capitol, Pierre, South Dakota, 57501; and U.S. EPA Region 8 Library, 999 18th Street, First Floor, Denver, Colorado, 80202–2466, telephone (303) 312–6312.

FOR FURTHER INFORMATION CONTACT: Linda Walters, Mail Code 8P2–P2, Pollution Prevention Branch, U.S. EPA Region 8, 999 18th Street, Denver, Colorado, 80202–2466, telephone (303) 312–6385.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR Part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under Part 258. Subtitle D also requires in Section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised

Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of the STIR. EPA interprets the requirements for States or Tribes to develop ''adequate'' programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in Section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an ''adequate'' program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. Procedural History of South Dakota's Application

On April 29, 1993, South Dakota submitted an application for adequacy determination for the State's municipal solid waste landfill permit program. On October 8, 1993, (58 FR 52846), EPA determined that South Dakota's application for adequacy determination met all of the statutory and regulatory requirements established by RCRA. Accordingly, South Dakota was granted a determination of adequacy for all portions of its municipal solid waste landfill permit program. However, EPA's decision to approve the South Dakota MSWLF permitting program did not extend to Indian Country, including the following ''existing or former'' Indian reservations in the State of South Dakota:

1. Cheyenne River
2. Crow Creek
3. Flandreau
4. Lower Brule
5. Pine Ridge
6. Rosebud
7. Sisseton
8. Standing Rock
9. Yankton

In the October 8, 1993, FR Notice, EPA stated that before EPA would be able to approve the State of South Dakota MSWLF permit program for any portion of Indian Country, the State would have to provide an appropriate analysis of the State's jurisdiction to enforce in these areas. Furthermore, in order for a State (or Tribe) to satisfy this requirement, it must demonstrate to the EPA's satisfaction that it has authority either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval.

On October 8, 1993, the State of South Dakota submitted an application amendment to EPA for approval of its solid waste permit program ''for regulation of solid waste activities on non-Indian lands for the former lands of the Yankton Sioux, Sisseton and parts of the Rosebud Indian Reservations.'' On April 7, 1994, (59 FR 16648), EPA made a tentative determination that the South Dakota amended application was adequate under Section 4005 of RCRA for the disestablished areas within the former boundaries of Lake Traverse and Yankton Reservations and the diminished portions of Rosebud Sioux Reservation lying within Gregory, Tripp, Lyman, and Mellette Counties, excluding Indian Country presently located within these disestablished and diminished areas.

EPA requested and received numerous comments from several parties during the following 30 day comment period and the two public hearings held at the Fort Randall Casino on June 1, 1994, and at Pierre, South Dakota on June 2, 1994. The comment period was extended beyond the 30 day comment period and comments were accepted by EPA up through July 1, 1994.

C. EPA's Determination

1. Lake Traverse (Sisseton-Wahpeton) Indian Reservation

The State of South Dakota and other commenters argued that the Lake Traverse Reservation, created by an 1867 Treaty between the United States and the Sisseton and Wahpeton bands of Sioux Indians, was disestablished by Act of Congress in 1891 and that the lands formerly part of that Reservation that are now owned in fee by non-Indians do not qualify as Indian Country pursuant to 18 U.S.C. 1151(a). In support of its assertion, the State cited the U.S. Supreme Court decision in *DeCoteau* v. *District County Court,* 420 U.S. 425 (1975).

Having reviewed all comments regarding the Lake Traverse Reservation and having consulted with the Department of Interior, EPA agrees with the State that the Supreme Court found in *DeCoteau* that the Lake Traverse Reservation has been disestablished. Accordingly, EPA is today approving the South Dakota MSWLF permitting program for all lands that were formerly within the 1867 Lake Traverse Reservation boundaries and do not otherwise qualify as Indian Country under 18 U.S.C. 1151. Today's approval does not extend to any trust or other lands within the former Lake Traverse Reservation that still qualify as Indian Country.

2. Rosebud Indian Reservation

The State of South Dakota argued that the Rosebud Indian Reservation, created by an 1889 Treaty between the United States and the Rosebud Sioux Tribe, was diminished by Acts of Congress in 1904, 1907, and 1910 and that the lands in Gregory, Tripp, Lyman and Mellette Counties formerly part of that Reservation that are now owned in fee by non-Indians do not qualify as Indian Country pursuant to 18 U.S.C. 1151(a). In support of its assertion, the State cited the U.S. Supreme Court decision in *Rosebud Sioux Tribe* v. *Kneip,* 430 U.S. 584 (1977).

Having reviewed the comments regarding the Rosebud Sioux Reservation and having consulted with the Department of Interior, EPA agrees with the State that the Supreme Court found in *Kneip* that the exterior boundaries of the Rosebud Reservation has been diminished and no longer include Gregory, Tripp, Lyman and Mellette Counties. Accordingly, EPA is today approving the South Dakota MSWLF permitting program for all lands in Gregory, Tripp, Lyman and Mellette Counties that were formerly within the 1889 Rosebud Sioux Reservation boundaries and do not otherwise qualify as Indian Country under 18 U.S.C. 1151. Today's approval does not extend to any trust or other lands in Gregory, Tripp, Lyman and Mellette Counties that still qualify as Indian Country.

3. Yankton Sioux Reservation

The State of South Dakota and other commenters argued that the Yankton

Sioux Reservation, established in the 1858 Treaty between the United States and the Yankton Sioux Tribe, had been disestablished by the United States Congress in the Act of August 15, 1884, (28 Stat. 286, 314) and that lands formerly part of the Yankton Sioux Reservation which are now owned in fee by non-Indians are no longer Indian Country. In support of its assertion, the State cited four opinions of the South Dakota Supreme Court and *Weddell* v. *Meierhenry,* 636 F.2d 211 (8th Cir. 1980). The Yankton Sioux Tribe and other commenters argued that Congress did not express a ''plain and unambiguous statement of congressional intent'' to disestablish the Yankton Sioux Reservation and that the State and Federal Court opinions cited by South Dakota on the Yankton Reservation disestablishment issue are not controlling.

The Agency has carefully reviewed and analyzed the arguments presented and has consulted with the Department of Interior as to whether Congress has disestablished the Yankton Sioux Reservation. In this analysis, the Agency was mindful that the issue of disestablishment is a matter of interpretation of Federal laws and that no Federal Court had addressed the merits of the question of the disestablishment of the Yankton Sioux Reservation until the recent opinion of the U.S. District Court in *Yankton Sioux Tribe* v. *Southern Missouri Waste Management District,* No. 94–4217 (D.S.D. June 14, 1995). As the Federal District Court in South Dakota has now addressed the issue on the merits, the Agency will follow that Court's finding that Congress did not, in the Act of August 15, 1894, disestablish the Yankton Sioux Reservation. Thus, in the Agency's view, the lands within the exterior boundaries of the Reservation remain Indian Country.

The Agency has stated previously, in its ''Final Determination of Partial Program Adequacy'' of South Dakota's municipal solid waste landfill (MSWLF) permit program, published at 58 FR 52486, 52488 (1993) that ''[b]efore EPA would be able to approve the State of South Dakota's MSWLF permit program for any portion of 'Indian Country,' the State would have to provide an appropriate analysis of the State's jurisdiction to enforce in these areas. In order for a State (or Tribe) to satisfy this requirement, it must demonstrate to the EPA's satisfaction that it has authority either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval.'' As the State has failed to make such a demonstration for lands within the exterior boundaries of the Yankton Sioux Reservation, the Agency does not today approve the South Dakota MSWLF permitting program within the exterior boundaries of the Yankton Sioux Reservation.

D. Other Major Comments

Several commenters expressly or impliedly suggested that only South Dakota had the technical and legal authority to provide proper oversight of MSWLFs and protect the environment. Section 4005(c)(1)(B) of RCRA, as amended, requires both States and Tribes to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised MSWLF Criteria (40 CFR part 258). EPA is tasked with determining whether States or Tribes have adequate permit programs for MSWLFs. In making its determination of adequacy, EPA reviews such technical and legal criteria as location, operation, design, groundwater monitoring, corrective action, closure, post-closure, financial assurance, enforcement and intervention authorities, public participation, and compliance monitoring to ensure enforceable standards comparable to EPA's revised MSWLF criteria exist in the State or Tribal application. The agency believes that this type of review of a State or Tribal application is sufficient to ensure that proper oversight is assured. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991). Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR Part 258 independent of any State/Tribal enforcement program. Furthermore, should EPA not find a State or Tribal application to be adequate as described above, EPA may enforce 40 CFR Part 258 if an imminent and substantial endangerment exists.

Another commenter expressed disappointment that EPA raised the issue of jurisdiction in environmental issues such as solid waste. EPA is required by RCRA Section 4005(C) and by 40 CFR Part 258 to authorize only those regulatory programs in which the applying State or Tribe can lawfully enforce its laws in court. The Agency believes that jurisdiction is thus appropriate and necessary to the effective enforcement and administration of regulatory programs intended to protect public health and the environment.

Another commenter argued that there should be only one central authority possessing the expertise, capability, and jurisdiction to ''fully and completely administer the national solid waste policy in the State of South Dakota.'' The commenter further suggested that, in this case, the central authority should be the State of South Dakota. The Agency, in reaching its decision to treat Indian tribes as politically separate and distinct from the states, is following over two hundred years of well-established legal and political practice. See, *e.g., Worcester* v. *Georgia,* 31 U.S. (6 Pet.) 515 (1832). Further, the State of South Dakota has, as noted above, failed to make an adequate demonstration of jurisdiction over Indian Country.

Another commenter, apparently accepting that the Supreme Court had found the Lake Traverse Reservation to be disestablished in *DeCoteau* and the Rosebud Reservation diminished in *Kneip,* argued that the Agency should specify those areas that might be Indian Country within the meaning of 18 U.S.C. 1151(b), which defines Indian Country as including ''dependent Indian communities.'' No commenters have specified any areas that might be dependent Indian communities within the former Lake Traverse Reservation or the diminished portion of the Rosebud Reservation. Nevertheless, the Agency believes that the definition of Indian Country as set by Congress in 18 U.S.C. 1151 provides a useful and workable guideline for determining areas of state authority in this as in other areas of governance. Any controversy that may arise regarding the inclusion of specific tracts in the definition of Indian Country, such as in determining the exact geographical location of political boundaries, can be dealt with as they may arise.

Several commenters raised objections to tribal regulation of non-Indian operators of landfills and argued that non-members have no avenue for participation in tribal governments or constitutional safeguards in tribal courts. Another commenter responded that anyone can request and speak before or petition the Yankton Sioux tribal government, whether they are Indian or non-Indian and that tribal courts are open to all individuals, whether Indian or non-Indian.

EPA is very aware of the concerns of non-Indians regarding fair treatment before tribal governments, but has no reason to believe that tribal governments are either more fair or less fair than other governments. However, the Agency is today considering only the question whether the State of South Dakota has regulatory authority, not whether the tribes have or should have such authority. The question of tribal regulatory authority is addressed only when a tribe applies for program authorization, as the State of South Dakota has done here.

Several commenters discussed the design, permitting and siting of the proposed landfill at Lake Andes, making thoughtful and detailed comments both for and against the landfill, including health, safety and environmental impacts, as well as issues of environmental justice and racism. Today's decision, however, is limited to the question whether the State of South Dakota has met the requirements of Section 4005 of RCRA and 40 CFR Part 258 regarding authorization of the State's Program for the Lake Traverse and Yankton Sioux Reservations and the diminished portion of the Rosebud Sioux Reservation. Accordingly, the Agency is not required to address the merits of the Lake Andes siting, design and permitting criteria. However, all permits issued under a State or Tribal program determined by EPA to be adequate must meet minimum Federal standards, including a permit to Roberts County for a new sanitary landfill.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. By approving State/Tribal municipal solid waste permitting programs, owners and operators of municipal solid waste landfills who are also small entities will be eligible to use the site-specific flexibility provided by Part 258 to the extent the State/Tribal permit program allows such flexibility. However, since such small entities which own and/or operate municipal solid waste landfills are already subject to the requirements in 40 CFR Parts 258 or are exempted from certain of these requirements, such as the groundwater monitoring and design provisions, this approval does not impose any additional burdens on these small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities; rather this approval creates flexibility for small entities in complying with the 40 CFR Part 258 requirements. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), P.L. 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the Act EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The Agency does not believe that approval of the State's program would result in estimated costs of $100 million or more to State, local, and tribal governments in the aggregate, or to the private sector, in any one year. This is due to the additional flexibility that the State can exercise (which will reduce, not increase, compliance costs). Thus, today's notice is not subject to the written statement requirements in sections 202 and 205 of the Act.

As to section 203 of the Act, the approval of the State program will not significantly or uniquely affect small governments other than the applicant, the State of South Dakota. As to the applicant, the State has received notice of the requirements of an approved program, has had meaningful and timely input into the development of the program requirements, and is fully informed as to compliance with the approved program. Thus, any applicable requirements of section 203 of the Act have been satisfied.

Authority: This notice is issued under the authority of Sections 2002, 4005, and 4010 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6912, 6945, and 6949(a).

Dated: June 24, 1996.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 96–23653 Filed 9–13–96; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comments Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Commission announces that it intends to submit to the Office of Management and Budget (OMB) a request to extend without change the existing collection of information listed below. The Commission is seeking public comments on the proposed extension.

DATES: Written Comments on this notice must be submitted on or before November 15, 1996.

ADDRESSES: Comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. As a