

US EPA ARCHIVE DOCUMENT

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7857–8]

New York: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: New York has applied to EPA for Final authorization of changes to its hazardous waste program under the Solid Waste Disposal Act, as amended, commonly referred to as 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 get written comments which oppose this authorization during the comment period, the decision to authorize New York's changes to its hazardous waste program will take effect as provided below. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule, or the portion of the rule that is the subject of the comments, 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 March 14, 2005, unless EPA receives adverse written comment by February 10, 2005. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule or those paragraphs or sections of this rule which are the subject of the comments opposing the authorization in the **Federal Register** and inform the public that only the portion of the rule that is not withdrawn will take effect. (See Section E of this rule for further details.)

ADDRESSES: Submit your comments, identified by FRL–7857–8 by one of the following methods:

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

- E-mail: infurna.michael@epamail.epa.gov.

- Fax: (212) 637–4437.
- Mail: Send written comments to Michael Infurna, Division of Environmental Planning and Protection, EPA, Region 2, 290 Broadway, 22nd Floor, New York, NY 10007.

- Hand Delivery or Courier: Deliver your comments to Michael Infurna, Division of Environmental Planning and Protection, EPA, Region 2, 290 Broadway, 22nd Floor, New York, NY 10007. Such deliveries are only accepted during the Regional Office's normal hours of operation. The public is advised to call in advance to verify the business hours. Special arrangements should be made for deliveries of boxed information.

You can view and copy New York's application during business hours at the following addresses: EPA Region 2 Library, 290 Broadway, 16th Floor, New York, NY 10007, Phone number: (212) 637–3185; or New York State Department of Environmental Conservation, Division of Solid and Hazardous Materials, 625 Broadway, Albany, NY 12233–7250, Phone number: (518) 402–8730. The public is advised to call in advance to verify the business hours of the above locations.

Instructions: Direct your comments to FRL–7857–8. EPA's policy is that all comments received will be included in the public docket without change, 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 regulations.gov, or e-mail. The Federal 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, 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 or any form of encryption, and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT:

Michael Infurna, Division of Environmental Planning and Protection, EPA Region 2, 290 Broadway, 22nd floor, New York, NY 10007; telephone number (212) 637–4177; fax number: (212) 637–4377; e-mail address: infurna.michael@epamail.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 New York's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant New York final authorization to operate its hazardous waste program with the changes described in the authorization application. New York 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 the States are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in New York, including issuing permits if necessary, 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 New York 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. New York has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013, and 7003. These sections include, but may not be limited to, the authority to:

- Do inspections, and require monitoring, tests, analyses, reports or other actions;
- Enforce RCRA requirements and suspend or revoke permits;
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which New York 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 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 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 New York Previously Been Authorized For?

New York initially received final authorization effective on May 29, 1986 (51 FR 17737) to implement its base hazardous waste management program. We granted authorization for changes to its program effective July 3, 1989 (54 FR 19184), May 7, 1990 (55 FR 7896), October 29, 1991 (56 FR 42944), May 22, 1992 (57 FR 9978), August 28, 1995 (60 FR 33753), October 14, 1997 (62 FR 43111) and January 15, 2002 (66 FR 57679).

While EPA is not authorizing any new New York State civil or criminal statute in this program revision authorization, be advised that New York State has revised some of the statutory provisions

which provide the legal basis for the State's implementation of the hazardous waste management program in New York State. On May 15, 2003, subdivisions 1 and 2 of section 71-2705 of the Environmental Conservation Law were amended. Amendments to subdivision 1 increased penalties for civil and administrative sanctions, while amendments to subdivision 2 increased fines for criminal sanctions.

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

On May 22, 2002, New York submitted a program revision application, seeking authorization of its changes in accordance with 40 CFR 271.21. New York's revision application includes changes to the Federal Hazardous Waste program, as well as State-initiated changes. New York made these changes to provisions that we had previously authorized, as listed in Section F. The State-initiated changes make the State's regulations more internally consistent, or make the State regulations more like the Federal language.

We now make an immediate final decision, subject to receipt of written comments that oppose this action, that New York's hazardous waste program revision and State-initiated changes satisfy all of the requirements necessary to qualify for Final authorization. Therefore, we grant New York Final authorization for the following program revisions. These provisions are analogous to RCRA regulations found in the 1999 edition of Title 40 of the CFR. The New York provisions are from the Title 6, New York Codes, Rules and Regulations (6 NYCRR), Volume A-2A, Hazardous Waste Management System, amended through April 10, 2004.

1. Program Revisions

Description of Federal Requirement (Revision Checklists ¹)	Analogous State regulatory authority ²
RCRA CLUSTER ³ VII	
Hazardous Waste Management System; Testing and Monitoring Activities (6/13/97, 62 FR 32452; Revision Checklist 158).	Title 6 New York Codes, Rules and Regulations (6 NYCRR) 370.1(e) introductory paragraph, 370.1(e)(1)(i), 370.1(e)(1)(vii)-(xiv), 370.1(e)(1)(xvii), 370.1(e)(5)(i), 370.1(e)(6)(i), 370.1(e)(8)(i), 370.1(e)(8)(v) and (vi), 373-2.27(e)(4)(i)(c'), 373-2.27(e)(6), 373-2.28(n)(4)(ii), 373-2 Appendix 33, Footnote 5, 373-3.27(e)(4)(i)(c'), 373-3.27(e)(6), 373-3.28(n)(4)(ii), 374-1.8(e)(5)(i), 374-1.8(g)(7)(i) and (ii), 374-1.8(h)(6), and 374-1 Appendix 49.
RCRA CLUSTER VIII	
Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Clarification and Technical Amendment (12/8/97, 62 FR 64636; Revision Checklist 163).	NYCRR 373-1.5(a)(2)(v), 373-2.2(g)(2)(iv), 373-2.5(c)(2)(vi), 373-2.27(a)(2)(iii), 373-2.27(a)(3) and (a)(4), 373-2.27(b)(21), 373-2.27(d)(1)(ii)(a)-(d'), 373-2.28(a)(2)(iii), 373-2.28(a)(3) and (a)(6), 373-2.28(k), 373-3.29(i)(3)(iii)(b'), 373-3.29(i)(3)(vii), 373-3.29(k)(1), 373-3.29(k)(2)(i)(b')(2), 373-3.29(k)(6)(i), 373-3.29(k)(10), and 373 Appendix 55. (More stringent provisions: 373-2.29(c)(3)(iv)(b') and 373-3.29(d)(3)(iv)(b').)

Description of Federal Requirement (Revision Checklists 1)	Analogous State regulatory authority ²
National Emission Standards for Hazardous Air Pollutants for Source Category: Pulp and Paper Production; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards: Pulp, Paper, and Paperboard Category (4/15/98 63 FR 18504; Revision Checklist 164).	6 NYCRR 371.1(e)(1)(xv).
Land Disposal Restrictions Phase IV—Treatment Standards for Metal Wastes and Mineral Processing Wastes (5/26/98, 63 FR 28556; Revision Checklist 167 A).	6 NYCRR 376.1(b)(xii), 376.1(c)(4), 376.3(b)(1)–(3), (5) and (6), 376.4(a)(5) and (8), 376.4(a) Table, and 376.4(j) Table UTS. (More stringent provisions: 376.3(b)(5)(iii).)
Land Disposal Restrictions Phase IV—Hazardous Soils Treatment Standards and Exclusions (5/26/98, 63 FR 28556; Revision Checklist 167 B).	6 NYCRR 376.1(b)(1)(xiv), 376.1(g)(1)(i)–(g)(1)(iii)(‘b’), 376.1(g)(1)(iv), 376.1(g)(1)(iv) Table, 376.1(g)(1)(v) and (vi), 376.1(g)(2)(i)–(g)(2)(iii), 376.1(g)(2)(iv) introductory paragraph, 376.1(g)(5), 376.4(e)(8)(iii)–(v) and 376.4(k)(1)–(5).
Land Disposal Restrictions Phase IV—Corrections (5/26/98, 63 FR 28556, as amended 6/8/98, 63 FR 31266; Revision Checklist 167 C).	6 NYCRR 376.1(d)(1)(ii)(‘b’) and (‘c’), 376.1(g)(1)(vii), 376.1(g)(2)(iii)(‘b’) Table, 376.1(g)(2)(iv)(‘d’) and (‘e’), 376.1(g)(2)(v) and (vi), 376.4(a)(5), 376.4(a) Table, 376.4(c)(1), 376.4(g)(1) introductory paragraph, 376.4(g)(4)(iii) and (iv), and 376.4(j) Table.
Land Disposal Restrictions Phase IV—Bevill Exclusion Revisions and Clarifications (5/26/98, 63 FR 28556; Revision Checklist 167 E).	6 NYCRR 371.1(d)(1)(ii)(‘a’) and (‘c’), 371.1(e)(2)(vi) introductory paragraph through (vi)(‘b’)(‘20’) and 371.1(e)(2)(vi)(‘c’), 2.28(m)(2)(ii) and (iii), 373–2.28(o)(7)(vi), 373–2.28(o)(13), 373–2.29(a)(2)(i), 373–2.29(a)(3), 373–2.29(c)(2), 373–2.29(c)(3)(ii)(‘i’), 373–2.29(c)(3)(iii), 373–2.29(c)(3)(iv)(‘b’), 373–2.29(d)(1)(ii), 373–2.29(d)(2)(i), 373–2.29(e)(3)(ii)(‘c’) introductory paragraph, 373–2.29(e)(3)(ii)(‘c’)(‘2’), 373–2.29(e)(5)(iv), 373–2.29(e)(6)(iii)(‘a’)(‘4’)(‘iv’), 373–2.29(e)(6)(iii)(‘c’), 373–2.29(e)(6)(iv), 373–2.29(e)(10)(ii)(‘c’), 373–2.29(f)(2)(ii), 373–2.29(f)(4)(i)(‘c’), 373–2.29(f)(4)(ii)(‘a’)(‘2’), 373–2.29(f)(5)(ii)(‘c’), 373–2.29(g)(3)(ii), 373–2.29(g)(3)(iv)(‘a’), 373–2.29(g)(4)(ii) and (iv)(‘a’), 373–2.29(g)(7), 373–2.29(h)(3)(iii)(‘b’), 373–2.29(h)(3)(vii), 373–2.29(j)(1), 373–2.29(j)(2)(i)(‘b’)(‘2’), 373–2.29(j)(6)(i), 373–2.29(j)(10), 373–3.2(f)(2)(iv), 373–3.5(c)(2)(vi), 373–3.27(a)(2)(iii), 373–3.27(a)(3), 373–3.27(d)(1)(ii), 373–3.27(d)(6)(ii)(‘f’)(‘2’), 373–3.28(a)(2)(iii), 373–3.28(a)(5), 373–3.28(k), 373–3.28(m)(2)(ii) and (iii), 373–3.28(o)(7)(vi), 373–3.28(o)(13), 373–3.29(a)(2)(i) and (a)(3), 373–3.29(b)(11) and (c), 373–3.29(d)(2), 373–3.29(d)(3)(ii)(‘a’) and (‘i’), 373–3.29(d)(3)(iii), 373–3.29(d)(3)(iv)(‘b’), 373–3.29(e)(1)(ii), 373–3.29(e)(1)(iii)(‘b’)(‘2’), 373–3.29(e)(1)(iii)(‘c’) introductory paragraph and (‘1’), 373–3.29(e)(1)(iii)(‘c’)(‘6’), 373–3.29(e)(1)(iii)(‘c’)(‘7’) introductory paragraph and (‘i’), 373–3.29(e)(1)(iii)(‘d’) and (‘e’), 373–3.29(e)(1)(iv)(‘d’), 373–3.29(e)(2)(i), 373–3.29(e)(2)(iii)(‘b’)(‘2’), 373–3.29(e)(2)(iii)(‘c’) introductory paragraph, 373–3.29(e)(2)(iii)(‘c’)(‘6’) and (‘7’), 373–3.29(e)(2)(iii)(‘d’) and (‘e’), 373–3.29(e)(2)(viii)(‘c’), 373–3.29(e)(2)(ix)(‘d’), 373–3.29(e)(4)(v)(‘b’), 373–3.29(f)(3)(ii)(‘c’) introductory paragraph, 373–3.29(f)(3)(ii)(‘c’)(‘2’), 373–3.29(f)(5)(iv), 373–3.29(f)(6)(iii)(‘a’)(‘4’)(‘iv’), 373–3.29(f)(6)(iv), 373–3.29(f)(10)(ii)(‘c’), 373–3.29(g)(2)(ii), 373–3.29(g)(4)(i)(‘c’), 373–3.29(g)(4)(ii)(‘a’)(‘2’), 373–3.29(g)(5)(ii)(‘c’), 373–3.29(h)(3)(iv)(‘a’), 373–3.29(h)(4)(iv)(‘a’), 373–3.29(h)(7), 373–
Land Disposal Restrictions Phase IV—Exclusion of Recycled Wood Preserving Wastewaters (5/26/98, 63 FR 28556; Revision Checklist 167 F).	6 NYCRR 371.1(e)(1)(ix)(‘c’).
Hazardous Waste Combustors; Revised Standards; Part 1: RCRA Comparable Fuel Exclusion; Permit Modifications for Hazardous Waste Combustion Units; Notification of Intent To Comply; Waste Minimization and Pollution Prevention Criteria for Compliance Extensions (6/19/98, 63 FR 33782; Checklist 168).	6 NYCRR 371.1(e)(1)(xvii), 371.4(i), 373–1.3(g)(2)(viii), 373–1.7(c)(12)(iii), 373–1.7(j) introductory paragraph, and 371.7(j)(1). (More stringent provisions: 373–1.7(c)(12)(iii).)

RCRA CLUSTER IX

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Petroleum Refining Process Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities (8/6/98, 63 FR 42110, as amended 10/9/98, 63 FR 54356; Revision Checklist 169).	6 NYCRR 371.1(d)(1)(ii)(‘d’)(‘3’), 371.1(d)(3)(ii)(‘b’)(‘2’), 371.1(d)(3)(ii)(‘b’)(‘5’), 371.1(e)(1)(xii)(‘a’) and (‘b’), 371.1(e)(1)(xvii)–(xviii), 371.1(g)(1)(iii)(‘d’)(‘3’), 371.1(g)(1)(iii)(‘e’), 371.4(b)(1), 371.4(c), and 371 Appendix 22, 374–1.8(a)(2)(iii), 376.2(a) and (b), 376.3(d)(1), and 376.4(a).
Hazardous Waste Recycling; Land Disposal Restrictions (8/31/98, 63 FR 46332; Revision Checklist 170).	6 NYCRR 370.1(e)(2)(v) and 376.4(a)(9).

Description of Federal Requirement (Revision Checklists ¹)	Analogous State regulatory authority ²
Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from Carbamate Production (9/4/98, 63 FR 47410; Revision Checklist 171).	6 NYCRR 376.4(a)(7), 376.4(a)(9), 376.4/Table and 376.4(j)(1)/Table UTS.
Characteristic Slags Generated From Thermal Recovery of Lead by Secondary Lead Smelters; Land Disposal Restrictions; Extension of Compliance Date (9/9/98, 63 FR 48124; Revision Checklist 172).	6 NYCRR 376.3(b)(2), (3), (5) and (6).
Land Disposal Restrictions: Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088) (9/24/98, 63 FR 51254; Revision Checklist 173).	6 NYCRR 376.3(g)(3) and 376.4(a)/Table.
Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities: Post-Closure Permit Requirement and Closure Process (10/22/98, 63 FR 56710; Revision Checklist 174).	6 NYCRR 373-1.2(e) introductory paragraph and (e)(3), 373-1.5(a)(1), 373-1.5(o), 373-2.6(a)(5) and (6), 373-2.7(a)(3), 373-2.7(c)(2)(viii), 373-2.7(c)(3)(ii)(d'), 373-2.7(h)(2)(iv), 373-2.7(h)(4)(ii)(d'), 373-2.8(a)(4), 373-3.6(a)(6), 373-3.7(a)(3) and (a)(4), 373-3.7(c)(2)(viii), 373-3.7(c)(3)(i)(d'), 373-3.7(h)(3)(iv) and (v), 373-3.7(h)(4)(i)(c'), 373-3.7(k), and 373-3.8(a)(4).
Hazardous Remediation Waste Management Requirements (HWIR Media) (11/30/98, 63 FR 65874; Revision Checklist 175).	6 NYCRR 370.2(b)(37), 370.2(b)(70), 370.2(b)(124), 370.2(b)(157)-(b)(159), 370.2(b)(179), 373-1.3(h)(1), 373-1.4(a)(5)(iv)(a) and (b), 373-1.7(c)(15), 373-1.9(e), 373-1.11, 373-2.1(a)(9), 373-2.5(c)(2)(xvii), 373-2.6(l)(4), 373-2.19(a)(1), 373-2.19(b)(1), 373-2.19(c), 373-3.1(a)(2), 376.1(b)(1)(iii), 376.5(a)(7), 621.3, 621.6, 621.7(a), (c) and (d), 621.9(a)(2), 621.13, and 621.14. (More stringent provisions: 373-1.7(c)(15), 373-1.11(b)(2)(iii) and (b)(2)(iv), 373-1.11(d)(4)(i) intro-(d)(4)(i)(e'), 373-1.11(e)(1)(i)-(iii) introductory paragraph, 373-1.11(e)(1)(iv) and (vii), 373-1.11(f)(3)(i), 373-1.11(g)(1)(iii), 621.6, 621.13, 621.14.)
Universal Waste Rule (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program) (12/24/98, 63 FR 71225; Revision Checklist 176).	6 NYCRR 374-1.7(a)(1), 374-1.7(a)(1)/Table, 374-1.7(a)(2) and 374-3.1(i)(9).
Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers (1/21/99, 64 FR 3382; Revision Checklist 177).	6 NYCRR 373-1.1(d)(1)(iii)(c)(1'), 373-2.27(b)(12), 373-2.27(b)(25), 373-2.27(b)(30), 373-2.29(a)(2)(v), 373-2.29(d)(1)(i)(a) and (b), 373-2.29(d)(2)(i)(a) and (b), 373-2.29(e)(8)(iii), 373-2.29(g)(5)(vi), 373-3.29(a)(2)(v), 373-3.29(e)(1)(i)(a) and (b), 373-3.29(e)(1)(iii)(b)(2) and (4), 373-3.29(e)(1)(iii)(c), 373-3.29(e)(2)(i)(a) and (b), 373-3.29(e)(2)(iii)(b)(2) and (4), 373-3.29(e)(2)(iii)(c), 373-3.29(f)(8)(iii), and 373-3.29(h)(5)(vi).
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Petroleum Refining Process Wastes; Exemption for Leachate from Non-Hazardous Waste Landfills (2/11/99, 64 FR 6806; Revision Checklist 178).	6 NYCRR 371.1(e)(2)(xiii).
Land Disposal Restrictions—Phase IV: Treatment Standards for Wood Preserving Wastes, Treatment Standards for Metal Wastes, Zinc Micronutrient Fertilizers, Carbamate Treatment Standards, and K088 Treatment Standards (5/11/99, 64 FR 25408; Revision Checklist 179).	6 NYCRR 371.1(c)(4)(iii), 371.1(c)(4) Table 1, 371.1(c)(6)(i)(c'), 371.1(e)(2)(vi)(c'), 371.1(e)(2)(vi)(c)(1'), 372.2(a)(8)(iii)(d'), 376.1(b)(1)(viii), 376.1(b)(1)(xiv), 376.1(g)(1)(iv)/Table, 376.1(g)(2)(iii)(b)/Table, 376.1(g)(2)(iv)(d'), 376.1(h)(4)(ii), 376.1(h)(4)(ii)(a'), 376.4(a)(9) and (a)(10), 376.4(a)/Table TSHW, (j)(1) and 376.1(k)(3)(iii).
Guidelines for Establishing Test Procedures for the Analysis of Oil and Grease and Non-Polar Material Under the Clean Water Act and Resource Conservation and Recovery Act (5/14/99, 64 FR 26315; Revision Checklist 180).	6 NYCRR 370.1(e)(8)(i) and (vii).

RCRA CLUSTER X

Hazardous Waste Management System; Modification of the Hazardous Waste Program; Hazardous Waste Lamps (7/6/99, 64 FR 36466; Revision Checklist 181).	6 NYCRR 370.2(b)(109), 370.2(b)(206), 371.1(j)(1)(ii)-(j)(1)(iv), 373-1.1(b)(4)(ii)-(b)(4)(iv), 373-2.1(a)(7)(ii)-(iv), 373-3.1(a)(9)(ii)-(vi), 374-3.1(a)(1)(ii)-(iv), 374-3.1(b)(1)(i), 374-3.1(b)(2)(ii) and (iii), 374-3.1(c)(1), 374-3.1(d)(1), 374-3.1(e)-(h), 374-3.1(i)(5) and (6), 374-3.1(i)(9), 374-3.1(j)(11), 374-3.2(a), 374-3.2(d)(4), 374-3.2(e)(5), 374-3.3(a), 374-3.3(b)(2)(iv), 374-3.3(c)(2)(v), 374-3.3(d)(4), 374-3.3(e)(5), 374-3.4(a), 374-3.5(a), 374-3.7(b)(1) and 376.1(a)(10)(ii)-(iv).
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¹ A Revision Checklist is a document that addresses the specific changes made to the Federal regulations by one or more related final rules published in the FEDERAL REGISTER. EPA develops these checklists as tools to assist States in developing their authorization applications and in documenting specific State analogs to the Federal Regulations. For more information see EPA's RCRA State Authorization Web page at <http://www.epa.gov/epaoswer/hazwaste/state>.

² The New York provisions are from the Title 6 of the New York Codes, Rules and Regulations (6 NYCRR), as amended through April 10, 2004.

³ A RCRA "Cluster" is a set of Revision Checklists for Federal rules, typically promulgated between July 1 and June 30 of the following year.

2. State-Initiated Changes

Except for the changes at 6 NYCRR §§ 372.3(a)(5) and 372.3(a)(7)(i)–(ii), the State-initiated changes correct typographical and printing errors, clarify and make the State's regulations more internally consistent, or make the State regulations more like the Federal language. At 6 NYCRR § 372.3(a)(5) and 372.3(a)(7)(i)–(ii), the State was required to remove and revise language as a result of a lawsuit in Federal court which determined that New York State could not limit the ability of a transporter to mix loads. While this change results in making the State provision more like the Federal, it is a special case and warranted distinction from the other State-initiated changes.

EPA grants New York Final authorization to carry out the following provisions of the State's program in lieu of the Federal program. The New York provisions are from the Title 6, New York Codes, Rules and Regulations (6 NYCRR), Volume A–2A, Hazardous Waste Management System, amended through April 10, 2004.

Part 370—Hazardous Waste Management System—General: Sections 370.1(e)(1)(xviii) and 370.4(a)(1) and (b)(1).

Part 371—Identification and Listing of Hazardous Waste: Sections 371.1(a)(10), (c)(4) Table 1, (d)(1)(ii)('a') and Appendix 24, Table 2.

Part 372—Hazardous Waste Manifest System and Related Standards or Generators, Transporters and Facilities: Sections 372.3(a)(5), (a)(7)(i) and (ii), 372.5(d)(6), 372.7(b)(3), (c)(1)(ii), (c)(1)(iii)('b')('2') and (c)(2).

Part 373, Subpart 373–1—Hazardous Waste Treatment, Storage and Disposal Facility Permitting Requirements: Sections 373–1.1(d)(1)(viii), (d)(2)(i)('b') and (d)(2)(iii)('b').

Part 373, Subpart 373–3—Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities: Section 373–3.2(j)(4).

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

New York hazardous waste management regulations are more stringent than the corresponding Federal regulations in a number of different areas. The more stringent provisions are being recognized as a part of the Federally-authorized program and are Federally enforceable. The specific more stringent provisions are noted on the chart in Section G and in the State's authorization application, and include, but are not limited to, the following:

1. At 6 NYCRR §§ 373–2.29(c)(3)(iv)('b') and 373–

3.29(d)(3)(iv)('b'), New York requires State approval subsequent to approval by U.S. EPA of an equivalent treatment method (40 CFR 264.1082(c)(4)(ii) and 265.1083(c)(4)(ii)).

2. At 6 NYCRR 373–1.11, New York has adopted and is seeking authorization for Remedial Action Plans (40 CFR part 270, subpart H (270.79 through 270.230)) introduced by the November 30, 1998, final rule (63 FR 65874; Revision Checklist 175). However, the Uniform Procedures Act at 6 NYCRR Part 621 implements a permitting process, applicable to all RCRA permits including RAPs, that is different and in some aspects more stringent than the federal permitting procedure. For example:

a. At 6 NYCRR §§ 373–1.11(d)(4)(i)('b') and ('c'), pursuant to the Public notice and comment procedures at 6 NYCRR § 621.6, New York requires a permit applicant to complete public notice requirements that are assigned to the permitting agency in the Federal program (40 CFR 270.145(a)(2) and (3)).

b. The Department may choose to modify, revoke, reissue or terminate a final RAP or deny a renewal application for the reasons listed at 6 NYCRR § 373–1.11(e)(1)(iii) and the additional reasons listed at 6 NYCRR § 621.14 (40 CFR 270.175(a)).

3. At 6 NYCRR § 373–1.11(f)(3)(i), New York requires the owner or operator to submit the request for transferring the Remedial Action Plan to a new owner or operator at least 180 days in advance (40 CFR 270.220(a)).

We consider the following State requirements to be beyond the scope of the Federal program:

1. New York did not adopt an analog to 40 CFR 261.4(g) that excludes certain dredged materials from the State definition of hazardous waste (November 30, 1998, final rule, 63 FR 65874; Revision Checklist 175). Instead, the State subjects these materials to full regulation as hazardous wastes.

2. New York State regulations do not incorporate the Mineral Processing Secondary Materials Exclusion at 40 CFR 261.4(a)(17) (originally introduced at 261.4(a)(16)) and the changes affecting 40 CFR 261.2(c)(3) and (c)(4)/Table, and 261.2(e)(1)(iii) addressed by the May 26, 1998, final rule (63 FR 28556; Revision Checklist 167D). Since New York did not adopt the exclusion at 40 CFR 261.4(a)(17) the State will have a broader in scope program because the effect is to include materials that are not considered solid waste by EPA.

Broader-in-scope requirements are not part of the authorized program and EPA

cannot enforce them. Although you must comply with these requirements in accordance with State law, they are not RCRA requirements.

Finally, at 6 NYCRR 376.4(e) New York has adopted but is not seeking authorization for 40 CFR 268.44 which contains two types of variances. New York has left the authority with EPA to review and approve the non-delegable general treatment standard variances at 40 CFR 268.44(a)–(g) as well as the delegable site-specific variances at 40 CFR 268.44(h)–(m). However, New York is more stringent because it requires the State to review and approve treatment variances subsequent to EPA approval. Note that New York has also adopted, but is not seeking authorization for the amendments to both types of treatment variances addressed by the December 5, 1997 final rule (62 FR 64504; Revision Checklist 162).

I. Who Handles Permits After the Authorization Takes Effect?

New York 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, and also to process permit modification requests for facilities with existing permits. EPA 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. Pursuant to § 3006(g)(1) of RCRA, EPA may continue to issue or deny permits to facilities within the State to implement those regulations promulgated under the authority of HSWA for which New York is not authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in New York?

The State of New York's Hazardous Waste Program is not authorized to operate in Indian country within the State. Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in these lands.

K. What Is Codification and Is EPA Codifying New York'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 Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. If this rule takes effect,

or we finalize the companion proposal to authorize the State's changes to its hazardous waste program, we may, at a later date, amend 40 CFR part 272, subpart HH to codify New York's authorized program.

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 12866 (56 FR 51735, October 4, 1993).

2. *Paperwork Reduction Act*—This rule does not impose an information collection burden under the Paperwork Reduction Act (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 (Pub. L. 104-4).

5. *Executive Order 13132: Federalism*—Executive Order 12132 (64 FR 19885, April 23, 1997) 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 67240, November 6, 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*

& *Safety Risks*—This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) 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 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 the requirements of RCRA. Thus, section 12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 272 note) 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 March 14, 2005.

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: November 23, 2004.

Kathleen C. Callahan,

Acting Regional Administrator, Region 2.
[FR Doc. 05-504 Filed 1-10-05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222, 224 and 226

[Docket No. 041221357-4357-01; I.D. 113004A]

RIN 0648-AS94

Endangered Marine and Anadromous Species; Final Rule to Remove Technical Revisions to Right Whale Listing Under the U.S. Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to remove two technical revisions made in an April 2003 final rule to the northern right whale (*Eubalaena sp.*) listing under the Endangered Species Act (ESA). The technical revisions purported to change: the way right whales are listed by splitting the endangered northern right whale into two separate endangered species - North Pacific right whale and North Atlantic right whale; the definition of "right whale" as it applies to the right whale approach regulations; and the section heading for right whale critical habitat. NMFS has determined that issuance of the 2003 final rule did not comply with the requirements of the ESA. This final rule corrects these mistakes by removing these technical revisions to 50 CFR and reinstating the language that existed before April 2003.

DATES: This rule takes effect on January 11, 2005.

ADDRESSES: Supporting documentation is available by request from the Chief, Endangered Species Division, NMFS, 1315 East-West Highway, F/PR3, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Marta Nammack, NMFS, Endangered Species Division, (301) 713-1401, ext. 180.

SUPPLEMENTARY INFORMATION:

Background

Right Whale Listing

From 1970 through 1975 the endangered and threatened species lists maintained by NMFS (50 CFR 224.101(b)) and the U.S. Fish and Wildlife Service (FWS) both identified endangered right whales as "Right whales (*Eubalaena spp.*)."

In 1980 the FWS list identified the listing as "Whale, right...*Balaena glacialis*" and in