

For example, § 61.151 of the Asbestos NESHAP requires unfenced/non-posted sites to be covered with a minimum of six inches of soil if vegetated or a minimum of 24 inches of soil if not vegetated. If the site is not fenced and posted, other viable capping materials can be used but only with EPA approval pursuant to 40 CFR 61.151(c). This means that neither asphalt nor concrete can be used as a surface treatment without EPA approval. In these communities, asbestos waste is currently buried beneath parking lots, driveways, and sidewalks. NHDES is substituting performance based specifications for the "one-size-fits-all" cover specifications in 40 CFR 61.151.

As another example, 40 CFR 61.151(d) requires the owner/operator of an inactive waste disposal site to supply notice at least 45 days in advance of excavating or disturbing any asbestos-containing waste at the site. Due to the built-up nature of these inactive waste disposal sites, the need to disturb asbestos on short notice is a common occurrence and needs to be addressed. For instance, asbestos waste often must be disturbed to replace broken water lines as well as to repair or replace cover materials exposed due to storm water runoff. NHDES's proposed substitute rules reduce the length of the notice period but also require all persons who disturb asbestos waste to be qualified and to employ specific safe work practices and engineering controls.

In addition, the general provisions of 40 CFR part 61, subpart A generally apply to new stationary sources that are not yet constructed or to existing stationary sources that are actively operating. Inactive waste disposal sites are already constructed and are no longer operating or allowed to emit pollutants. Therefore, NHDES is proposing to substitute general requirements that are more relevant to inactive waste disposal sites. For example, the alternative rules address site monitoring, maintenance, and reporting requirements in a manner appropriate to closed nonoperating sources that by their nature cannot be constructed or modified to increase their emissions.

NH DES is seeking partial rule substitution because its alternative rules apply only to a subset of the inactive waste disposal sites subject to 40 CFR 61.151, namely those inactive waste disposal sites not operating after July 9, 1981.

IV. When Did the Authority To Implement and Enforce Section 112 Standards Become Effective in New Hampshire?

On October 2, 1996, EPA approved New Hampshire's program under section 112(l)(5) and 40 CFR 63.91 for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This delegation mechanism only applied to part 70 sources (see 61 FR 51370). On May 9, 2002, the NH DES submitted a request to EPA to receive straight delegation of authority to implement and enforce NESHAPs and New Source Performance Standards (NSPSs) for both major and area sources under a new delegation mechanism. NH DES sought to take delegation of these standards by incorporating the standards into NH DES's regulations. On September 19, 2002, EPA approved this delegation mechanism (see 67 FR 59001). Among other standards, NH DES incorporated by reference the Asbestos NESHAP, with the exception of 40 CFR 61.151, standard for inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations.

NH DES did not request straight delegation of § 61.151 because it had submitted a partial rule substitution pursuant to 40 CFR 63.93 for a portion of that rule. NH DES's request for rule substitution applies only to those inactive waste disposal sites not operating after July 9, 1981 which are subject to 40 CFR 61.151 (*i.e.*, sites operated by certain asbestos mills, manufacturers, and fabricating facilities). NH DES's request seeks no change in delegation relative to inactive asbestos waste disposal sites operating after July 9, 1981 (*i.e.*, NH DES will continue to regulate such facilities according to § 61.151 standards).

V. Opportunities for Public Comments

EPA views the approval of NH DES's request to use its regulation for inactive waste disposal sites as a partial rule substitute for applicable requirements in the Asbestos NESHAP as a noncontroversial action since the State program is in operation and is no less stringent than the Asbestos NESHAP. EPA anticipates no adverse comments. Therefore, EPA is publishing this direct final rule without prior proposal. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal for this action should relevant adverse comments be filed. This action will be effective July 28, 2003, without further

notice, unless EPA receives relevant adverse comments by June 27, 2003.

If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective July 28, 2003, and no further action will be taken on the proposed rule.

VI. Summary of EPA's Action

After reviewing the request for approval of the NH DES's Administrative Rules for Management and Control of Asbestos Disposal Sites not operated after July 9, 1981, EPA has determined that this request meets all of the requirements necessary to qualify for partial rule substitution approval under CAA section 112(l) and 40 CFR 63.91 and 63.93. EPA has determined that NH DES's asbestos rule is equivalent to or not less stringent than the Federal Asbestos NESHAP. Therefore, EPA hereby approves NH DES's rule to be used in place of the Federal Asbestos NESHAP, as it applies to those inactive waste disposal sites not operating after July 9, 1981, that are subject to 40 CFR 61.151. As of the effective date of this action, NH DES's asbestos rule is enforceable by the EPA and citizens under the CAA. Although NH DES has primary implementation and enforcement responsibility, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review." This rule is not subject to Executive Order 13045, entitled, "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under Executive Order 12866.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*