

US EPA ARCHIVE DOCUMENT

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).

This rule also does not have tribal implications, because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, 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. 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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 9, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Reporting and recordkeeping requirements.

Dated: March 6, 2003.

**Jerri-Anne Garl,**

*Acting Regional Administrator, Region 5.*

■ For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### Subpart YY—Wisconsin

■ 2. Section 52.2570 is amended by adding paragraph (c)(108), to read as follows:

##### § 52.2570 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(108) On December 16, 2002, Lloyd L. Eagan, Director, Wisconsin Department of Natural Resources, submitted revised rules to allow use of NO<sub>x</sub> emissions averaging for sources subject to NO<sub>x</sub> emission limits in the Milwaukee-Racine area. The revised rules also establish a NO<sub>x</sub> emissions cap for sources that participate in emissions averaging, consistent with the emissions modeled in Wisconsin's approved one-

hour ozone attainment demonstration for the Milwaukee-Racine area. The rule revision also creates a new categorical emissions limit for new integrated gasification combined cycle units.

(i) Incorporation by reference.

(A) NR 428.02(6m) as published in the (Wisconsin) Register, November 2002, No. 563 and effective December 1, 2002.

(B) NR 428.04(2)(g)(3) as published in the (Wisconsin) Register, November 2002, No. 563 and effective December 1, 2002.

(C) NR 428.06 as published in the (Wisconsin) Register, November 2002, No. 563 and effective December 1, 2002.

[FR Doc. 03-8536 Filed 4-9-03; 8:45 am]

BILLING CODE 6560-50-U

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[FRL-7480-9]

### Nebraska: Final Authorization of State Hazardous Waste Management Program Revision

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

**ACTION:** Immediate final rule.

**SUMMARY:** Nebraska 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 which oppose this authorization during the comment period, the decision to authorize Nebraska'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 June 9, 2003 unless EPA receives adverse written comment by May 12, 2003. 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.

**ADDRESSES:** Send written comments to Lisa V. Haugen, U.S. EPA Region 7, ARTD/RESP, 901 North 5th Street, Kansas City, Kansas 66101. You can view and copy Nebraska's application during normal business hours at the following addresses: Nebraska Department of Environmental Quality, Suite 400, The Atrium, 1200 "N" Street, Lincoln, Nebraska 68509-8922, (402) 471-2186; and EPA Region 7, Library, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551-7877, Lisa V. Haugen.

**FOR FURTHER INFORMATION CONTACT:** Lisa V. Haugen, U.S. EPA Region 7, ARTD/RESP, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551-7877.

**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 Nebraska's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Nebraska Final authorization to operate its hazardous waste program with the changes described in the authorization application. Nebraska has responsibility for permitting treatment, storage, and disposal facilities 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 Nebraska, including issuing permits, until the State is granted authorization to do so.

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

The effect of this decision is that a facility in Nebraska 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. Nebraska 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

This action does not impose additional requirements on the regulated community because the regulations for which Nebraska is being authorized by today's action are already effective under state law, 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. 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.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw only 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. For What Has Nebraska Previously Been Authorized?**

Nebraska initially received Final authorization on January 24, 1985, effective February 7, 1985 (50 FR 3345), to implement the RCRA hazardous waste management program. We granted authorization for changes to its program on October 4, 1985, effective December 3, 1988 (53 FR 38950), June 25, 1996, effective August 26, 1996 (61 FR 32699), and June 4, 2002, effective April 22, 2002 (67 FR 38418).

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

On July 23, 2002, Nebraska submitted a final complete program revision application, seeking authorization of its changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to EPA's receipt of written comments that oppose this action, that Nebraska's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Nebraska Final authorization for the following program changes:

Description of Federal requirement (include checklist #, if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous State authority <sup>1</sup>
Toxicity Characteristic Revisions (Toxicity Leaching Procedure)—Checklist 74.	55 FR 11798-11877, March 29, 1990.	Title 128 2-009.07; 2-009.09-.10; 2-016; 3-010.01-.02; 3-011.02-.03; 21-014; 22-011; 22-013 (effective June 18, 2001, with amendments to Chapters 3, 4, 10, 12, 14, 16, 25, and Appendix V, effective April 2002)

Description of Federal requirement (include checklist #, if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous State authority <sup>1</sup>
Universal Waste: General Provisions—Checklist 142A; Specific Provisions for Batteries—Checklist 142B; Specific Provisions for Pesticides—Checklist 142C; Specific Provisions for Thermostats—Checklist 142D; Petition Provisions to Add a New Universal Waste.	60 FR 25492–25551, May 11, 1995.	Nebraska Revised Statutes §81–1504(15)(b) (2000); Title 128 1–004; 1–053; 1–086; 1–129; 2–001.07; 4–002.04; 6–001; 7–002.03–.04; 7–002.06–.09; 7–011; 8–003; 8–006.03; 9–002–003; 9–007.01; 10–001.03–.05; 12–001.03H; 20–001.06; 21–001; 22–001.01K; Chapter 25 (effective June 18, 2001, with amendments to Chapters 3, 4, 10, 12, 14, 16, 25, and Appendix V, effective April 2002)

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

In this authorization of the State of Nebraska's program revisions for Federal Revision Checklists 71 and 142A–D, there are no provisions that are more stringent or broader in scope. Broader in scope requirements are not part of the authorized program and EPA cannot enforce them.

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

Nebraska 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. 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 Nebraska is not yet authorized.

#### J. What Is Codification and Is EPA Codifying Nebraska'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 CFR. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart CC for this authorization of Nebraska's program changes until a later date.

#### K. Administrative Requirements

The Office of Management and Budget (OMB) 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 preexisting 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 (Public Law 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 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).

#### 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: March 17, 2003.

**Nat Scurry,**

*Acting Regional Administrator, Region 7.*

[FR Doc. 03-8835 Filed 4-9-03; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[FRL-7480-6]

#### Utah: Final Authorization of State Hazardous Waste Management Program Revision

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

**ACTION:** Immediate final rule.

**SUMMARY:** Utah 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. We are publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize Utah's changes to their 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 June 9, 2003 unless EPA receives adverse written comment by May 12, 2003. 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.

**ADDRESSES:** Copies of the Utah program revision applications and the materials which EPA used in evaluating the revisions are available for inspection and copying at the following locations: EPA Region VIII, from 7 a.m. to 4 p.m., 999 18th Street, Suite 300, Denver, Colorado 80202-2466, contact: Kris Shurr, phone number: (303) 312-6139 or Utah Department of Environmental Quality (UDEQ), from 8 a.m. to 5 p.m.,

288 North 1460 West, Salt Lake City, Utah 84114-4880, contact: Susan Toronto, phone number: (801) 538-6776. Send written comments to Kris Shurr, 8P-HW, U.S. EPA, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, phone number: (303) 312-6139 or electronically to [shurr.kris@epa.gov](mailto:shurr.kris@epa.gov).

**FOR FURTHER INFORMATION CONTACT:** Kris Shurr, 8P-HW, U.S. EPA, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, phone number: (303) 312-6139 or [shurr.kris@epa.gov](mailto:shurr.kris@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 Utah's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Utah Final authorization to operate its hazardous waste program with the changes described in the authorization application. Utah 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 Utah, including issuing permits, until Utah is authorized to do so.

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

This decision means that a facility in Utah 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. Utah 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:

- Conduct inspections; require monitoring, tests, analyses, or reports;
- enforce RCRA requirements; suspend or revoke permits; and,
- take enforcement actions regardless of whether Utah has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Utah 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. We are providing an opportunity for the public to 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, therefore, if you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the Utah 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