

Dated: June 11, 1996.
Dennis Grams,
Regional Administrator.
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[FRL-5525-9]

**Nebraska; Final Full Program
Determination of Adequacy of State/
Tribal Municipal Solid Waste Landfill
Permit Program**

AGENCY: Environmental Protection
Agency.

ACTION: Notice of immediate final
program determination of adequacy on
Nebraska's application.

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 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 governing such determinations. The EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which the 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 the 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/Tribal permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the State/Tribal permit program allows such flexibility. The EPA notes that regardless of the approval status of a State/Tribe and the permit status of any

facility, the federal criteria under 40 CFR part 258 will apply to all permitted and unpermitted MSWLF facilities.

Nebraska applied for a determination of adequacy under section 4005 of RCRA. The EPA reviewed Nebraska's application and has made a decision, subject to public review and comment, that Nebraska's municipal solid waste landfill permit program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is approving Nebraska's MSWLF permit program.

EFFECTIVE DATE: The determination of adequacy for Nebraska shall be effective on August 23, 1996, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Missouri's program revision application must be received by the close of business July 24, 1996, unless.

ADDRESSES: Copies of Nebraska's application for MSWLF permit program approval are available for inspection and copying from 8 a.m. to 4:30 p.m., Monday through Friday at the following addresses: Office of Public Affairs, Atrium Building, Suite 400, 1200 N Street, Lincoln, Nebraska 68509 Attn: Mr. Joseph Francis, telephone 402-471-4210; and U.S. EPA Region VII Library, 726 Minnesota Avenue, Kansas City, Kansas 66101, Phone: 913-551-7241.

FOR FURTHER INFORMATION CONTACT: Ms. Althea M. Moses, 726 Minnesota Ave., Kansas City, Kansas 66101; (913) 551-7055.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, the EPA promulgated 40 CFR part 258 for MSWLFs. 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 facilities comply with the Federal Criteria under 40 CFR part 258. Subtitle D also requires in section 4005 of RCRA that the EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the 40 CFR part 258. 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.

The EPA intends to propose in the STIR to allow partial approval if: (1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring

compliance with 40 CFR part 258; (2) changes to a limited narrow part(s) of the State/Tribal permit program are needed to meet these requirements; and (3) provisions not included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of 40 CFR part 258. As a State's/Tribe's regulations and statutes are amended to comply with 40 CFR part 258, unapproved portions of a partially approved MSWLF permit program may be approved by the EPA. The State/Tribe may submit an amended application to EPA for review and an adequacy determination will be made using the same criteria as for the initial application. This adequacy determination will be published in the Federal Register summarizing the Agency's decision and the portion(s) of the State/Tribal MSWLF permit program affected and providing an opportunity to comment for a period of 30 days. The adequacy determination will become effective sixty (60) days following publication if no adverse comments are received. If EPA receives adverse comments on its adequacy determination, another Federal Register notice will be published either affirming or reversing the initial decision while responding to the public comments.

The EPA will review State/Tribal requirements to determine whether they are "adequate" under section 4005(c)(1)(C) of RCRA. The 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 40 CFR part 258. 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, the 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.

The EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. The EPA plans to provide more specific criteria for this evaluation when it proposes the STIR. The EPA expects State/Tribes to meet all of these requirements for all elements of a MSWLF program before it

gives full approval to a MSWLF program.

B. State of Nebraska

On August 29, 1995 the Nebraska Department of Environmental Quality submitted an amended application for full MSWLF landfill permit program approval. This application follows an August 19, 1993 submittal on which EPA approved all portions of Nebraska's program for all parts except the exemption from ground-water monitoring at small facilities. The partial program approval determination was due to an exemption from ground water monitoring at small facilities which appeared in Nebraska Department of Environmental Quality, Title 132—*Rules and Regulations Pertaining to Solid Waste Management*, Chapter 10, Section 001. This exemption was vacated from 40 CFR Part 258 as a result of *Sierra Club v. U.S. Environmental Protection Agency*, 992 F.2d 337 (D.C. Cir. 1993). In accordance with this decision, 40 CFR Part 258.1 (f)(1) was revised in 40 CFR Part 258.1(f), 58 FR 51536 (October 1, 1993). Further background on the final partial program determination of adequacy is located at 58 FR 65985 (December 17, 1993).

Nebraska does not claim jurisdiction over Indian land. Nebraska's program is not enforceable on Indian lands.

The EPA has reviewed Nebraska's application, and has made an immediate final decision that Nebraska's municipal solid waste landfill permit program satisfies all the requirements of the State/Tribal Implementation Rule to qualify for full program approval. Consequently, EPA intends to grant full approval of the Nebraska program. The public may submit written comments on EPA's immediate final decision up until July 24, 1996. Copies of Nebraska's application for program approval are available for inspection and copying at the locations identified in the ADDRESSES section of this action.

Approval of Nebraska's municipal solid waste landfill permitting program shall become effective August 23, 1996, unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either: (1) A withdrawal of the immediate final decision, or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

C. Decision

I conclude that Nebraska's application for full program adequacy determination meets all of the statutory and regulatory requirements established by RCRA for full program adequacy. Accordingly, Nebraska is granted a full program determination of adequacy for all parts of its municipal solid waste landfill permit program.

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. As the EPA explained in the preamble to the final MSWLF criteria, the EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by the EPA should be considered to be in compliance with the Federal criteria. See 56 FR 50978, 50995 (October 9, 1991).

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

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this final 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. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended, 42 U.S.C. § 6946.

Dated: June 11, 1996.

Dennis Grams,

Regional Administrator.

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[FRL-5523-5]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity to Comment Regarding Union Electric Company, St. Louis, MO

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding Union Electric Company, St. Louis, Missouri.

SUMMARY: EPA is providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(A).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

On June 24, 1995, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551-7630, the following Complaint: In the Matter of Union Electric Company, St. Louis, Missouri, EPCRA Docket No. VII-95E-158 and CWA Docket No. VII-95-W-001.

The Complaint proposes a penalty of Ten Thousand Dollars (\$10,000) for the discharge of Mercury into the Mississippi River, on September 28, 1994, without a permit issued under Section 402 of the Clean Water Act, in violation of Section 301 of the Clean Water Act.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by Union Electric Company is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public