subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

IV. EPA's Final Determination

EPA, after review and consideration of all the information submitted by Michigan and the comments received, has determined that the revisions to Michigan's NPDES program resulting from the Executive Orders should be approved. Moreover, EPA has determined that the revisions are not substantial.

Dated: October 1, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97–29622 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 233

[FRL–5918–7]

Approval of Modifications to Michigan's Assumed Program To Administer the Section 404 Permitting Program Resulting From the Reorganization of the Michigan Environmental Agencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval.

SUMMARY: Notice is hereby given that the United States Environmental Protection Agency (EPA) approves of the modifications of Michigan's assumed Clean Water Act Section 404 (Section 404) permitting program which resulted from Michigan Executive Order 1995–18 which reorganized Michigan's environmental agencies.

EFFECTIVE DATE: November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Kevin Pierard, Chief, Watersheds and Non-Point Source Programs Branch, Water Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–4448.

SUPPLEMENTARY INFORMATION:

Note: This action is one of four **Federal Register** actions related to reorganization of state environmental agencies in Michigan. All these actions are published together in the **Federal Register**, with the exception of a Clean Air Act State Implementation Plan published on November 6, 1997 at 62 FR 59995.

I. Background

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 November 25, 1994, EPA approved of revisions to Michigan's Section 404 program resulting from Executive Order 1991–31, which transferred the responsibilities and authorities of the Michigan Department of Natural Resources (MDNR) to the Director of a new MDNR. On July 3, 1995, Michigan Governor John Engler signed Executive Order 1995–18 (Executive Order), which elevated the former Environmental Protection Bureau of MDNR to full departmental status as the Michigan Department of Environmental Quality (MDEQ), effective October 1, 1995. MDEQ retained all of its environmental duties, functions and responsibilities and virtually all of the personnel formerly assigned to it as a bureau in the MDNR. In addition, certain other environmental duties, functions and responsibilities of the Law, Geographical Survey and Land and Water Management Divisions were transferred to MDEQ, as was the authority to make decisions regarding administrative appeals in those matters under its purview.

The Attorney General, in a statement dated June 13, 1996, statement, certified to the following:

> It is my opinion that E.O. 1995–18 did not substantively change the state's statutes or rules relating to the administration of federally delegated programs nor was any authority, power, duty or function contained within Michigan's statutes or rules applicable to federally delegated programs diminished by the execution of E.O. 1995–18. Specifically, E.O. 1995–18 did not affect program jurisdiction, the scope of activities regulated, criteria for the review of permits, public participation, enforcement capabilities or the adequacy of Michigan's legal authority to carry out its federally delegated programs.

Based upon a review of this information, as well as a review of the Section 404 program documents submitted in support of Michigan's original (1983) request for EPA approval and the materials submitted by Michigan and considered by EPA in approving of revisions to Michigan's Section 404 program on November 25, 1994, EPA preliminarily concluded that the Executive Order did not substantially revise the State of Michigan's Section 404 program and that any revisions resulting from the Executive Order should be approved. This preliminary determination was based upon the fact that none of the statutes or rules which comprise Michigan's Section 404 program changed as a result of the Executive Order and MDEQ retained virtually all of the personnel formerly assigned to it as a bureau in MDNR.

Although none of the statutes or regulations which comprise Michigan's program changed, there was one additional matter that EPA considered before making its preliminary determination. Specifically, the Executive Order provides that the Director of MDEQ now decides administrative appeals of wetland permitting decisions, rather than the Michigan Natural Resources Commission. However, this change does not affect the Michigan Section 404 program's ''area of jurisdiction, scope of activities regulated, criteria for review of permits, public participation, or enforcement capability.'' 40 CFR 233.16(d)(3). Consequently, EPA did not view this change to be a substantial revision. Moreover, EPA preliminarily concluded that this revision should be approved because it is not inconsistent with anything in the Clean Water Act or its implementing regulations.

While not required to do so according to the State Section 404 program regulations, EPA chose to invite public comment concerning the Agency's preliminary determinations. Consequently, on March 28, 1997, EPA published a notice in the **Federal Register** of its preliminary determinations that the Executive Order caused no substantial revisions to Michigan's Section 404 program and that any revisions to Michigan's Section 404 program that resulted from the Executive Order should be approved. EPA also indicated that it might conduct a public hearing, if there was significant public interest based on requests received. Finally, EPA stated that its preliminary decision only addressed, and EPA was only seeking comment on, the impact of the Executive Order on Michigan's Section 404 program.

II. Comments

In response to the March 28, 1997, notice, EPA received comments from three commenters: the Tip of the Mitt Watershed Council, the East Michigan Environmental Action Council, and the Michigan Environmental Council. The commenters all raised the same two issues. First, the commenters noted that the Executive Order transferred authority to hold hearings and make findings of fact and render decisions on contested Section 404 permits from the Natural Resources Commission, a public body that was subject to Michigan's Open Meetings Act, to the Director of

the MDEQ, who in turn delegated that authority to the MDEQ Office of Administrative Hearings, an entity that is not a public body and therefore is not subject to Michigan's Open Meetings Act.

The public participation requirements for state Section 404 programs are set forth at 40 CFR 233.32–34. The only ''Open Meetings Act'' type requirements in those regulations is at 40 CFR 233.33, which requires that state Section 404 programs provide an opportunity for public hearings at which the public must be allowed an opportunity to submit oral and written statements or data concerning a permit application or draft general permit. Michigan clearly continues to comply with this requirement. *See* Section 281.708 of the Michigan Compiled Laws. Nothing in the state Section 404 wetland program regulations requires that adjudicatory hearings on contested permits be open to the public. Consequently, the fact that these types of hearings may not necessarily be open to the general public in Michigan is not a basis for disapproving of the revisions resulting from the Executive Order.

We further note that Michigan did not represent in its original 1983 program submission, and EPA in reviewing and approving of that original program submission did not find, that Michigan was relying on the Michigan Open Meetings Act to demonstrate that it had authority to comply with the federal public participation requirements. Rather, Michigan cited to Sections 8 and 10 of its Wetlands Protection Act, Section 5 of its Water Resources Act, Section 6 of its Inland Lakes and Streams Act, and Sections 41–42 of its Administrative Procedures Act, to demonstrate that it had such authority. None of these statutory provisions were affected by the Executive Order. Consequently, any changes resulting from the Executive Order pertaining to the applicability or inapplicability of the Michigan Open Meetings Act do not in any way constitute changes in Michigan's approved Section 404 program.

The second issue raised by the commenters is that, under the Executive Order, the Chief Administrative Law Judge for the Office of Administrative Hearings who decides certain contested Section 404 permits is appointed by the Director of the MDEQ and so allegedly will not be capable of exercising decisionmaking authority independent of the Director of the MDEQ. However, there is nothing in the state Section 404 program regulations pertaining to administrative appeals of permit decisions. Consequently, the possibility that the Chief Administrative Law Judge may not be entirely independent of the Director of the MDEQ is not a basis for disapproving of the revisions resulting from the Executive Order.

Of course, if as a result of the changes to the administrative appeals process resulting from the Executive Order, Michigan repeatedly issues Section 404 permits which do not conform with the requirements of the Clean Water Act, this might serve as a basis for withdrawal of Michigan's Section 404 program under 40 CFR 233.53. EPA notes that it currently has pending before it a February 4, 1997, petition to withdraw Michigan's Section 404 program that was filed by the Michigan Environmental Council (MEC) which alleges, among other things, that Michigan is in fact repeatedly issuing such permits in part because of the changes to the administrative appeals process. EPA is separately investigating the allegations in that petition to determine whether cause exists to commence withdrawal proceedings. EPA, in approving of the revisions to Michigan's Section 404 program resulting from the Executive Order, is in no way expressing any opinion on the question of whether withdrawal proceedings should commence in light of the allegations in the MEC petition. Moreover, EPA is not expressing any opinion on questions which MEC separately raised in a letter dated June 14, 1996, regarding the impact of Michigan's Public Act 132 of 1996 on Michigan's Section 404 program. Instead, EPA is addressing those questions separately.

In a related comment, one commenter argued that, under the Executive Order, the Director may ''appoint an individual within or outside the [MDEQ]'' to decide certain administrative appeals in which the Director has been involved. The commenter also noted that there is no statutory definition of the individuals eligible for service in this role and so ''it is conceivable that an individual with a personal or financial interest in the project at issue could be appointed to decide an appeal.'' However, in contrast to 40 CFR 123.25(c), there is nothing in either the Clean Water Act or in EPA's implementing regulations governing conflicts of interest in state Section 404 programs. Consequently, the possibility that such a conflict could arise is not a sufficient basis to disapprove of the revisions to Michigan's Section 404 program resulting from the Executive Order. Moreover, although not necessary to our decision, we note that Michigan has represented to EPA that all decisionmakers appointed by the Director will be required to sign a ''Conflict of Interest Certification'' certifying that they ''do not now receive, nor have ever received, any income directly or indirectly from any person who holds a permit, has applied for a permit, or who is subject to an enforcement order issued pursuant to or under the authority of [the Clean Water Act].'' Consequently, the possibility that an appointed decisionmaker might have a financial conflict of interest is extremely remote.

Finally, all three commenters stated that they believed that the revisions resulting from the Executive Order were substantial and so requested a public hearing. EPA is required to provide an opportunity for a public hearing under 40 CFR 233.16(d)(3) if a proposed revision is substantial. 40 CFR 233.16(d)(3) provides that ''substantial revisions include, but are not limited to, revisions that affect the area of jurisdiction, scope of activities regulated, criteria for review of permits, public participation, or enforcement capability.'' As described above, none of the statutes or rules upon which EPA authorized Michigan's Section 404 program changed as a result of the Executive Order. Instead, the Executive Order simply changed the people or entities responsible for carrying out the various functions set forth within these statutes and rules. Consequently, EPA does not believe that the revisions to Michigan's Section 404 program resulting from the Executive Order are substantial.

Moreover, in light of the fact that EPA only received three sets of comments which addressed virtually identical issues, EPA does not believe that there is sufficient public interest in this matter to hold a public hearing. Finally, none of the comments explained why a public hearing was necessary or would be helpful in resolving the question of whether EPA should approve of any revisions to Michigan's Section 404 program. Consequently, EPA is not providing for a public hearing.

III. Regulatory Assessment Requirements

A. 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.

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 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.

EPA's approval of any revisions to Michigan's Section 404 program resulting from the Executive Order contains 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 merely recognizes an internal reorganization of an existing approved Section 404 State program; and this determination does 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, this determination is not 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 merely recognizes an internal reorganization of an existing assumed State Section 404 program, EPA's determination contains no regulatory requirements that might significantly or uniquely affect small governments.

C. 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 simply results 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. This approval will 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 will not impose any new burdens on small entities.

D. Paperwork Reduction Act

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

IV. EPA's Final Determination

EPA, after review and consideration of all the information submitted by Michigan and the comments received, has determined that the revisions to Michigan's Section 404 program resulting from the Executive Order should be approved. Moreover, EPA has determined that the revisions are not substantial.

Dated: October 1, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97–29623 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5918–8]

Michigan: Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on application of Michigan for final authorization.

SUMMARY: Notice is hereby given that the United States Environmental Protection Agency (U.S. EPA) approves the revisions to the State of Michigan's authorized hazardous waste management program resulting from Michigan Executive Order 1995–18.

EFFECTIVE DATE: November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy O'Malley, U.S. EPA, State Programs and Authorization Section, Waste Pesticides and Toxics Division, 77 W. Jackson Blvd. (DR–7J), Chicago, Illinois 60604, or telephone (312) 886–6085.

SUPPLEMENTARY INFORMATION:

Note: This action is one of four **Federal Register** actions related to reorganization of state environmental agencies in Michigan. All these actions are published together in this **Federal Register**, with the exception of a Clean Air Act State Implementation Plan published on November 6, 1997 at 62 FR 59995.

A. Background

On March 28, 1997, EPA published in the **Federal Register** a notice announcing the preliminary determination to approve the State of Michigan's hazardous waste management program, as revised, pursuant to Section 3006(b) of the Resource Conservation and Recovery Act (RCRA) and 40 CFR 271.21(b)(4).

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,