

entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that this does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. See *Union Electric Co. v. EPA*, 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that the EPA prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the EPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The EPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the EPA explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this proposed rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than \$100 million in any one year, the EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the EPA is not required to develop a plan with regard to small

governments. This rule imposes no additional regulatory burden.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations.

Authority: 42 U.S.C. 7401-7671(q).

Dated: March 14, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97-7818 Filed 3-27-97; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 123

[FRL-5803-3]

Modification of Michigan's Approved Program to Administer the National Pollutant Discharge Elimination System 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 approved National Pollutant Discharge Elimination System (NPDES) 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 NPDES 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 this document may be submitted to Jo Lynn Traub, Director, Water Division, Attn: Michigan NPDES 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 E-mail address: chaiken.eugene@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:

Eugene Chaiken, Chief, NPDES Support and Technical Assistance Branch at the EPA address noted above or telephone at (312) 886-0120.

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 the 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) 886-0120 between 8 a.m. and 4:30 p.m. (Central time)(Monday-Friday); in Lansing, call (517) 373-9489 between 9 a.m. and 6 p.m. (Eastern time)(Monday-Saturday), and between 12 p.m. and 4 p.m. (Eastern time)(Sunday); in Marquette, call (906) 227-2260 for current library hours; and in Detroit, call (313) 833-1440 between 9:30 a.m. and 5:30 p.m. (Eastern time)(Tuesday, Thursday-Saturday), and between 1 p.m. and 9 p.m. (Eastern time)(Wednesday).

The supporting information for today's notice includes: copies of Executive Orders 1991-31, 1995-4, and 1995-18 signed by the Governor of Michigan on November 8, 1991, February 7, 1995, and July 31, 1995, respectively; copies of the correspondence from Michigan to EPA dated August 9, 1995 and January 19, 1996, regarding the effects of the Executive Orders on Michigan's NPDES program; statements of the Michigan Attorney General dated August 2, 1995, and June 13, 1996; an October 24, 1996, letter from the Director of MDEQ regarding MDEQ's compliance with Clean Water Act conflict of interest requirements; NPDES program documents submitted in support of Michigan's original (1973) request for EPA approval; a June 14, 1996, letter from the Michigan Environmental Council to EPA regarding Michigan Public Act 132 of 1996; and EPA's preliminary finding of no substantial revisions and preliminary approval of any revisions resulting from the Executive Orders.

SUPPLEMENTARY INFORMATION: On October 17, 1973, EPA approved the National Pollutant Discharge Elimination System (NPDES) permitting program submitted by the State of Michigan pursuant to section 402 of the

Clean Water Act. Procedures for revision of State programs at 40 CFR 123.62 provide for EPA review of any revisions to federally authorized State NPDES programs to determine whether or not such revisions are substantial and to approve or disapprove any such revisions.

On November 8, 1991, the Governor of Michigan issued Executive Order 1991-31, intended to reorganize and consolidate functions and responsibilities of the Michigan environmental agencies. Though initially stayed in the Michigan court system, the Michigan Supreme Court ultimately upheld the validity of Executive Order 1991-31 on September 2, 1993. *Dodak v. Engler*, 443 Mich. 560, 506 N.W.2d 190 (1993). Subsequently, the Governor issued additional Executive Orders (Executive Orders 1995-4 and 1995-18) related to the organization, functions, and responsibilities of the Michigan environmental agencies.

On May 21, 1993, Michigan submitted a modification to the approved program seeking EPA recognition of the State's authority to issue NPDES general permits. On November 29, 1993, EPA approved the modification. The National Wildlife Federation and the Michigan United Conservation Clubs filed a petition in the U.S. Court of Appeals for the Sixth Circuit for judicial review of EPA's approval of the modification. By joint motions of the parties, that litigation is currently stayed while, among other things, EPA publishes today's notice and, ultimately, takes final action on it.

EPA announces today that it has made preliminary determinations that Executive Orders 1991-31, 1995-4 and 1995-18 did not make any substantial changes in Michigan's approved NPDES program, and that any changes to the Michigan NPDES program resulting from these Executive Orders should be approved. While not required to do so according to the State NPDES program regulations, EPA invites public comment concerning the Agency's conclusions, specifically, its preliminary determination that the Executive Orders caused no substantial revisions to Michigan's NPDES program, as well as EPA's preliminary decision to approve any revisions to Michigan's NPDES program that resulted from the Executive Orders. Additionally, EPA requests specific comment on the impact, if any, the Executive Orders have on EPA approval of the modification to the Michigan NPDES program recognizing the State's authority to issue general permits. EPA may conduct a public hearing, if there

is significant public interest based on requests received.

EPA notes that the Michigan Environmental Council (MEC) filed an administrative petition requesting that EPA commence proceedings to withdraw Michigan's NPDES program by letter dated June 14, 1996. The petition requests that EPA initiate proceedings to withdraw its approval of Michigan's NPDES program based upon Michigan's recent enactment of Public Act 132 of 1996, which establishes certain environmental audit privilege and immunity provisions in the State's natural resources and environmental protection code. In response to the petition, EPA is conducting an informal investigation into the allegations in the petition. Specifically, EPA has initiated a separate process to review Michigan's Public Act 132 of 1996 and its potential impact on Michigan's federally delegated and authorized programs, including NPDES, to determine whether there is cause to commence withdrawal proceedings.

EPA's preliminary decision only addresses, and this notice is only seeking comment on, the impact of the Executive Orders noted above on Michigan's NPDES program. EPA's preliminary decision does not address the issues raised by MEC regarding Public Act 132 of 1996. EPA intends to address those issues in the course of the separate informal investigations into the allegations in the petition to commence withdrawal proceedings. Although EPA does not seek and does not intend to respond on the merits to comments regarding Public Act 132 of 1996 in this proceeding, EPA will consider such public comments in responding to the Petition to commence withdrawal proceedings. Any such comments should be sent separately to John Bernstein, Attn: Michigan Petition to Withdraw, U.S. Environmental Protection Agency, Mail Code: WN-16J, 77 West Jackson Boulevard, Chicago, Illinois 60604.

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 NPDES 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 NPDES program resulting from the Executive Orders 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 approved NPDES State 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, such a 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 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