

US EPA ARCHIVE DOCUMENT

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ adopted date	EPA approval date and citation ⁵	Explanations
V. Stack Height Demonstration Analysis	Statewide	Submitted: 8/20/96 and 12/3/86.	6/7/89, 54 FR 24334.	
VI. Commitment to revise stack height rules in response to NRDC v. Thomas, 838 F.2d 1224 (DC Cir. 1988).	Statewide	Submitted: 5/11/88	9/2/88, 53 FR 34077.	
VII. PM10 Committal SIP	Statewide	Submitted: 7/12/88	10/5/90, 55 FR 4083.1	
VIII. Small Business Assistance Program	Statewide	Submitted: 11/10/92 and 4/1/94.	10/25/94, 59 FR 53589.	
IX. Commitment regarding permit exceedences of the PM10 standard in Rapid City.	Rapid City	Submitted: 7/19/95	6/10/02, 67 FR 39619.	

⁵ In order to determine the EPA effective date for a specific provision that is listed in this table, consult the **Federal Register** cited in this column for that particular provision.

[FR Doc. 05-4338 Filed 3-7-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL-7877-4]

Idaho: Incorporation by Reference of Approved State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Resource Conservation and Recovery Act, as amended (RCRA), allows EPA to authorize State hazardous waste management programs if EPA finds that such programs are equivalent and consistent with the Federal program and provide adequate enforcement of compliance. Title 40 of the Code of Federal Regulations (CFR) part 272 is used by EPA to codify its decision to authorize individual State programs and incorporates by reference those provisions of the State statutes and regulations that are subject to EPA's inspection and enforcement authorities as authorized provisions of the State's program. This final rule revises the codification of the Idaho authorized program.

DATES: This final rule is effective on March 8, 2005. The incorporation by reference of authorized provisions in the Idaho statutes and regulations contained in this rule is approved by the Director of the Federal Register as of March 8, 2005, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, U.S. EPA, Region 10, 1200 Sixth Avenue, Mail stop WCM-122, Seattle, WA 98101, e-mail: hunt.jeff@epa.gov, phone number (206) 553-0256.

SUPPLEMENTARY INFORMATION:

I. Incorporation by Reference

A. What Is Codification?

Codification is the process of including the statutes and regulations that comprise the State's authorized hazardous waste management program in the CFR. Section 3006(b) of RCRA, as amended, allows the Environmental Protection Agency (EPA) to authorize State hazardous waste management programs. The State regulations authorized by EPA supplant the federal regulations concerning the same matter with the result that after authorization EPA enforces the authorized regulations. Infrequently, State statutory language which acts to regulate a matter is also authorized by EPA with the consequence that EPA enforces the authorized statutory provision. EPA does not authorize State enforcement authorities and does not authorize State procedural requirements. EPA codifies the authorized State program in 40 CFR part 272 and incorporates by reference State statutes and regulations that make up the approved program which is federally enforceable. EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013 and 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934 and 6973, and any other applicable statutory and regulatory provisions.

Today's action codifies EPA's authorization of revisions to Idaho's hazardous waste management program. This codification reflects the State program in effect at the time EPA authorized revisions to the Idaho hazardous waste management program in a final rule dated March 10, 2004 (69 FR 11322). Notice and an opportunity for comment regarding the revisions to the authorized State program were provided to the public at the time those revisions were proposed.

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

Idaho initially received final authorization for its hazardous waste management program, effective April 9, 1990 (55 FR 11015). Subsequently, EPA authorized revisions to the State's program effective June 5, 1992 (57 FR 11580), August 10, 1992 (57 FR 24757), June 11, 1995 (60 FR 18549), January 19, 1999 (63 FR 56086), July 1, 2002 (67 FR 44069), and March 10, 2004 (69 FR 11322). EPA first codified Idaho's authorized hazardous waste program effective February 4, 1991 (55 FR 50327), and updated the codification of Idaho's program on June 5, 1992 (57 FR 11580), August 10, 1992 (57 FR 24757), and August 24, 1999 (64 FR 34133). In this action, EPA revises Subpart N of 40 CFR part 272, to include the recent authorization revision actions effective July 1, 2002 (67 FR 44069) and March 10, 2004 (69 FR 11322).

C. What Decisions Have We Made in This Action?

Today's action codifies EPA's authorization of revisions to Idaho's hazardous waste management program. This codification incorporates by reference the most recent version of the State's authorized hazardous waste management regulations. This action does not reopen any decision EPA previously made concerning the authorization of the State's hazardous waste management program.

EPA is incorporating by reference the authorized revisions to the Idaho hazardous waste program by revising subpart N of 40 CFR part 272. 40 CFR part 272, subpart N, § 272.651 previously incorporated by reference Idaho's authorized hazardous waste program, as amended, through 1999. Section 272.651 also references the demonstration of adequate enforcement authority, including procedural and

enforcement provisions, which provide the legal basis for the State's implementation of the hazardous waste management program. In addition, § 272.651 references the Memorandum of Agreement, the Attorney General's Statement and the Program Description which were evaluated as part of the approval process of the hazardous waste management program in accordance with subtitle C of RCRA.

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

EPA retains the authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013 and 7003, and any other applicable statutory and regulatory provisions, to undertake inspections and enforcement actions and to issue orders in all authorized States. With respect to enforcement actions, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State analogues to these provisions. Therefore, the EPA is not incorporating by reference Idaho's inspection and enforcement authorities nor are those authorities part of Idaho's approved State program which operates in lieu of the Federal program. 40 CFR 272.651(b)(2) lists these authorities for informational purposes, and also because EPA considered them in determining the adequacy of Idaho's enforcement authorities. This action revises this listing for informational purposes where these authorities have changed under Idaho's revisions to State law and were considered by EPA in determining the adequacy of Idaho's enforcement authorities. Idaho's authority to inspect and enforce the State's hazardous waste management program requirements continues to operate independently under State law.

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

The public is reminded that some provisions of Idaho'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 Idaho is not authorized, but which have been incorporated into the State regulations because of the way the State adopted Federal regulations by reference;

(3) State procedural and enforcement authorities which are necessary to establish the ability of the program to enforce compliance but which do not

supplant the Federal statutory enforcement and procedural authorities.

State provisions that are "broader in scope" than the Federal program are not incorporated by reference in 40 CFR part 272. For reference and clarity, 40 CFR 272.651(b)(3) lists the Idaho regulatory provisions which are "broader in scope" than the Federal program and which are not part of the authorized program being incorporated by reference. This action updates that list for "broader in scope" provisions. While "broader in scope" provisions are not part of the authorized program and cannot be enforced by EPA, the State may enforce such provisions under State law.

Idaho has adopted but is not authorized for certain sections of the Post Closure rule (Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities: Post-Closure Permit Requirement and Closure Process; Final Rule) promulgated by EPA on October 22, 1998 (63 FR 56710). These unauthorized sections of the Post Closure rule include the State analogs to Federal citations 40 CFR 270.1(c)(7), 40 CFR 265.121, 40 CFR 265.110(c), and 40 CFR 265.118(c)(4). Additionally, Idaho is authorized for State analogs to Federal 40 CFR 264.90(e), 264.90(f), 264.110(c), 264.112(b)(8), 264.112(c)(2)(iv), 264.118(b)(4), 264.118(d)(2)(iv), 264.140(d), 265.90(f), 265.110(d), 265.112(b)(8), 265.118(c)(5), 265.140(d), 270.1(c) introductory text, and 270.28 except where those sections reference the use of enforceable documents in the context of the Post Closure rule. Idaho did not seek, nor receive, authorization for language in those sections which state as follows: " * * * or in an enforceable document (as defined in 270.1(c)(7))." Therefore, these Federal amendments, included in Idaho's adoption by reference at IDAPA 58.01.05.000, *et seq.*, are not part of the State's authorized program included in this codification.

F. What Will Be the Effect of Codification on Federal HSWA Requirements?

With respect to any requirement(s) pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) for which the State has not yet been authorized and which EPA has identified as taking effect immediately in States with authorized hazardous waste management programs, EPA will enforce those Federal HSWA standards until the State is authorized for those provisions.

The Codification does not affect Federal HSWA requirements for which

the State is not authorized. EPA has authority to implement HSWA requirements in all States, including States with authorized hazardous waste management programs, until the States become authorized for such requirements or prohibitions unless EPA has identified the HSWA requirement(s) as an optional or as a less stringent requirement of the Federal program. A HSWA requirement or prohibition, unless identified by EPA as optional or as less stringent, supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985).

Some existing State requirements may be similar to the HSWA requirements implemented by EPA. However, until EPA authorizes those State requirements, EPA enforces the HSWA requirements and not the State analogs.

II. Statutory and Executive Order Reviews

This action codifies EPA-authorized hazardous waste management requirements pursuant to RCRA Section 3006 and imposes no requirements other than those imposed by State law (see **SUPPLEMENTARY INFORMATION**). Therefore, this action complies with applicable executive orders and statutory provisions as follows:

1. *Executive Order 12866: Regulatory Planning Review*—The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993).

2. *Paperwork Reduction Act*—This action does not impose an information collection burden under the Paperwork Reduction Act.

3. *Regulatory Flexibility Act*—This action codifies Idaho's authorized hazardous waste management regulations in the CFR and does not impose new burdens on small entities. After considering the economic impacts of today's action on small entities under the Regulatory Flexibility Act, I certify that this action will not have a significant economic impact on a substantial number of small entities.

4. *Unfunded Mandates Reform Act*—Because this action codifies pre-existing requirements under State law which EPA already approved under 40 CFR part 271 and does not impose any additional enforceable duty beyond that required by State law or existing Federal law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

5. *Executive Order 13132: Federalism*—Executive Order 13132 does not apply to this action because it will not have federalism implications (*i.e.* substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government). This action codifies existing authorized State hazardous waste management program requirements without altering the relationship or the distribution of power and responsibilities established by RCRA.

6. *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*—Executive Order 13175 does not apply to this action because this action does not have tribal implications (*i.e.* substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes).

7. *Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*—This action is not subject to Executive Order 13045 because it is not economically significant and it does not make decisions based on environmental health or safety risks.

8. *Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*—This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

9. *National Technology Transfer and Advancement Act (NTTAA)*—EPA previously addressed the non-applicability of the NTTAA in its final approvals to revisions of the State's authorized hazardous waste management program. Section 12(d) of the NTTAA does not apply to this action.

10. *Executive Order 12988*—EPA has taken the necessary steps in this action to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

11. *Congressional Review Act*—The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and

other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**.

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: February 15, 2005.

Ronald A. Kreizenbeck,

Acting Regional Administrator, EPA Region 10.

■ For the reasons set forth in the preamble, EPA amends 40 CFR part 272 as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

■ 1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

■ 2. Subpart N is amended by revising § 272.651 to read as follows:

§ 272.651 Idaho State-Administered Program: Final Authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), Idaho has final authorization for the following elements as submitted to EPA in Idaho's base program application for final authorization which was approved by EPA effective on April 9, 1990. Subsequent program revision applications were approved effective on June 5, 1992, August 10, 1992, June 11, 1995, January 19, 1999, July 1, 2002, and March 10, 2004.

(b) The State of Idaho has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own

actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State Statutes and Regulations.*

(1) The Idaho statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(i) The EPA-Approved Idaho Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program, March 2004.

(ii) [Reserved]

(2) EPA considered the following statutes and regulations in evaluating the State program but is not incorporating them herein for enforcement purposes:

(i) Idaho Code (I.C.) containing the General Laws of Idaho Annotated, Title 39, Chapter 44, "Hazardous Waste Management", published in 2002 by the Michie Company, Law Publishers: sections 39-4404; 39-4405 (except 39-4405(8)); 39-4406; 39-4407; 39-4408(4); 39-4409(2) (except first sentence); 39-4409(3); 39-4409(4) (first sentence); 39-4410; 39-4411(1); 39-4411(3); 39-4411(6); 39-4412 through 39-4416; 39-4418; 39-4419; 39-4421; 39-4422; and 39-4423(3)(a)&(b).

(ii) Idaho Code (I.C.) containing the General Laws of Idaho Annotated, Title 39, Chapter 58, "Hazardous Waste Facility Siting Act", published in 2002 by the Michie Company, Law Publishers: sections 39-5804; 39-5809; 39-5810; 39-5813(2); 39-5814; 39-5816; 39-5817; and 39-5818(1).

(iii) Idaho Code (I.C.) containing the General Laws of Idaho Annotated, Volume 2, Title 9, Chapter 3, "Public Writings", published in 1990 by the Michie Company, Law Publishers, Charlottesville, Virginia: sections 9-337(10); 9-337(11); 9-338; 9-339; and 9-344(2).

(iv) 2002 Cumulative Pocket Supplement to the Idaho Code (I.C.), Volume 2, Title 9, Chapter 3, "Public Writing", published in 2002 by the Michie Company, Law Publishers, Charlottesville, Virginia: sections 9-340A, 9-340B, and 9-343.

(v) Idaho Department of Environmental Quality Rules and Regulations, Idaho Administrative Code, IDAPA 58, Title 1, Chapter 5, "Rules and Standards for Hazardous Waste", as published July 2002: sections 58.01.05.000; 58.01.05.356.02 through 58.01.05.356.05; 58.01.05.800; 58.01.05.850; 58.01.05.996; 58.01.05.997; and 58.01.05.999.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not

part of the authorized program, are not incorporated by reference, and are not federally enforceable:

(i) Idaho Code containing the General Laws of Idaho Annotated, Title 39, Chapter 44, "Hazardous Waste Management", published in 2002 by the Michie Company, Law Publishers: sections 39-4403(6)&(14); 39-4427; 39-4428 and 39-4429.

(ii) Idaho Code containing the General Laws of Idaho Annotated, Title 39, Chapter 58, "Hazardous Waste Siting Act", published in 2002 by the Michie Company, Law Publishers: section 39-5813(3).

(iii) Idaho Department of Environmental Quality Rules and Regulations, Idaho Administrative Code, IDAPA 58, Title 1, Chapter 5, "Rules and Standards for Hazardous Waste", as published July 2002: sections 58.01.05.355; and 58.01.05.500.

(4) *Memorandum of Agreement*. The Memorandum of Agreement between EPA Region 10 and the State of Idaho (IDEQ), signed by the EPA Regional Administrator on August 1, 2001, although not incorporated by reference, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(5) *Statement of Legal Authority*. The "Attorney General's Statement for Final Authorization," signed by the Attorney General of Idaho on July 5, 1988 and revisions, supplements and addenda to that Statement, dated July 3, 1989, February 13, 1992, December 29, 1994, September 16, 1996, October 3, 1997, April 6, 2001, and September 11, 2002, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Program Description*. The Program Description, and any other materials submitted as part of the original application or as supplements thereto, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

■ 3. Appendix A to part 272, State Requirements, is amended by revising the listing for "Idaho" to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Idaho

(a) The statutory provisions include: Idaho Code containing the General Laws of Idaho Annotated, Title 39, Chapter 44, "Hazardous Waste Management", 2002:

sections 39-4402; 39-4403 (except 39-4403(6)&(14)); 39-4408(1)-(3); 39-4409(1) (except fourth and fifth sentences); 39-4409(2) (first sentence); 39-4409(4) (except first sentence); 39-4409(5); 39-4409(6); 39-4409(7); 39-4409(8); 39-4411(2); 39-4411(4); 39-4411(5); 39-4423 (except 39-4423(3)(a)&(b)); and 39-4424.

Idaho Code containing the General Laws of Idaho Annotated, Title 39, Chapter 58, "Hazardous Waste Facility Siting Act", published in 2002 by the Michie Company, Law Publishers: sections 39-5802; 39-5803; 39-5808; 39-5811; 39-5813(1); and 39-5818(2).

Copies of the Idaho statutes that are incorporated by reference are available from Michie Company, Law Publishers, 1 Town Hall Square, Charlottesville, VA 22906-7587.

(b) The regulatory provisions include:

Idaho Department of Environmental Quality Rules and Regulations, Idaho Administrative Code, IDAPA 58, Title 1, Chapter 5, "Rules and Standards for Hazardous Waste", as published on July 2002: sections 58.01.05.001; 58.01.05.002; 58.01.05.003; 58.01.05.004; 58.01.05.005; 58.01.05.006; 58.01.05.007; 58.01.05.008; 58.01.05.009; 58.01.05.010; 58.01.05.011; 58.01.05.012; 58.01.05.013; 58.01.05.014; 58.01.05.015; 58.01.05.016; 58.01.05.356.01; and 58.01.05.998, except where any of those sections reference the use of enforceable documents in the context of the Post Closure rule. Idaho did not seek, nor receive, authorization for language in those sections which states as follows: "* * * or in an enforceable document (as defined in 270.1(c)(7))." Therefore, these Federal amendments included in Idaho's adoption by reference at IDAPA 58.01.05.000, *et seq.*, are not part of the State's authorized program. Nor does Idaho's authorized program include the Federal regulations at 40 CFR 270.1(c)(7), 40 CFR 265.121, 40 CFR 265.110(c) or 40 CFR 265.119(c)(4) because Idaho did not seek authorization for those sections.

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[FR Doc. 05-4342 Filed 3-7-05; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 190, 191, 192, 193, 194, 195, 198, and 199

RIN 2137-AD77

Agency Reorganization: Nomenclature Change and Technical Amendments

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: In accordance with the Norman Y. Mineta Research and Special Programs Improvement Act, which

reorganized the Department's pipeline and hazardous materials safety programs into the new Pipeline and Hazardous Materials Safety Administration (PHMSA), this document revises all references to the former Research and Special Programs Administration (RSPA) in 49 CFR parts 190 through 199 to reflect the creation of PHMSA. This document also updates the Office of Pipeline Safety's internet and mailing addresses, docket procedures, titles, section numbers, penalty considerations and cap adjustments, terminology, and other changes conforming part 190 with the Pipeline Safety Improvement Act of 2002. The amendments made by this rule reflect the changed organizational posture of the agency and update the part 190 enforcement procedures to reflect current public law. This rule does not impose any new operating requirements on pipeline owners and operators.

DATES: This final rule is effective March 8, 2005.

FOR FURTHER INFORMATION CONTACT: Lawrence White, Attorney-Advisor, Pipeline and Hazardous Materials Safety Administration, Office of the Chief Counsel, 400 7th Street, SW., Washington, DC 20590. Tel: (202) 366-4400. Fax: (202) 366-7041. E-mail: lawrence.white@dot.gov.

SUPPLEMENTARY INFORMATION:

Background and Summary

In accordance with the Norman Y. Mineta Research and Special Programs Improvement Act (Pub. L. 108-426, 118 Stat. 2423; Nov. 30, 2004) (the "Mineta Act"), which reorganized the Department's pipeline and hazardous materials safety programs into the new PHMSA, this document revises all references to the former RSPA in 49 CFR parts 190-199 to reflect the creation of PHMSA. This document also makes conforming changes reflecting the enactment of the Pipeline Safety Improvement Act of 2002 (Pub. L. 107-355, 116 Stat. 2985; Dec. 17, 2002) (the "PSI Act") including changes to the Office of Pipeline Safety's (OPS') Internet and mailing addresses, docket procedures, titles, section numbers, penalty considerations and cap adjustments, terminology, and other editorial changes to enhance the clarity and consistency of the part 190 enforcement procedures used by the agency. The amendments made by this rule reflect the changed organizational posture of the agency and update the part 190 enforcement procedures to reflect current public law. This rule does not impose any new operating