

US EPA ARCHIVE DOCUMENT

based on the parallel proposal published on December 1, 2008 (73 FR 72756). As stated in the parallel proposal, we will not institute a second comment period on this action.

#### List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 11, 2009.

Elizabeth Craig,

Acting Assistant Administrator, Office of Air and Radiation.

■ Accordingly, the amendments to the rule published in the **Federal Register** on December 1, 2008 (73 FR 72727) are withdrawn as of February 26, 2009.

[FR Doc. E9-4144 Filed 2-25-09; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[EPA-R09-RCRA-2008-0726; FRL-8771-8]

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

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

**ACTION:** Immediate final rule.

**SUMMARY:** The State of Nevada applied for final authorization of revisions to its hazardous waste management program under the Resource Conservation and Recovery Act (RCRA), as amended. The Environmental Protection Agency (EPA) has determined that these changes satisfy all of the requirements necessary to qualify for final authorization, and is authorizing the State's changes through this immediate final rule. EPA is publishing this rule to authorize the changes without a prior proposal because we believe that this action is not controversial and do not expect comments that oppose it. In the Proposed Rules section of this **Federal Register**, EPA is also publishing a proposal to authorize these changes to Nevada's hazardous waste management program. Unless we receive written comments that oppose this authorization during the comment period, the decision to authorize Nevada's changes to its hazardous waste management 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 and the separate document in the

proposed rules section of this **Federal Register** will serve as the proposal for purposes of this rulemaking action. EPA will respond to public comments in a later final rule based on the proposal. Nevada's application for program revision is available for public review and comment. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action should do so at this time.

**DATES:** Final authorization will become effective on April 27, 2009 unless EPA receives adverse written comment on or before March 30, 2009. 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:** Submit your comments, identified by Docket ID No. EPA-R09-RCRA-2008-0726 by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* [downey.jennifer@epa.gov](mailto:downey.jennifer@epa.gov).
- *Fax:* (415) 947-3533 (prior to faxing, please notify the EPA contact listed below).

- *Mail:* Send written comments to Jennifer Downey, Region IX (WST-2), 75 Hawthorne Street, San Francisco, CA 94105.

- *Hand Delivery:* Jennifer Downey, Region IX (WST-2), 75 Hawthorne Street, San Francisco, CA 94105. Such deliveries are only accepted during the office's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R09-RCRA-2008-0726. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov> including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <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 <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. (For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>).

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some 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 Nevada's application at the following addresses: Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 901 So. Stewart Street, Ste. 4001, Carson City, NV 89701, Phone: 775/687-4670, Business Hours: 9 a.m. to 5 p.m. Monday through Friday. U.S. EPA Region IX Library-Information Center, 75 Hawthorne Street, San Francisco, CA 94105, Phone: 415/947-4406, Business Hours: 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m. Monday through Thursday.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Downey, Region IX (WST-2), 75 Hawthorne Street, San Francisco, CA 94105, Phone: 415/972-3342. E-mail: [downey.jennifer@epa.gov](mailto:downey.jennifer@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 revise their programs and ask EPA to authorize the revisions. Revisions 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. States can also initiate their own changes to their hazardous waste program and these changes must then be authorized.

### B. What Decisions Have We Made in This Rule?

We conclude that Nevada's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Nevada Final authorization to operate its hazardous waste program with the changes described in this rulemaking. Nevada has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out all authorized 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 HSWA regulations take effect as a matter of federal law in authorized States before those States are authorized for such requirements. Thus, EPA will implement those requirements and prohibitions in Nevada, including issuing permits, until the State is granted authorization to do so.

### C. What Is the Effect of This Authorization Decision?

A facility in Nevada subject to RCRA will now have to comply with the authorized State requirements instead of the corresponding Federal requirements in order to comply with RCRA. Additionally, facilities must comply with any applicable Federally issued requirements, such as, for example, HSWA regulations issued by EPA for which Nevada has not received authorization, and RCRA requirements that are not supplanted by authorized State-issued requirements. Nevada continues to have enforcement responsibilities under its State law to pursue violations of its hazardous waste management program. EPA continues to have independent authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, the authority to:

- Do inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements (including State-issued statutes and regulations that are authorized by EPA, and any applicable federally-issued

statutes and regulations) and suspend or revoke permits; and

- Take enforcement actions regardless of whether the State has taken its own actions.

This authorization action does not impose additional requirements on the regulated community because the regulations for which Nevada is being authorized are already effective under State law, and are not changed by this authorization action.

### D. Why Wasn't There a Proposed Rule Before This 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. You may not have another opportunity to comment. 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 these 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 then use the proposal mentioned in the previous paragraph in making any further decision on the authorization of the State program changes. EPA will also address all public comments in a later final rule. 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 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 Nevada Previously Been Authorized For?

Nevada initially received final authorization for the base RCRA program on August 19, 1985 effective October 18, 1985 (50 FR 33359). Nevada has since received authorization for all revisions to the Federal RCRA program through June 1999, except for 40 CFR section 260.22 and the final rule published on April 12, 1989 (61 FR 16289) addressing Imports and Exports of Hazardous Waste. The following

**Federal Register** publication and effective dates apply to those revisions: April 29, 1992 effective June 29, 1992 (57 FR 18083), May 27, 1994 effective July 26, 1994 (59 FR 27472), April 11, 1995 effective June 12, 1995 (60 FR 18358), June 24, 1996 effective August 23, 1996 (60 FR 32345), January 29, 1999 effective March 30, 1999 (64 FR 4596), and June 12, 2002 effective August 12, 2002 (67 FR 40229).

### G. What Changes Are We Authorizing With This Action?

On May 27, 2004, August 30, 2004, January 25, 2005 and May 15, 2006, Nevada submitted final complete program revision applications for changes and additions to the Federal RCRA implementing regulations that occurred between July 7, 1999 and July 1, 2005, seeking authorization of those changes, as well as miscellaneous changes to its previously authorized regulations, 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 Nevada's hazardous waste management program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, EPA grants Nevada's final authorization for the following program revisions:

#### 1. Program Revision Changes for Federal Rules

Nevada adopts by reference the Federal RCRA regulations in effect as of July 1, 2005 at Nevada Administrative Code (NAC), section 444.8632 as modified by sections 444.86325.1(d) and (f), 444.8633 and 444.8634 adopted effective May 6, 2006. Nevada adopts the Federal requirements under the state statutory authorities as found in the Nevada Revised Statutes (NRS), sections 459.485, 490, 500 and 550 effective 2005. The Federal requirements for which the state is being authorized are as follows:

RCRA Cluster X (Federal Rules Published From July 7, 1999 to June 30, 2000)

(Adopted by Nevada as indicated in section 4 of LCB Petition No. R-2001-02 (filed with the Secretary of State on December 6, 2000) and as amended by LCB Petition 2001-02 [LCB R-037-01] (filed with the Secretary of State on October 25, 2001)).

Hazardous Air Pollutant Standards for Combustors, Miscellaneous Units, and Secondary Lead Smelters; Clarification of BIF Requirements; Technical Correction to Fast-track Rule (64 FR 52828, 9/30/99 as amended 64 FR 63209, 11/19/99) (Checklist 182);

Land Disposal Restrictions Phase IV— Technical Corrections (64 FR 56469, 10/20/99) (Checklist 183);

Accumulation Time for Waste Water Treatment Sludges (65 FR 12378, 3/8/00) (Checklist 184);

Vacatur of Organobromine Production Waste Listings (65 FR 14472, 3/17/00) (Checklist 185);

Petroleum Refining Process Wastes—Clarification (65 FR 36365, 6/8/00) (Checklist 187).

RCRA Cluster XI (Federal Rules Published From July 1, 2000 to June 30, 2001)  
(Adopted by Nevada as indicated in section 4 of LCB Petition No. R-2001-02 [LCB R-037-01] (filed with the Secretary of State on October 25, 2001)).

Hazardous Air Pollutant Standards; Technical corrections (65 FR 42292, 7/10/00 amended 66 FR 24270, 5/14/01 and 66 FR 35087, 7/3/01) (Checklist 188);

Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes (65 FR 67068, 11/8/00) (Checklist 189);

Land Disposal Restrictions Phase IV—Deferral for PCBs in Soil (65 FR 81373, 12/26/00) (Checklist 190);

Mixed Waste Rule 66 FR 27218, 5/16/01) (Checklist 191);

Mixture and Derived-From Rules Revisions (66 FR 27266, 5/16/01) (Checklist 192A);

Land Disposal Restrictions Correction (66 FR 27266, 5/16/01) (Checklist 192B);

Change of Official EPA Mailing Address (66 FR 34374, 6/28/01) (Checklist 193).

RCRA Cluster XII (Federal Rules Published From July 1, 2001 to June 30, 2002)  
(Adopted by Nevada as indicated in section 4 of LCB Petition No. 2002-11 [LCB R104-02] (filed with the Secretary of State on October 18, 2002)).

Mixture and Derived-From Rules Revision II (66 FR 50332, 10/3/01 amended 66 FR 60153, 12/3/01) (Checklist 194);

Inorganic Chemical Manufacturing Wastes Identification and Listing (66 FR 58258, 11/20/01 amended 67 FR 17119, 4/9/02) (Checklist 195);

CAMU Amendments (67 FR 2962, 1/22/02) (Checklist 196);

Interim Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (67 FR 6792, 2/13/02) (Checklist 197);

Hazardous Air Pollutant Standards for Hazardous Waste Combustors (67 FR 6968, 2/14/02) (Checklist 198);

Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes and TCLP Use With MGP Waste (67 FR 11251, 3/13/02) (Checklist 199).

RCRA Cluster XIII (Federal Rules Published From July 1, 2002 to June 30, 2003)  
(Adopted by Nevada as indicated in section 4 of LCB File No. R-126-03 [SEC 2003-06] (filed with the Secretary of State on April 13, 2004) and as amended by LCB File No. R-208-03 [SEC 2003-08] (filed with the Secretary of State on April 16, 2004)).

Zinc Fertilizers Made From Recycled Hazardous Secondary Material (67 FR 48393, 7/24/02) (Checklist 200);

Treatment Variance for Radioactively Contaminated Batteries (67 FR 62618, 10/7/02) (Checklist 201);

Hazardous Air Pollutant Standards for Combustors—Corrections 2 (67 FR 77687, 12/19/02) (Checklist 202).

RCRA Clusters XIV and XV (Federal Rules Published From July 1, 2003 to June 30, 2005)  
(Adopted by Nevada as indicated in LCB File Number R175-05, effective May 4, 2006).

Recycled Used Oil Management Standards; Clarification (68 FR 44659, 7/30/03) (Checklist 203);

National Environmental Performance Track Program (69 FR 21737, 4/22/04, as amended 69 FR 62217, 10/25/04) (Checklist 204);

NESHAP: Surface Coating of Automobiles and Light-Duty Trucks; Final Rule (69 FR 22601, 4/26/04) (Checklist 205);

Nonwastewaters from Dyes and Pigments (70 FR 9138, 2/24/05) (Checklist 206);

Uniform Hazardous Waste Manifest Rule (70 FR 10776, 3/4/05, as amended 70 FR 35034, 06/16/05) (Checklist 207);

SW-846 Methods Innovation Rule (70 FR 34538, 06/14/05) (Checklist 208).

## 2. Miscellaneous Changes

During a review of Nevada's regulations in 2002, EPA identified a variety of changes that Nevada had made to provisions EPA had previously authorized, as well as a number of State provisions that have never been authorized. In its program revision applications described in Section G, Nevada also addressed additional State-initiated changes. These miscellaneous changes, which are listed following this paragraph, generally (1) update the CFR reference dates to conform with the State's adoption of the Federal regulations, (2) clarify and make the State's regulations more internally consistent, or (3) bring the State regulations closer to the Federal language. EPA has evaluated the changes addressed in this section and has determined that the State's authorized hazardous waste program, as amended by these provisions, remains equivalent to, consistent with, and no less stringent than the Federal RCRA program for which the State is authorized.

Nevada Administrative Code (NAC), as amended effective May 4, 2006, sections 444.84225 "Class 3 modification"; 444.84235 "Delisted waste"; 444.8427 "facility for community recycling"; 444.84275 "facility for community storage"; 444.8428 "facility for the management of hazardous waste"; 444.843 "hazardous waste" except (b) and (c); 444.8432 "management of hazardous waste"; 444.84335 "new or expanding facility for the management of hazardous waste"; 444.84375; 444.850(2); 444.8546 "facility for the management of hazardous waste"; 444.8565 "hazardous waste" except 444.8565(b); 444.861 "used oil"; 444.8618; 444.86325(1)(a); 444.86325(1)(b); 444.8671; 444.8675(1)-(4); and 444.8688.

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

At NAC section 86325.1(f), Nevada has not adopted the Federal exemption at 40 CFR 264.1050(h) and 265.1050(g), as addressed in the final rule for Surface Coating of Automobiles and Light-Duty Trucks (69 FR 22602, April 26, 2004; Checklist 205), thus the State's regulation is more stringent than the Federal requirement. In addition, Nevada is more stringent with respect to the July 30, 2003 final rule for the Recycled Used Oil Management Standards (68 FR 44659; Checklist 203) because at NAC 86325.1(d), the State excludes 40 CFR 261.5(j) from its incorporation by reference. In contrast to the Federal code which directs conditionally-exempt small quantity generator hazardous waste mixed with used oil to be handled according to the Part 279 standards (used oil), Nevada subjects such mixed wastes to its hazardous wastes regulations. Other than the April 26, 2004 and July 30, 2003 final rules, Nevada incorporates by reference the remaining Federal rules listed in Section G; therefore, there are no significant differences between the remaining Federal rules and the revised State rules being authorized today.

There is an outstanding issue in the revised Nevada program that will not be authorized at this time. The issue is discussed in detail here in order to alert the regulated community to the potential conflict between the Federal and State programs as they currently exist. The issue concerns Nevada's adoption of a program that regulates antifreeze that is recycled and that either exhibits the toxicity characteristic of hazardous waste, or is a listed hazardous waste in the state of origin. Nevada's program requirements may be less stringent than the federal program, and therefore EPA is not authorizing Nevada's spent antifreeze recycling program at this time. Generators and recyclers of used antifreeze determined to be hazardous waste must continue to comply with the requirements of 40 CFR 261.6(b)-(d) "Requirements for Recyclable Materials" as adopted by reference by Nevada.

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

NDEP will issue permits for all the provisions for which it is authorized and will administer the permits it issues. Section 3006(g)(1) of RCRA gives EPA the authority to issue or deny permits or parts of permits for requirements for which the state is not authorized. Therefore, whenever EPA adopts standards under HSWA for

activities or wastes not currently covered by the authorized program, EPA may process RCRA permits in Nevada for the new or revised HSWA standards until NDEP has received final authorization for such new or revised HSWA standards. EPA and NDEP have agreed to a joint permitting process for facilities covered by both the authorized program and standards under HSWA for which the State is not yet authorized, and for handling existing EPA permits after the State receives authorization.

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

Nevada is not being authorized to operate any portion of the hazardous waste management program in Indian country. Nevada is not authorized to carry out its hazardous waste program in Indian country within the State, which includes the following: The Confederated Tribes of the Goshute Reservation; Duckwater Shoshone Tribe; Ely Shoshone Tribe; Fort McDermitt Paiute and Shoshone Tribes; Fort Mohave Indian Tribe; Las Vegas Tribe of Paiute Indians; Lovelock Paiute Tribe; Moapa Band of Paiute Indians; Paiute-Shoshone Tribe of the Fallon Reservation and Colony; Pyramid Lake Paiute Tribe; Reno-Sparks Indian Colony; Shoshone-Paiute Tribes of Duck Valley Reservation; Summit Lake Paiute Tribe; Te-Moak Tribes of Western Shoshone Indians; Walker River Paiute Tribe; Washoe Tribe; Winnemucca Indian Colony; Yerington Paiute Tribe; and the Yomba Shoshone Tribe. This authorization action has no effect in Indian country. EPA will continue to implement and administer the RCRA program in Indian country within the State.

#### K. What Is Codification and Is EPA Codifying Nevada's Hazardous Waste Management 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 management 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 DD for this authorization of Nevada's program changes.

#### L. Statutory and Executive Order Reviews

This rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no requirements other than those imposed by State law. Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

##### 1. Executive Order 12866: Regulatory Planning Review

The Office of Management and Budget has exempted this rule from its review under Executive Order (EO) 12866.

##### 2. Paperwork Reduction Act

This rule does not impose an information collection burden under the Paperwork Reduction Act.

##### 3. Regulatory Flexibility Act

After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act, 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 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.

##### 5. Executive Order 13132: Federalism

EO 13132 does not apply to this rule because it will not have federalism implications (*i.e.*, substantial direct effects on the State, 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 described in EO 13132.

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

EO 13175 does not apply to this rule because it will not have tribal implication (*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 & Safety Risks

This rule is not subject to EO 13045 because it is not economically significant and it is not based on health or safety risks.

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

This rule is not subject to EO 13211 because it is not a significant regulatory action as defined in EO 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 the requirements of RCRA. Thus, section 12(d) of the National Technology Transfer and Advance Act does not apply to this rule.

##### 10. 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). This action will be effective on April 27, 2009.

#### List of Subjects in 40 CFR Part 271

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

**Authority:** This notice 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: January 29, 2009.

**Laura Yoshii,**

*Acting Regional Administrator, Region 9.*

[FR Doc. E9-4121 Filed 2-25-09; 8:45 am]

**BILLING CODE 6560-50-P**