

US EPA ARCHIVE DOCUMENT

2. On page 58438, column 2, in the "Need for Correction" section of the preamble the language "As published, the correcting amendment of September 24, 2008 (73 FR 54945) to final regulations (TD 9321) contains errors that may prove to be misleading and is in need of clarification." is corrected to read "As published, the correcting amendment of September 24, 2008 (73 FR 54945) to final regulations (TD 9321) contains errors that may prove to be misleading and is in need of clarification."

**Guy R. Traynor,**

*Federal Register Liaison, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 271**

[FRL-8733-7]

### **Minnesota: Final Authorization of State Hazardous Waste Management Program Revision**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is granting Minnesota Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The agency published a proposed rule on July 14, 2008 at 73 FR 40263 and provided for public comment. The public comment period ended on August 13, 2008. We received no comments. No further opportunity for comment will be provided. EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is proposing to authorize the State's changes through this proposed final action.

**DATES:** *Effective Date:* The final authorization will be effective on October 23, 2008. This approval will expire automatically if the Joint Powers Agreement (JPA) between the State of Minnesota and Hennepin County is terminated or expires without renewal.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R05-RCRA-2008-0468. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some of the information is not publicly available, e.g., CBI or other information whose

disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy. You may view and copy Minnesota's application from 9 a.m. to 4 p.m. at the following addresses: U.S. EPA Region 5, LR-8J, 77 West Jackson Boulevard, Chicago, Illinois, contact: Gary Westefer (312) 886-7450; or Minnesota Pollution Control Agency, 520 Lafayette Road, North, St. Paul, Minnesota 55155, contact Tanya Maurice (651) 297-1793.

**FOR FURTHER INFORMATION CONTACT:** Gary Westefer, Minnesota Regulatory Specialist, U.S. EPA Region 5, LR-8J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-7450, e-mail [westefer.gary@epa.gov](mailto:westefer.gary@epa.gov).

### **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 Minnesota's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we are granting Minnesota final authorization to operate its hazardous waste program with the changes described in the authorization application. Minnesota has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in 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 Minnesota, including issuing permits, until the State is granted authorization to do so.

#### **C. What Is the Effect of the Proposed Authorization Decision?**

The effect of this decision is to allow Minnesota to implement the EPA approved JPA with Hennepin County. Hennepin County will be able to conduct an agreed number of inspections, within Hennepin County, annually on behalf of the Minnesota Pollution Control Agency (MPCA). The JPA does not affect MPCA's enforcement responsibility.

Minnesota continues to have 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, require monitoring, tests, analyses, or reports, and
- Enforce RCRA requirements and suspend or revoke permits.

This action does not impose additional requirements on the regulated community because there are no new regulations or inspection requirements created by this action. Metro County authorities, including Hennepin County, are already performing inspections at RCRA facilities.

#### **D. Proposed Rule**

On July 14, 2008 (73 FR 40263), EPA published a proposed rule. In that rule we proposed granting authorization of changes to Minnesota's hazardous waste program and opened our decision to public comment. The agency received no comments on this proposal. EPA found Minnesota's RCRA program to be satisfactory.

#### **E. What Has Minnesota Previously Been Authorized for?**

Minnesota initially received final authorization on January 28, 1985, effective February 11, 1985 (50 FR 3756) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on July 20, 1987, effective September 18, 1987 (52 FR 27199); on April 24, 1989, effective June 23, 1989 (54 FR 16361) amended June 28, 1989 (54 FR 27169); on June 15, 1990, effective August 14, 1990 (55 FR 24232); on June 24, 1991, effective August 23, 1991 (56 FR 28709); on March 19, 1992,

effective May 18, 1992 (57 FR 9501); on March 17, 1993, effective May 17, 1993 (58 FR 14321); on January 20, 1994, effective March 21, 1994 (59 FR 2998); and on May 25, 2000, effective August 23, 2000 (65 FR 33774). Minnesota also received authorization for the U.S. Filter Recovery Services Project XL on May

22, 2001, effective May 22, 2001 (66 FR 28085).

#### F. What Changes Are We Authorizing With Today's Action?

On February 25, 2008, Minnesota submitted a final complete program revision application, seeking authorization of their changes in

accordance with 40 CFR 271.21. We have determined that Minnesota's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, we are granting Minnesota final authorization for the following program change:

Description of state initiated change (include checklist #, if relevant)	Federal Register date and page (and/or RCRA statutory authority)	State authority
Joint Powers Agreement between the Minnesota Pollution Control Agency and Hennepin County.	42 U.S.C. 6926 and 6929, 40 CFR 271.16 and 271.17.	Minnesota Statutes sections 13.02, effective 1974 as amended; 13.39, effective 1981 as amended; 115.071, effective 1973 as amended; 115.072, effective 1973 as amended; 116.07, effective 1967 as amended; 116.075, effective 1971 as amended; 471.59, effective 1943 as amended; 473.151, effective 1976 as amended; 473.811, effective 1975 as amended.

Minnesota entered into the Joint Powers Agreement under its statutes. Sections 13.02 and 13.39 of the Minnesota Statutes cover data practices. Section 13.02 includes political subdivisions such as counties as well as the State agencies. Section 13.39 provides for public access to all data except that legally classified as nonpublic. Section 115.071 provides for adequate enforcement tools including civil and criminal penalties meeting the requirements of 40 CFR 271.16. Section 115.072 allows the State agency to seek recovery of its litigation costs. Section 116.07 authorizes MPCA to adopt hazardous waste rules. Section 116.072 authorizes the issuance of Administrative Penalty Orders meeting the requirements of 40 CFR 271.16. Section 116.075 governs treatment of trade secret data as does section 473.151, which also authorizes sharing of this information to comply with Federal law as required in 40 CFR 271.17(a). Section 471.59 provides the legal basis for governmental units such as MPCA and Hennepin County to enter into a cooperative agreement. Section 473.811 provides the seven Metro Counties (including Hennepin) authority to inspect waste facilities for enforcement purposes.

#### G. Where Are the Revised State Rules Different From the Federal Rules?

In the changes currently being made to Minnesota's program, there are no revisions of State regulations.

#### H. Who Handles Permits After the Authorization Takes Effect?

Minnesota will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to implement

and issue permits for HSWA requirements for which Minnesota is not yet authorized. EPA or Minnesota may enforce compliance with those permits. There are no new permits, or alterations to existing permits created by the JPA.

#### I. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Minnesota?

Minnesota is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. This includes:

1. All lands within the exterior boundaries of Indian Reservations within or abutting the State of Minnesota, including:
  - a. Bois Forte Indian Reservation.
  - b. Fond Du Lac Indian Reservation.
  - c. Grand Portage Indian Reservation.
  - d. Leech Lake Indian Reservation.
  - e. Lower Sioux Indian Reservation.
  - f. Mille Lacs Indian Reservation.
  - g. Prairie Island Indian Reservation.
  - h. Red Lake Indian Reservation.
  - i. Shakopee Mdewakanton Indian Reservation.
  - j. Upper Sioux Indian Reservation.
  - k. White Earth Indian Reservation.
2. Any land held in trust by the U.S. for an Indian tribe, and
3. Any other land, whether on or off a reservation that qualifies as Indian country.

Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in these lands.

#### K. Statutory and Executive Order Reviews

This proposed rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no

requirements other than those imposed by State law (see **SUPPLEMENTARY INFORMATION**, Section A. Why are Revisions to State Programs Necessary?). Therefore this rule complies with applicable executive orders and statutory provisions as follows:

#### 1. Executive Order 18266: Regulatory Planning Review

The Office of Management and Budget has exempted this rule from its review under Executive Order 12866 (58 FR 51735, October 4, 1993).

#### 2. Paperwork Reduction Act

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.*).

#### 3. Regulatory Flexibility Act

After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), I certify that this rule will not have a significant economic impact on a substantial number of small entities.

#### 4. Unfunded Mandates Reform Act

Because this rule approves 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).

#### 5. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) does not apply to this rule 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).

*6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to this rule because it will not have tribal implications (*i.e.*, substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and 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 rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866 and because the EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

*8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action as defined in Executive Order 12866.

*9. National Technology Transfer Advancement Act*

EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets 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 to this rule.

*10. Executive Order 12988*

As required by section 3 of Executive Order 12988 (61 FR 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.

*11. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings*

EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 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.

*12. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations*

Because this rule proposes authorization of pre-existing State rules and imposes no additional requirements beyond those imposed by State law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994).

*13. Congressional Review Act*

EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) 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).

**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: October 10, 2008.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

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**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Part 65**

[Docket No. FEMA—B-1011]

**Changes in Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

**DATES:** These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Assistant Administrator of FEMA reconsider the changes. The modified BFEs may be changed during the 90-day period.

**ADDRESSES:** The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3151.

**SUPPLEMENTARY INFORMATION:** The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.