

US EPA ARCHIVE DOCUMENT

Model C-2

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL]

[*insert State name*]: [Final] Authorization of State Hazardous Waste Management Program
Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate Final Rule.

SUMMARY: [*insert State name*] has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments that oppose this authorization during the comment period, the decision to authorize [*insert State name*]'s changes to its hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on [*insert date 60 days after the date of publication*] unless EPA receives adverse written comment by [*insert date 30 days after the date of publication*]. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect. [*You may use a longer time period for the comment period and/or the effective date, particularly if you believe you will receive many comments. Allow sufficient time to evaluate the comments and publish a withdrawal notice, if necessary, before the rule becomes effective.*]

ADDRESSES: Submit your comments by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
2. E-mail: [*insert name and email address of appropriate Regional contact*].
3. Mail: [*insert name and address of appropriate Regional contact*].
4. Hand Delivery or Courier. Deliver your comments to [*insert name and address of appropriate Regional contact*].

Instructions: We must receive your comments by [*insert date 30 days after the date of publication*]. Please refer to Docket Number ____ [*insert docket number if Region uses a docket*]. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or e-mail. The Federal regulations.gov website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

You can view and copy [*insert State name*]’s application and associated publicly available materials from [*insert business hours*] at the following locations: [*insert appropriate State addresses*] and EPA Region [*insert Region number*], Library, [*insert the address, phone number, and contact*]. Interested persons wanting to examine these documents should make an appointment with the office at least [*insert number of hours or days*] in advance.

FOR FURTHER INFORMATION CONTACT: [*insert name, address, email address and phone number of the appropriate Regional contact.*].

SUPPLEMENTARY INFORMATION:

A. Why are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA’s regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in this Rule?

We conclude that *[insert State name]*'s application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant *[insert State name]* Final authorization to operate its hazardous waste program with the changes described in the authorization application. *[insert State name]* has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country *[add if appropriate: unless the State has explicitly demonstrated its authority and has been expressly authorized by EPA to implement the RCRA hazardous waste program in all or part of Indian country]*) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in *[insert State name]*, including issuing permits, until the State is granted authorization to do so.

[Omit reference to Indian country if the State does not contain any Indian country. Tailor as appropriate for the particular State after consulting with the Regional Indian law and policy contacts.]

C. What is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in *[insert State name]* subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. *[insert State name]* has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- do inspections, and require monitoring, tests, analyses or reports
- enforce RCRA requirements and suspend or revoke permits
- take enforcement actions regardless of whether the State has taken its own actions

[Delete this third bullet if the State is in the US court of Appeals Eighth Circuit, due to the Harmon case]

This action does not impose additional requirements on the regulated community because the regulations for which *[insert State name]* is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval *[as appropriate, insert language explaining why we don't anticipate adverse comment]*. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of

today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if EPA Receives Comments that Oppose this Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

[Add the following if you want the option of withdrawing the authorization of only part of the revisions, if the adverse comments you receive are specific to particular revisions] If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What has [INSERT STATE NAME] Previously been Authorized for?

[Insert paragraph briefly describing the State's authorization history prior to submission of this program revision application. The following is an example:]

[insert State name] initially received Final authorization on *[insert date of publication of authorization FR notice]*, effective *[insert effective date]* (_ FR _) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on *[insert date of publication of authorization FR notice]*, effective *[insert effective date]* (_ FR _), *[insert date of publication of authorization FR notice]*, effective *[insert effective date]* (_ FR _), . . . , and *[insert date of publication of authorization FR notice]*, effective *[insert effective date]* (_ FR _).

G. What Changes are We Authorizing with Today's Action?

On *[insert date of application submission]*, *[insert State name]* submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that *[insert State name]*'s hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant *[insert State name]* Final authorization for the following program changes:

[Insert discussion which summarizes the State's program revision. Discuss any relevant changes to State statutory and regulatory authority. For clarity, it is recommended that you use a table, such as shown below, to summarize the State's program revision.]

[Insert discussion which summarizes the State's program revision. Discuss any relevant changes to State statutory and regulatory authority. In addition, you may wish to insert a

paragraph directing the public's attention to certain issues (e.g., the State's more stringent requirements). For clarity, it is recommended that you use a table, such as shown below, to summarize the State's program revision.]

Description of Federal Requirement (include checklist #, if relevant)	<u>Federal Register</u> date and page (and/or RCRA statutory authority)	Analogous State authority ¹

¹[*Insert title and adoption or effective date of the State rules. If the dates are different for some of the rules, an additional column can be added to the Table.*]

NOTE: Describe any major portions of the State's program which are not part of the RCRA program (e.g., any major State requirements that are broader in scope than the relevant Federal requirements; non delegable provisions). You may wish to insert a paragraph directing the public's attention to certain issues (e.g., the State's more stringent requirements). The following is an example:]

H. Where are the Revised State Rules Different from the Federal Rules?

We consider the following State requirements to be more stringent than the Federal requirements:

- [insert State reference(s)] because the State requires.....,
- [insert State reference(s)] because the State requires....., and
- [insert State reference(s)] because the State requires.....

These requirements are part of [insert State name]'s authorized program and are federally enforceable.

We also consider the following State requirements go beyond the scope of the Federal program:

- [insert State reference(s)] because the State requires.....,
- [insert State reference(s)] because the State requires....., and
- [insert State reference(s)] because the State requires.....

Broader-in-scope requirements are not part of the authorized program and EPA can not enforce them. Although you must comply with these requirements in accordance with state law, they are

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not RCRA requirements.

EPA cannot delegate the Federal requirements at *[insert Federal regulation reference(s)]*. Although *[insert State name]* has adopted these requirements *[by reference/verbatim from the Federal regulations -cite the State regs]*, EPA will continue to implement those requirements.

[Insert discussion of the status of State hazardous waste permits issued before the State is authorized. It must be clear what happens, if anything, at the date of authorization. The following is an example:]

I. Who Handles Permits After the Authorization Takes Effect?

[State] will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until *[insert language from MOA explaining when EPA administration of permits terminates]*. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which *[insert State name]* is not yet authorized.

[Insert a statement as to whether or not the State is being authorized to operate in any Indian country. The following is an example:]

J. How does Today's Action Affect Indian Country (18 U.S.C. 1151) in *[insert State name]*? [Omit if the State does not contain any Indian country. Tailor as appropriate in consultation with the Regional Indian law and policy contacts.]

[insert State name] is not authorized to carry out its hazardous waste program in Indian country within the State, which includes *[insert a list of the Indian country (use bullets)]*. EPA will continue to implement and administer the RCRA program in these lands.

[or]

In *[date]* (*[FR number]*), *[insert State name]* received authorization to implement its hazardous waste program in *[all of the/ certain]* Indian country within the State, including the following lands *[insert a list of the Indian country (use bullets)]*. *[State]'s* hazardous waste regulations apply in these lands in lieu of the Federal regulations, and the State issues and enforces hazardous waste permits in those lands. The State also implements in those Indian lands the changes to the State's hazardous waste program that EPA is authorizing through this rule.

K. What is Codification and is EPA Codifying *[insert State name]*'s Hazardous Waste Program as Authorized in this Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart *[insert appropriate subpart]* for this authorization of *[State]*'s program changes *[or program, if program not codified at all]* until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State 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 (Pub. L. 104-4). **For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).** This action will not have 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. **This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 Fed. Reg. 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.**

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 F.R. 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 F.R. 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the •Attorney General's Supplemental Guidelines for the Evaluation

of Risk and Avoidance of Unanticipated Takings• issued under the executive order. *[If your approval imposes additional paperwork burdens, add a section addressing the Paperwork Reduction Act; for all other rules include the following sentence:]* This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

[For final or immediate final rules only, add:]

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. 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. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This action will be effective _____.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

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:

Name

Regional Administrator, Region