and November 30, 1993 (58 FR 51244, October 1, 1993). Michigan's Program Description dated June 30, 1984, and addenda thereto dated June 30, 1986; September 12, 1988; July 31, 1990; and August 10, 1992, which were a component of the State's original final authorization and subsequent revision applications, specified that the Michigan Department of Natural Resources (MDNR) was the agency responsible for implementing Michigan's hazardous waste management program. The Program Description indicated that the Site Review Board (SRB) also had authority to approve or deny construction permit applications.

On November 8, 1991, the Governor of Michigan issued Executive Order 1991–31 (EO 1991–31). EO 1991–31, which became effective on September 2, 1993, provides that:

All the statutory authority, power, duties, functions, and responsibilities of the Commission of Natural Resources and the Department of Natural Resources * * * and of the director of the Department of Natural Resources and of the agencies, boards and commissions contained therein * * * are hereby transferred to the director of a new Michigan Department of Natural Resources, by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, being Section 16.103 of the Michigan Compiled Laws.

EO 1991–31, Section I(A)(1). EO 1991–31 also affected the SRB. EO 1991–31 also provides that:

* * * the functions, duties, and responsibilities of the Site Review Boards * * * are transferred by a Type II transfer * * * and a Site Review Board shall be advisory to the director of the new Michigan Department of Natural Resources.

EO 1991–31, Section III(C)(9). The Director of the MDNR now has the authority to approve or deny construction permit applications.

Pursuant to EPA's request, on March 10 and August 18, 1994, Michigan submitted documents to EPA that were necessary for EPA to determine the impact of EO 1991-31 upon the authorized State hazardous waste management program. The documents consisted of a modified Program Description, an addendum to the Attorney General's Statement, and an addendum to the Memorandum of Agreement between the State and EPA outlining the policies, responsibilities and procedures under which the program is administered. Michigan in its submittal indicated that there had been no substantive changes in Michigan's hazardous waste management program as a result of EO 1991-31. Rather, according to Michigan, EO 1991–31 resulted in some internal reorganization of the MDNR.

Based upon review of the documents submitted by Michigan, EPA made a preliminary determination to approve Michigan's hazardous waste management program, as revised, pursuant to 271.21(b). On October 21, 1994, EPA published a notice in the **Federal Register** announcing EPA's proposed decision. The notice also stated that the proposed decision would be subject to public review and comment, and announced the availability of Michigan's application for public inspection at two locations in Michigan.

B. Comments

In response to the October 21, 1994, notice, EPA received comments from the National Wildlife Federation (NWF), who disagreed with EPA's proposed approval of Michigan's hazardous waste management program revisions. A summary of NWF's comments and EPA's response is provided below:

In its first comment, NWF claims that Michigan has failed to demonstrate that its reorganized program complies with the minimum Federal requirements concerning public participation of Section 7004(b) of RCRA. The commenter noted that in changing the role of the SRB from a decision-making body to an advisory body, EO 1991-31 transferred the permit decision-making power to the Director of the MDNR. According to the commenter, the MDNR Director, unlike the former SRB, is not subject to Michigan's Open Meetings Act. The commenter states that public access to monitor the Director is limited by the reorganization, and Michigan's public has no right to observe and attend the meetings at which key permitting decisions are made. Therefore, the commenter believes that the "new MDNR" fails to encourage public participation.

EPA does not agree that this change represents a change in the public participation requirements of Michigan's hazardous waste program that is inconsistent with RCRA Section 7004(b)(2). Michigan, in its submittal to EPA of information on March 10 and August 18, 1994, demonstrated that EO 1991–31 did not substantially alter the public participation processes or affect the authorized State program's equivalence or consistency to the Federal program. The State's public participation provisions include the following: notice of the State's intent to issue a permit through publication in major local newspapers of general circulation; broadcasts of such notice over local radio stations; written notice

to certain State and local governmental agencies; at least a 45-day public comment period; and an informal public hearing if one is requested during the comment period (see Michigan Administrative Code Sections R299.9513 and R 299.9514). The change in the applicability of the State's Open Meetings Act did not constitute a change in the State hazardous waste program, since the State's Open Meetings Act has never been relied upon by the State to meet the Federal guidelines for public participation (see 40 CFR 271.14 and 124). RCRA Section 3006(b) requires States to maintain equivalency to the Federal program; however, States can also pass legislation that is more stringent than the Federal programs. The Michigan Open Meetings Act would fall in that category since it is a State law that goes beyond the Federal requirements for public participation. Consequently, the change in the applicability of the State's Open Meetings Act to the MDNR Director does not represent a change in Michigan's hazardous waste management program. Any direct comments on the Michigan Open Meetings Act should be referred to the State of Michigan.1

The commenter also suggested that EO 1991–31 affected the public participation requirements, since it changed the manner in which the State develops administrative rules implementing Michigan's hazardous waste program. The Director of the MDNR now establishes the administrative rules by which the program is administered rather than the Michigan Natural Resources Commission (MNRC). The commenter stated that the Director of the MDNR, unlike MNRC, is not subject to Michigan's Open Meetings Act and therefore the Director can make final decisions on administrative rules pertaining to the hazardous waste management program in closed meetings and the substance of those meetings need not be recorded. The commenter suggested that this represents a significant change in the way the State develops administrative

¹It should be noted, though, that public involvement in RCRA activities is receiving increased visibility. On June 2, 1994, EPA published in the **Federal Register** (59 FR 28680–28711) a proposed rule that would require earlier and more meaningful public participation in the RCRA permitting process. This Agency rulemaking is anticipated to be finalized the summer of 1995. When this rule becomes finalized, States will be required to be authorized for these activities. However, for the time being, the State of Michigan is meeting all the current requirements for public participation under the Federal RCRA program.