

The CNMI is defined as a "State" in 40 CFR 258.2. The CNMI has applied for a determination of adequacy under section 4005 (c) (1) (C) of RCRA, 42 U.S.C. 6945 (c) (1) (C). EPA Region IX has reviewed the CNMI's MSWLF permit program application and has made a final determination that all portions of the CNMI's permit program application are adequate to ensure compliance with the revised MSWLF criteria.

On February 27, 2002, EPA published in the **Federal Register** its tentative determination that the CNMI MSWLF permit program would ensure compliance with the revised Federal Criteria. In the notice of tentative determination, EPA announced that the CNMI application would be available for public review during EPA's public comment period. Although not required by RCRA, EPA offered to hold a public hearing if there was sufficient public interest. EPA determined that there was not sufficient public interest to hold a public meeting, and the public comment period ended on April 29, 2002.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kelly Doordan, Office of Pollution Prevention and Solid Waste, mail code WST-7, EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105, telephone 415-972-3383, or via the Internet: [doordan.kelly@epa.gov](mailto:doordan.kelly@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**A. Background**

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). 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 MSWLFs comply with the Federal Criteria under 40 CFR part 258. Subtitle D also requires in section 4005 (c) (1) (C), 42 U.S.C. 6945 (c) (1) (C), that EPA determine the adequacy of state municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the EPA has promulgated the Final State Implementation Rule (SIR), which can be found at 40 CFR part 239. The rule specifies the requirements which State programs must satisfy to be determined adequate.

EPA interprets the requirement for states to develop "adequate" programs for permits or other forms of prior approval and conditions to impose several minimum requirements. First, each State must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State

must have the authority to issue a permit or other notice of prior approval and conditions to all new and existing MSWLFs in its jurisdiction. The State also must provide for public participation in permit issuance and enforcement, as required in section 7004 (b) of RCRA, 42 U.S.C. 6974 (b). Finally, the State 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.

EPA Regions will determine whether a State has submitted an "adequate" program based on the requirements of the SIR. EPA expects States to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

**B. CNMI**

On September 19, 2001, EPA Region IX received the CNMI's MSWLF Permit Program application for adequacy determination. Region IX reviewed the application, submitted comments to the CNMI, and requested supplementary information about the state program implementation. The CNMI addressed EPA's comments, provided the requested additional information, and submitted a revised narrative portion of the final application for adequacy determination on January 4, 2002. EPA reviewed the CNMI's final application and on February 27, 2002, published in the **Federal Register** its tentative determination that the CNMI MSWLF permit program met the requirements necessary to qualify for full program approval and ensure compliance with the revised Federal Criteria.

In the notice of tentative determination, EPA announced the availability of the application for public comments. Although not required by RCRA, EPA offered to hold a public hearing if there was sufficient public interest. The public comment period ended on April 29, 2002, and EPA determined that there was not sufficient public interest to hold a public meeting.

The CNMI has three municipal solid waste dumps that are currently out of compliance with the federal criteria for MSWLFs: the Puerto Rico Dump (PRD) on Saipan, one dump on Tinian, and one dump on Rota. The CNMI has developed a schedule for closure of the PRD and construction of a new MSWLF on Saipan. The federal regulations do not allow location of a landfill in a seismic zone without an approved State program. As the entire island of Saipan is considered a seismic zone, the CNMI intends to utilize the flexibility provisions afforded to approved states

under particular circumstances to construct a new MSWLF in a seismic impact zone and to use an alternative landfill liner.

During the application review process, EPA expressed concern about the CNMI's staffing capacity and anticipated schedule for bringing the dumps on Tinian and Rota into compliance with federal criteria. On January 4, 2002, the CNMI sent EPA a supplement to the original application with additional information on CNMI commitments to maintaining adequate staffing levels to oversee the program and to developing integrated solid waste management and dump closure plans for Tinian and Rota. Today's document gives public notice of EPA's final determination of full program adequacy for the CNMI MSWLF permit program.

Section 4005 (a) of RCRA, 42 U.S.C. 6945 (a), provides that citizens may use the citizen suit provisions of section 7002 of RCRA, 42 U.S.C. 6972, to enforce the Federal Criteria in 40 CFR part 258 independent of any State enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

**Administrative Requirements**

*A. Compliance With Executive Order 12866*

Executive Order 12866 requires Office of Management and Budget review of "significant regulatory actions." Significant regulatory actions are defined as those that (1) have an annual effect on the economy \$100 Million or more or adversely affect a sector of the economy, including 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 or obligations of recipients; or (4) raise novel legal or policy issues. This tentative decision is a not a "significant regulatory action" and is not subject to the requirements of Executive Order 12866.

*B. Certification Under the Regulatory Flexibility Act*

Pursuant to the provisions of 5 U.S.C. 605 (b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not