

US EPA ARCHIVE DOCUMENT

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g.), of the

Instruction, from further environmental documentation. This rule establishes a safety zone.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T05–122 to read as follows:

§ 165.T05–122 Safety zone; Fireworks Display, Potomac River, Washington, DC.

(a) Location. The following area is a safety zone: All waters of the Potomac River in Washington, DC, surface to bottom, within a radius of 200 yards around two fireworks barges which will be located approximately 1,000 feet upstream of the Theodore Roosevelt Memorial Bridge, at position latitude 38°53'45.7" N, longitude 077°03'31.6" W. All coordinates reference Datum NAD.

(b) Definition. The Captain of the Port Baltimore means the Commander, Coast Guard Sector Baltimore or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(c) Regulations. The general regulations governing safety zones, found in Sec. 165.23, apply to the safety zone described in paragraph (a) of this section.

(1) All vessels and persons are prohibited from entering this zone, except as authorized by the Captain of the Port, Baltimore, Maryland.

(2) Persons or vessels requiring entry into or passage within the zone must request authorization from the Captain of the Port or his designated representative by telephone at (410) 576–2693 or by marine band radio on VHF channel 16 (156.8 MHz).

(3) All Coast Guard vessels enforcing this safety zone can be contacted on

marine band radio VHF channel 16 (156.8 MHz).

(4) The operator of any vessel within or in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State and local agencies.

(e) Effective period. This section is effective from 7:30 p.m. to 10 p.m. on October 1, 2005.

Dated: September 19, 2005.

Jonathan C. Burton,

Commander, U.S. Coast Guard, Acting Captain of the Port, Baltimore, Maryland.

[FR Doc. 05–19584 Filed 9–29–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7977–4]

Montana: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Montana has applied to EPA for Final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements 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 proposed rule because we believe this action is not controversial. Unless we get written comments opposing this authorization during the comment period, the decision to authorize Montana's changes to their hazardous waste program will take effect as provided below. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect. A separate document in the proposed rules section of this **Federal Register** will serve as the proposal to authorize the State's changes.

DATES: We must receive your comments by October 31, 2005. Unless EPA receives comments that oppose this action, this Final authorization approval will become effective without further notice on November 29, 2005.

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: shurr.kris@epa.gov. 3. Mail: Kris Shurr, 8P-HW, U.S. EPA, Region 8, 999 18th St, Ste 300, Denver, Colorado 80202-2466, phone number: (303) 312-6139. 4. Hand Delivery or Courier: to Kris Shurr, 8P-HW, U.S. EPA, Region 8, 999 18th St, Ste 300, Denver, Colorado 80202-2466, phone number: (303) 312-6139.

Instructions: Do not submit information that you consider to be Confidential Business Information (CBI) or information that should be otherwise protected from disclosure through [regulations.gov](http://www.regulations.gov), or e-mail. The Federal [regulations.gov](http://www.regulations.gov) Web site 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](http://www.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 Montana's application at the following addresses: MDEQ from 9 a.m. to 4 p.m., 1520 E 6th Ave, Helena, MT 59620, contact: Bob Martin, phone number (406) 444-4194 and EPA Region 8, from 8 a.m. to 3 p.m., 999 18th Street, Suite 300, Denver, CO 80202-2466, contact: Kris Shurr, phone number: (303) 312-6139, e-mail: shurr.kris@epa.gov.

FOR FURTHER INFORMATION CONTACT: Kris Shurr, EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, phone number: (303) 312-6139, e-mail: shurr.kris@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Why are Revisions to State Programs Necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program 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 their 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 Montana's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Montana Final authorization to operate its hazardous waste program with the changes described in the authorization application. Montana has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders, except in Indian country, and for carrying out those portions 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 Montana, including issuing permits, until Montana is authorized to do so.

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

The effect of this decision is that facilities in Montana subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements. Montana has primary enforcement responsibility under its state hazardous waste program for violations of the program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, the authority to conduct inspections and 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 the regulations for which Montana is being authorized 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 this action is a routine program change, and we do not expect comments opposing this approval. We are providing an opportunity for public comment at this time. In addition, in the proposed rules section of today's **Federal Register**, there is a separate document that proposes to authorize the State program changes. If we receive comments opposing this authorization, that document will serve as a proposal to authorize the changes.

E. What Happens If EPA Receives Comments Opposing This Action?

If EPA receives comments opposing this authorization, we will withdraw this rule by publishing a notice in the **Federal Register** before the rule becomes effective. We then will address all public comments in a later **Federal Register**. You may not have another opportunity to comment. If you want to comment on this action, you must do so at this time.

If we receive comments opposing authorization of only a particular change to the State hazardous waste program, we will withdraw that part of the rule. However, the authorization of program changes that are not opposed by any comments 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 Montana Previously Been Authorized For?

Montana initially received Final authorization on July 11, 1984, effective July 25, 1984 (49 FR 28245) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on July 11, 1984, effective September 25, 1985 (49 FR 28245), January 19, 1994, effective March 21, 1994 (59 FR 02752), and December 26, 2000, effective December 26, 2000 (65 FR 81381).

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

On July 28, 2005, Montana submitted a final revision application, seeking

authorization of program changes in accordance with 40 CFR 271.21.

We now make an immediate final decision, subject to receipt of written comments opposing this action, that Montana's hazardous waste program revision satisfies all of the requirements necessary for Final authorization. Therefore, we grant Montana final authorization for its entire Hazardous Waste Program, excluding the broader-in-scope provisions, as found at Administrative Rules of Montana (ARM), Title 17, Chapter 53, effective March 9, 2005, which incorporated 40 CFR parts 124 and 260 through 268, 270, 273, and 279, effective July 1, 2004. Montana has revised its entire program using a method that incorporates the Federal Program by reference. This method clearly indicates where the State's requirements are more stringent or broader-in-scope than the Federal requirements. EPA is also approving changes to the State's Availability of Information requirements (AI), as well as authorizing the State for the Exceptions to Blending and Burning of Hazardous Waste requirements [RCRA section 3004(q)(2)(A), (r)(2) and (r)(3), as codified in 40 CFR 261.4(a)(12)(i)&(ii)] (Non-Checklist Item BB).

In addition to the changes authorized above, EPA is also approving changes to the State's procedural and enforcement provisions. EPA reviewed these provisions in order to determine the adequacy of Montana's procedural and enforcement authorities to operate the hazardous waste program. In compliance with the requirements of 40 CFR 271.16(a)(3)(ii), Montana has revised its provisions at Montana Code Annotated Section 75-10-418 to obtain criminal penalties for used oil violations (Non-Checklist Item CP), as well as hazardous waste violations. State procedural and enforcement provisions are not authorized by EPA and do not supplant the Federal procedural and enforcement provisions. EPA relies on Federal procedural and enforcement authorities rather than the State analogs to these provisions. Montana's procedures to implement the State's hazardous waste management program requirements continue to operate independently under State law. The following State procedural and enforcement authorities are included as part of this action for informational purposes and are not part of the State's program that operate in lieu of EPA: Montana Code Annotated 2005, sections 2-3-101 et seq., 2-3-221, 2-4-103, 2-4-315, 2-6-101 et seq., 2-15-3501 et seq., 27-30-204, 30-14-402 et seq., 75-10-107, and 75-10-401 et seq.; and

Montana Rules of Civil Procedure, Rule 24(a).

H. Where Are the Revised State Rules Different From the Federal Rules?

The State has not adopted the following Federal rules: 40 CFR 260.20, 260.21, 260.22, and 260.23. (See ARM 17.53.401.) While this does not make the State more stringent, the regulated community must apply to the Regional office and comply with the Federal requirements for petitions, including delisting petitions, addressed by these rules. The State does not adopt any provision associated with the regulation of underground injection; instead, the responsibility for this part of the program is left with EPA (see 17.53.102(3), 17.53.802(2), 17.53.902(18), 17.53.1202(16) and 17.53.1202(18)). The State also has not adopted the permit by rule requirements for ocean disposal barges, because the State is landlocked and the provisions do not apply to the State.

The State has requirements that are more stringent than the Federal rules at (references are to the Administrative Rules of Montana, Title 17): 17.53.502(2), 17.53.602(2), 17.53.602(3), 17.53.603, 17.53.802(5), 17.53.803, 17.53.902(6), 17.53.903 and 17.53.1202(11) require annual rather than biennial reports; 17.53.803(1)(f)(iii) requires the most recent corrective action cost estimate to be submitted in the annual report; 17.53.702(2) through (4), 17.53.704 and 17.53.706 through 708 contain additional requirements for transfer facilities; 17.53.602(7) and (8) require the primary exporter to also file a report with the Montana Department of Environmental Quality; 17.53.602(9) gives both EPA and the State the authority to extend the record retention period; 17.53.1002(1), 17.53.1002(6) and 17.53.1003 prohibit certain wastes, including the dioxin wastes, from being burned in a Boiler and Industrial Furnace (BIF); 17.53.1002(2) and 17.53.1004 require that BIFs also perform background and periodic testing of soils and water in addition to the 40 CFR 266.102 requirements; 17.53.1002(4) does not allow the 40 CFR 266.102(e)(3)(ii) exemption from the particulate standards for BIFs and adds a provision that gives the Montana Department of Environmental Quality the discretion to require a BIF owner/operator submit, in conjunction with the permit application, a plan that will require cessation of hazardous waste burning during prolonged inversion conditions; 17.53.1002(5) requires annual stack emissions in addition to 40 CFR 266.102(e)(8)(i)(C); 17.53.1002(7) does not allow the 40 CFR 266.105(b)

waiver from the BIF particulate matter standard; and 17.53.1002(6) and 17.53.1002(8) do not allow the 40 CFR 266.109 low risk exemption and the § 266.110 waiver of the DRE trial burn for boilers; 17.53.1202(10) does not allow the submission of data in lieu of a trial burn as per 40 CFR 270.22(a)(1)(ii) and 270.22(a)(6); 17.53.1202(14) and (15) require that the term of a Boiler and Industrial Furnace permit be only five years and the permit may be modified to assure that the facility is in compliance with the current applicable requirements. The State does not allow interim status for BIFs; thus, does not adopt 40 CFR 266.103 and the language associated with it in 40 CFR part 266 (see 17.53.1002(3)), as well as 40 CFR 270.66(g) (see 17.53.1202(19)).

We also consider the State requirements to be broader-in-scope than the Federal program at: 17.53.111(2), 17.53.112, 17.53.113 and 17.53.1202(5)(l) and (17), because the State requires permit application fees as well as registration fees; 17.53.703 is also broader-in-scope because it requires that transporters obtain a registration from the state. Broader-in-scope requirements are not part of the authorized program, and EPA cannot enforce them. Although a facility must comply with these requirements in accordance with State law, they are not RCRA requirements.

EPA cannot delegate the Federal requirements at 40 CFR part 262, subparts E and H, §§ 268.5, 268.6, 268.42(b), and 268.44(a) through (g). EPA will continue to implement these requirements. Additionally, the State has chosen not to adopt 40 CFR 268.44(h) through (m); the responsibility for these requirements also remains with EPA.

I. Who Handles Permits After This Authorization Takes Effect?

Montana will issue and administer permits for all the provisions for which it is authorized. EPA will continue to administer any RCRA hazardous waste permits or portions of permits that we issued prior to the effective date of this authorization. EPA will transfer any pending permit applications, completed permits, or pertinent file information to Montana within 30 days of this approval. 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 and Montana have agreed to joint permitting and enforcement for those HSWA requirements for which Montana is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Montana?

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

- A. Lands within the exterior boundaries of the following Indian Reservations located within or abutting the State of Montana:
 - a. Blackfeet Indian Reservation.
 - b. Crow Tribe of Montana Indian Reservation.
 - c. Flathead Indian Reservation.
 - d. Fort Belknap Indian Reservation.
 - e. Fort Peck Indian Reservation.
 - f. Northern Cheyenne Indian Reservation.
 - g. Rocky Boy's Indian Reservation.
- B. Any land held in trust by the U.S. for an Indian tribe, and
- C. Any other land, whether on or off a reservation that qualifies as Indian country within the meaning of 18 U.S.C. 1151.

Therefore, this program revision does not extend to Indian country where EPA will continue to implement and administer the RCRA program in these lands.

K. What is Codification and is EPA Codifying Montana's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's authorized hazardous waste program statutes and regulations 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 BB for this authorization of Montana's program 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 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 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 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. EPA has complied with Executive Order 12630 (53 FR 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. 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.*).

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 November 29, 2005.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation-by-reference, Indians-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: September 22, 2005.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 05-19619 Filed 9-29-05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-7977-6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct Final Deletion of the Batavia Landfill Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 2, announces the deletion of the Batavia Landfill Superfund Site (Site), located in the Town of Batavia, Genesee County, New York, from the National Priorities List (NPL) and will consider public comment on this action.

The NPL is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated