

provisions of the State's statutes and regulations.

DATES: This regulation is effective October 27, 2003, unless EPA receives adverse written comment on this regulation by the close of business September 26, 2003. If EPA receives such comments, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** informing the public that this rule will not take effect. The incorporation by reference of authorized provisions in the New Mexico statutes and regulations contained in this rule is approved by the Director of the Federal Register as of October 27, 2003 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Send written comments referring to Docket Number NM-01-02 to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD-G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, Phone number: (214) 665-8533. You can inspect the records related to this codification effort from 8:30 a.m. to 4 p.m. Monday through Friday in the EPA Region 6 1445 Ross Avenue, Dallas, Texas 75202-2733, Phone number: (214) 665-6444.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD-G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, Phone number: (214) 665-8533.

SUPPLEMENTARY INFORMATION:

A. What Is Codification?

Codification is the process of placing a State's statutes and regulations that comprise the State's authorized hazardous waste management program into the Code of Federal Regulations (CFR). Section 3006(b) of RCRA, as amended, allows the Environmental Protection Agency (EPA) to authorize State hazardous waste management programs to operate in lieu of the Federal hazardous waste management regulatory program. EPA codifies its authorization of State programs in 40 CFR part 272 and incorporates by reference State statutes and regulations that EPA will enforce under sections 3007 and 3008 of RCRA and any other applicable statutory provisions.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and State requirements that can be Federally enforced. This effort provides

clear notice to the public of the scope of the authorized program in each State.

B. What Is the History of the Authorization and Codification of New Mexico's Hazardous Waste Management Program?

New Mexico initially received Final authorization effective January 25, 1985, (50 FR 1515) to implement its Base Hazardous Waste Management program. Subsequently, the EPA approved additional program revision applications effective April 10, 1990 (55 FR 4604); July 25, 1990 (55 FR 28397); December 4, 1992 (57 FR 45717); August 23, 1994 (59 FR 29734); December 21, 1994 (59 FR 51122); July 10, 1995 (60 FR 20238); January 2, 1996 (60 FR 53708) as affirmed by EPA in the **Federal Register** notice published on January 26, 1996 (61 FR 2450); and March 10, 1997 (61 FR 67474). The EPA incorporated by reference New Mexico's then authorized hazardous waste program effective December 13, 1993 (58 FR 52677); August 21, 1995 (60 FR 32113); November 18, 1996 (61 FR 49265); and July 13, 1998 (63 FR 23224). Effective October 9, 2001 (66 FR 42140), EPA granted authorization to New Mexico for additional program revisions. In this document, EPA is approving a conforming change to the New Mexico regulations at Title 20, Chapter 4, Part 1, New Mexico Administrative code, section 20.4.1.1103, and incorporating by reference the authorized State hazardous waste program in New Mexico. The State's provision at section 20.4.1103 clarifies that references to any provisions of 40 CFR Part 280 within the text of any other provision of 40 CFR as adopted in Part 1 would mean the New Mexico Underground Storage Tank Regulations, 20 NMAC 5.1 through 5.16.

C. What Decisions Have We Made in This Rule?

The purpose of today's **Federal Register** document is to codify New Mexico's base hazardous waste management program and its revisions to that program. EPA provided notices and opportunity for comments on the Agency's decisions to authorize the New Mexico program, and EPA is not now reopening the decisions, nor requesting comments, on the New Mexico authorizations as published in the **Federal Register** notices specified in Section B of this document.

This document incorporates by reference New Mexico's hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. By

codifying New Mexico's authorized program and by amending the Code of Federal Regulations, the public will be more easily able to discern the status of Federally approved requirements of the New Mexico hazardous waste management program.

The EPA is incorporating by reference the New Mexico authorized hazardous waste program in subpart GG of 40 CFR part 272. Section 272.1601 incorporates by reference New Mexico's authorized hazardous waste statutes and regulations. Section 272.1601 also references the statutory provisions (including procedural and enforcement provisions) which provide the legal basis for the State's implementation of the hazardous waste management program, the Memorandum of Agreement, the Attorney General's Statements and the Program Description, which are approved as part of the hazardous waste management program under Subtitle C of RCRA.

D. What Is the Effect of New Mexico's Codification on Enforcement?

The EPA retains its authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013 and 7003, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in authorized States. With respect to these actions, the EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than any authorized State analogues to these provisions. Therefore, the EPA is not incorporating by reference such particular, approved New Mexico procedural and enforcement authorities. Section 272.1601(b)(2) of 40 CFR lists the statutory provisions which provide the legal basis for the State's implementation of the hazardous waste management program, as well as those procedural and enforcement authorities that are part of the State's approved program, but these are not incorporated by reference.

E. What State Provisions Are Not Part of the Codification?

The public needs to be aware that some provisions of New Mexico's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions include:

- (1) provisions that are not part of the RCRA subtitle C program because they are "broader in scope" than RCRA subtitle C (see 40 CFR 271.1(i));
- (2) Federal rules for which New Mexico is not authorized, but which have been incorporated into the State