

US EPA ARCHIVE DOCUMENT

determination will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law. This determination to approve the Lake County's application will affect only the Lake County's operation of the County's landfill.

EPA consulted with the Confederated Salish and Kootenai Tribes early in the process of making this determination to approve the County's alternative final cover request so that the Tribes had the opportunity to provide meaningful and timely input. Between 2007 and 2009, technical issues were raised and addressed by both the Tribes and EPA concerning Lake County's proposal. EPA's consultation with the Tribes culminated in a letter of July 15, 2009, from the Tribes, in which they stated that they have no further issues with the Lake County proposal. The Tribes did not offer any additional comments during the public comment period announced in the **Federal Register** on February 10, 2010.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards, (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide to Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The technical standards included in the application were proposed by Lake County. Given EPA's obligations under Executive Order 13175 (see above), the Agency has, to the extent appropriate, applied the standards established by the County and accepted by the Tribes. In addition, the Agency evaluated the proposal's design against the engineering design and construction criteria contained in the EPA draft guidance document, "Water Balance Covers for Waste Containment: Principles and Practice (2009)."

Authority: Sections 1008, 2002, 4004, and 4010 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6907, 6912, 6944, and 6949a. Temporary Delegation of Authority to Promulgate Site-Specific Rules to Respond to Requests for Flexibility from Owners/Operators of Municipal Solid Waste Landfill Facilities in Indian Country, October 14, 2009, Incorporation by Reference.

List of Subjects in 40 CFR Part 258

Environmental protection, Incorporation by reference, Municipal landfills, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: April 22, 2010.

Carol Rushin,

Acting Regional Administrator, Region VIII.

Editorial Note: This document was received in the Office of the Federal Register on August 11, 2010.

■ For the reasons stated in the preamble, 40 CFR part 258 is amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

■ 1. The authority citation for part 258 continues to read as follows:

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c) and 6949a(c), 6981(a).

Subpart F—[Amended]

■ 2. Add § 258.62 to subpart F to read as follows:

§ 258.62 Approval of Site-Specific Flexibility Requests in Indian Country.

(a) *Lake County Municipal Landfill final cover requirements.* Paragraph (a) of this section applies to the Lake County Landfill, a municipal solid waste landfill owned and operated by Lake County on the Confederated Salish and Kootenai Tribes' Flathead Reservation in Montana. The alternative final cover request submitted by Lake County, Montana, consisting of the "Lake County Landfill Alternative Cover," dated May 2007, the "Construction Quality Assurance & Control Plan for the Lake County Class II Landfill Unit Landfill Closure Project" and the "Lake County Landfill Plans for Final Closure January 2009," dated January 2009, is hereby incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect or obtain a copy at the Environmental Protection Agency, Region VIII, Montana Office, 10 West 15th St., Suite 3200, Helena, MT or by calling 406-457-5000. You may also inspect a copy at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. The facility owner and/or operator may close the facility in accordance with this application,

including the following activities more generally described as follows:

(1) The owner and operator may install an evapotranspiration system as an alternative final cover for the 15.4 acre active area.

(2) The final cover system shall consist of a 5.5-foot-thick multi-layer cover system comprised, from bottom to top, of an 18-inch intermediate and gas vent layer, a 24-inch native sand layer, an 18-inch imported silt layer and a 6-inch topsoil layer, as well as seeding and erosion control.

(3) The final cover system shall be constructed to achieve an equivalent reduction in infiltration as the infiltration layer specified in § 258.60(a)(1) and (a)(2), and provide an equivalent protection from wind and water erosion as the erosion layer specified in paragraph (a)(3) of this section.

(4) In addition to meeting the specifications of the "Lake County Landfill Alternative Cover" dated May 2007, and the "Construction Quality Assurance & Control Plan for the Lake County Class II Landfill Unit Landfill Closure Project" dated January 2009, the owner and operator shall:

(i) At 50% final design, submit to EPA for approval an Operations and Maintenance Plan that includes an inspection schedule (at least quarterly) and remediation plan to address any potential rodent damage to the final cover; and

(ii) Achieve re-vegetation rates greater than 50% by the end of the first season and a complete stand of native grasses by the end of the third season.

(5) The owner and operator shall place documentation demonstrating compliance with the provisions of this Section in the operating record.

(6) All other applicable provisions of 40 CFR part 258 remain in effect.

[Reserved]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R01-RCRA-2010-0468-FRL-9190-6]

Massachusetts: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Commonwealth of Massachusetts applied to EPA for final

authorization of certain changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA determined that these changes satisfy all requirements needed to qualify for final authorization and recently authorized the State's changes through an immediate final action. In the immediate final action, EPA also stated that "Massachusetts is not authorized to carry out its hazardous waste program in Indian country." An adverse comment was filed regarding this determination (but not otherwise challenging the authorization decision). Therefore, EPA is today responding to this comment and making a final decision that the updated authorization does not apply to Indian country. In addition, EPA is correcting an error in the immediate final action rule.

DATES: The authorization of Massachusetts' program revisions shall continue to take effect on August 23, 2010 as provided in the immediate final rule. Today's decision that the updated authorization does not apply to Indian country also will be final, effective August 23, 2010.

ADDRESSES: *Docket:* EPA has established a docket for this action under Docket ID No. EPA-R01-RCRA-2010-0468. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although it may be listed in the index, some information might not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the following two locations: (i) Massachusetts Department of Environmental Protection, Business Compliance Division, One Winter Street—8th Floor, Boston, MA 02108, business hours Monday through Friday 9 a.m. to 5 p.m., tel: (617) 556-1096; and (ii) EPA Region I Library, 5 Post Office Square, 1st Floor, Boston, MA 02109-3912, by appointment only, (617) 918-1990.

FOR FURTHER INFORMATION CONTACT: Robin Biscaia, RCRA Waste Management Section, Office of Site Remediation and Restoration (OSRR 07-1), EPA New England—Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109-3912; telephone number: (617) 918-1642; fax number: (617) 918-0642, e-mail address: biscaia.rob@epa.gov.

SUPPLEMENTARY INFORMATION: The Massachusetts program revisions

authorized by EPA through the recent immediate final action are identified in the immediate final rule, 75 FR 35660 (June 23, 2010). Since no adverse comments were received regarding EPA's decision to authorize these revisions, the decision to authorize the revisions is not being withdrawn and will continue to take effect on August 23, 2010 as provided in the immediate final rule.

However, in the immediate final rule, EPA also stated that "Massachusetts is not authorized to carry out its hazardous waste program in Indian country within the State (land of the Wampanoag Tribe). Therefore, EPA will continue to implement and administer the RCRA program in these lands." *Id.* at 35665. An adverse comment was received regarding this determination, worded as follows: "Through federalism, Massachusetts as one of the 50 sovereign united States, should have the authority to protect its residents from hazardous waste contaminating our water and air within our boundaries. Whenever the Massachusetts regulations exceed the Federal regulations or are broader, the EPA through comity should be enforcing the higher Massachusetts standards within Indian country." Since an adverse comment was received on this issue, the determination regarding whether the authorization applies within Indian country will not take effect as a final decision based on the immediate final rule. Rather, EPA instead has considered the comment and is making its final determination regarding the effect of the authorization decision on Indian country in today's final rule.

Massachusetts has not applied for authority to operate its RCRA program within Indian country. In the absence of any request from the State, the EPA has no occasion for considering whether it would grant Massachusetts such authority. Thus, in the absence of any request from the State, the EPA cannot agree with the commenter that Massachusetts should be granted the authority to operate its program in Indian country. Rather, the EPA administered RCRA program will continue to apply in those lands.

The EPA also cannot agree with the commenter that it should be enforcing the Massachusetts requirements rather than the Federal RCRA requirements, within Indian country. As a legal matter, for areas where the EPA directly administers the RCRA program, the EPA must enforce its own requirements rather than a State's requirements.

Thus, the EPA is today making the final determination that Massachusetts is not authorized to carry out its

hazardous waste program in Indian country within the State (land of the Wampanoag Tribe). Therefore, EPA will continue to implement and administer the RCRA program in these lands. This determination affects only the land in the town of Gay Head (Aquinnah), Massachusetts, taken into trust by the Department of the Interior for the Wampanoag Tribal Council of Gay Head, Inc., as authorized by the Wampanoag Tribal Council of Gay Head, Inc., Indian Claims Settlement Act of 1987. *See* 25 U.S.C. 1771-1771i.

In addition, EPA is today correcting an error in the immediate final action rule. At page 35664 of that rule, the EPA authorized the State to regulate waste codes P188, Physostigmine Salicylate, and P204, Physostigmine, under Checklist 140. However, on page 35663 of that rule, the EPA erroneously stated that the State was not being authorized for those two waste codes. This incorrect statement should be disregarded. The authorization of the State to regulate those two waste codes will take effect on August 23, 2010, along with the rest of the immediate final rule.

The ways in which the EPA has complied with various administrative requirements regarding the authorization action is set out in part L of the immediate final rule. No further steps are required in order to make today's final determination.

List of Subjects in 40 CFR Part 271

Environmental protection, Hazardous waste, Indian lands.

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: August 9, 2010.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

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