

commenter that ADEQ is not capable of implementing Arizona's existing hazardous waste program. The permitting and enforcement programs are inconsistent and favor violators. Permitting is also slow and unresponsive to the public.

The comment contained examples about three facilities. As to the first facility, the commenter alleged that there have been various explosions and that waste was sent off-site from the facility to a non-permitted site. Also, there was no penalty assessed despite an alleged failure to submit the facility's permit application on time. The commenter further questioned the validity of a partial facility closure that was approved after a public hearing was denied. Finally, the commenter stated that ADEQ has yet to issue a permit for this facility.

In the second case, a facility is operating on the site of a previous facility. The commenter alleged that both facilities were able to operate under interim status for over 10 years. The commenter stated that this allowed increases in storage and treatment capacity at the facilities without the public participation which would have been required under the permitting process. The commenter further alleged that the current facility has documented groundwater and soil contamination that ADEQ has not addressed.

Lastly, the commenter alleged that in conducting public participation on a permit for a facility in Phoenix, ADEQ denied a request for a public hearing on the grounds that there was not sufficient public interest despite the fact that it was the City of Phoenix that had requested the hearing.

Response: This comment does not specifically pertain to the State's program revision discussed in EPA's notice but comments more generally on the State's overall program capabilities. EPA cannot find that the examples cited demonstrate an overall lack of permitting and enforcement capability, though the comment warrants further action as detailed below.

Based on a review of Arizona's application for final authorization as well as continuing periodic comprehensive assessments of Arizona's hazardous waste program, EPA has determined that Arizona meets the RCRA requirements including those set out in 40 CFR 271.13 through 271.16. EPA has further determined that Arizona has the capability to implement these requirements. Also, EPA's oversight of the Arizona program includes monitoring of the implementation of the approved program, including permitting and

enforcement, through quarterly progress reports which culminate in an annual on-site review. Arizona most recently successfully completed the program review process in November 1994, although the review did identify permits and enforcement as some areas for on-going program improvements.

Information such as that provided by this commenter is continually evaluated by EPA in these assessments of State capabilities. EPA now is following up on the commenter's examples as part of EPA's on-going evaluation of the Arizona program. Problem areas which are identified through this process will be addressed through program implementation improvement.

Finally, though the intermittent enforcement complained of does not represent a lack of program capability, it may, after further investigation, suggest the need for supplementary Federal enforcement action in some cases. Although authorized states have primary enforcement responsibility, EPA retains enforcement authority to carry out RCRA requirements. The commenter's examples will be fully evaluated and enforcement action taken, as appropriate.

In sum, EPA has evaluated the state's capability and has determined that the state has adequate capability to warrant authorization. Any member of the public, however, is at any time encouraged to raise such concerns for EPA to take into account in EPA's ongoing assessment and improvement of program capabilities.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Arizona's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for Federal

agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Under the authority of RCRA section 3006(b), EPA has already approved Arizona's hazardous waste program. EPA does not anticipate that the approval of the revisions to Arizona's hazardous waste program referenced in today's notice will result in annual costs of \$100 million or more. EPA estimates that it costs a state approximately \$7,323 to develop and submit to EPA a revision application for approval.

EPA's approval of state programs generally have a deregulatory effect on the private sector because once it is determined that a state hazardous waste program meets the requirements of RCRA section 3006(b) and the regulations promulgated thereunder at 40 CFR Part 271, owners and operators