

to Utah's program in not providing for a public hearing, which, they state, is required by 40 CFR 271.20. EPA disagrees. The regulations relied upon by the commenters apply to initial program authorization, and not program revision authorizations. Rather, we have proceeded in accordance with 40 CFR 271.21, which does not require public hearings. On March 4, 1986, at 51 FR 07540, EPA promulgated amendments to 40 CFR 271.21 that eliminated public hearing requirements for program revisions. In this March 4, 1986 **Federal Register**, EPA stated: "As discussed in the proposal, the new procedures do not require public hearings to be held in conjunction with EPA's authorization decisions. Since there is no legal requirement to provide for hearings on revision decisions and little public interest has been shown to date in attending hearings on initial authorization of State programs, we think the opportunity to provide written comments is adequate. Only one comment was received on the elimination of routine public hearings, and that comment favored the rule change. However, while the regulatory requirement is deleted, a Regional Administrator, in his discretion, could decide to hold a hearing." (51 FR 07541).

Consequently, EPA Region VIII believes it adhered to the governing regulations regarding opportunities for public hearings during the EPA approval process for State program revisions. We also believe, that due to the nature and limited number of comments received, the opportunity to provide for written comments, in lieu of a public hearing, was an adequate process to obtain public comment.

Both commenters shared a concern about the "use constituting disposal" provisions of 40 CFR part 266, subpart C. They appear to have concerns about the provisions of Utah regulations (which incorporate the Federal rules by reference) that allow, under certain conditions, "hazardous wastes," like lime-based slag, to be used as a "fertilizer." They argue that Utah's statute (like RCRA) does not allow the land application of hazardous wastes (beneficial or not) unless it occurs at a permitted disposal facility. For the reasons set forth below, EPA disagrees. EPA's regulations accommodate the proper reuse, recycling, and reclamation of as many resources destined for disposal as possible, while regulating hazardous wastes and hazardous waste residuals that must be discarded. EPA's regulations at 40 CFR part 266, subpart C, place controls on the management of hazardous wastes before such wastes are

made into a fertilizer. Producing fertilizer from an otherwise hazardous waste is a type of recycling which, in EPA's regulations, is referred to as "use constituting disposal." Rather than prohibiting the use of waste-derived fertilizers, EPA promulgated regulations to require that hazardous wastes that are going to be made into fertilizers be managed in accordance with all applicable hazardous waste management requirements until the wastes are actually made into a fertilizer. With regard to the "use constituting disposal" provisions of 40 CFR part 266, subpart C, in the context of fertilizer applications, these provisions in Utah's program were authorized by EPA as part of Utah's first program revision, which took effect on March 7, 1989—over fourteen years ago. Utah's rules currently incorporate the Federal rules by reference making them identical. Utah's current revision application, for which we recently published a tentative approval, with an opportunity for public comment, does not include any regulatory revisions to 40 CFR part 266, subpart C. Since the comment we have received on "use constituting disposal" is not part of Utah's most recent program revision application, we believe the public comments on "use constituting disposal" are not within the scope of this Agency action.

Both commenters raised concerns that the "Express RCRA Authorization" process circumvents the requirements of 40 CFR 271.7. They feel that the use of this process fails to identify deficiencies in the State program and does not allow the State to have regulations that are more protective than the Federal minimum requirements.

The "Express RCRA Authorization" initiative should not be confused with the "Abbreviated Authorization Revisions" discussed at 40 CFR 271.21(h). The Abbreviated Authorization Revision process is an optional process, may only be used under limited circumstances, and the prerequisite provisions must be listed in 40 CFR 271.21, Table 1. Any change to this process must be publicly noticed and opportunity for public comment provided.

The "Express RCRA Authorization" initiative is only a restructuring of the components submitted by the State in an authorization revision application. It was designed to make the application process more efficient and less resource intensive for the States and EPA. Although the submittal format is significantly different from what was previously used, all the components required by 40 CFR 271.21 (and thus, 40

CFR 271.7) are still provided in the revision application. Since there was no change in the required components, a public notice and public comment period was not required.

An Express Authorization application now requires a simplified State Attorney General's statement which certifies the State's statutory authority along with a table identifying the applicable State statutes. In the past, the State Attorney General had to submit a complex statutory and regulatory statement that could obscure the State's statutory authority and often duplicated the rule checklists (which are still provided and used as a tool to identify the State's equivalent rules). This new statement actually makes the State's statutory authority more apparent, rather than less, while maintaining all the requirements of 40 CFR 271.7. In addition to clarifying the State's statutory authority, the new format also makes it more apparent to the Region where the State's rules are different from the Federal rules, especially those that are more stringent or broader-in-scope, thereby reducing the time to review and approve a revision application. The Express Authorization approach does not restrict, in any way, the State's ability to adopt rules that are either more protective of human health and the environment or broader in scope than the Federal program. Nor does it limit the requirement for EPA to make a determination that the State's rules are equivalent and no less stringent than the Federal rules.

Both commenters point out that Utah's Solid and Hazardous Waste Act at 19–6–102(17)(b)(iii) exempts certain wastes, specifically: fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily for the combustion of coal or other fossil fuels, from the definition of solid waste that are not exempt from the Federal definition of solid waste at 40 CFR 261.4(b)(4).

An authorization review generally compares Federal regulations to State regulations. We would compare a State statute to a Federal regulation only if the State does not adopt a regulation and uses the State statute as its equivalent provision. In addition, the review of a State program revision focuses on the changes identified by the EPA-generated checklist (a tool used by both the State and EPA to identify all required changes) and any other changes identified by the State. A review of a State's entire program is conducted periodically using a different review process.

Our review has determined that Utah has adopted equivalent rules to 40 CFR