

US EPA ARCHIVE DOCUMENT

Inbound International
 Inbound Direct Entry Contracts with
 Foreign Postal Administrations
 (MC2008–6, CP2008–14 and CP2008–15)
 International Business Reply Service
 Competitive Contract 1 (MC2009–14 and
 CP2009–20)
 Competitive Product Descriptions
 Express Mail
 [Reserved for Group Description]
 Express Mail
 [Reserved for Product Description]
 Outbound International Expedited Services
 [Reserved for Product Description]
 Inbound International Expedited Services
 [Reserved for Product Description]
 Priority
 [Reserved for Product Description]
 Priority Mail
 [Reserved for Product Description]
 Outbound Priority Mail International
 [Reserved for Product Description]
 Inbound Air Parcel Post
 [Reserved for Product Description]
 Parcel Select
 [Reserved for Group Description]
 Parcel Return Service
 [Reserved for Group Description]
 International
 [Reserved for Group Description]
 International Priority Airlift (IPA)
 [Reserved for Product Description]
 International Surface Airlift (ISAL)
 [Reserved for Product Description]
 International Direct Sacks—M-Bags
 [Reserved for Product Description]
 Global Customized Shipping Services
 [Reserved for Product Description]
 International Money Transfer Service
 [Reserved for Product Description]
 Inbound Surface Parcel Post (at non-UPU
 rates)
 [Reserved for Product Description]
 International Ancillary Services
 [Reserved for Product Description]
 International Certificate of Mailing
 [Reserved for Product Description]
 International Registered Mail
 [Reserved for Product Description]
 International Return Receipt
 [Reserved for Product Description]
 International Restricted Delivery
 [Reserved for Product Description]
 International Insurance
 [Reserved for Product Description]
 Negotiated Service Agreements
 [Reserved for Group Description]
 Domestic
 [Reserved for Product Description]
 Outbound International
 [Reserved for Group Description]

Part C—Glossary of Terms and Conditions
 [Reserved]

Part D—Country Price Lists for International
 Mail [Reserved]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R02–RCRA–2009–0346; FRL–8916–7]

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

AGENCY: Environmental Protection
 Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: New York State 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, with limited exceptions, 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 New York's changes to its 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, 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 August 31, 2009 unless EPA receives adverse written comment by July 31, 2009. 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 EPA–R02–RCRA–2009–0346, 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@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.

Instructions: Direct your comments to Docket ID No. EPA–R02–RCRA–2009–0346. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line 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 Federal <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 or 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 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.

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@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 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 State 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), January 15, 2002 (66 FR 57679), and March 14, 2005 (70 FR 1825, as corrected on April 4, 2005 at 70 FR 17286).

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 August 26, 2003 New York added a new provision to its statutes at Public Officers Law (POL) § 89(5)(a)(1-a) that allows requests for records related to critical infrastructure information to be excepted from disclosure at any time, not just at the time of submission. The new State provision is consistent with 40 CFR 2.203(c) which states that "If a claim covering the information is received after the information itself is received, EPA will make such efforts as are administratively practicable to associate the late claim with copies of the previously-submitted information in EPA files" in order to safeguard the Confidential Business Information in the submitted documents. Public Officers Law § 86.5, defines Critical Infrastructure as "systems, assets, places or things, whether physical or virtual, so vital to the state that the disruption, incapacitation or destruction of such systems, assets, places or things could jeopardize the health, safety, welfare or security of the state, its residents or its economy." After the events of September 11, 2001, a number of

records that at one time were publicly available were deemed confidential and this new provision is used by the State Agency to withhold information at the time it is requested as a matter of public safety.

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

On October 27, 2005, December 1, 2005 and October 27, 2006, New York submitted three program revision applications, seeking authorization of its changes in accordance with 40 CFR 271.21. Subsequently, on July 17, 2008, the State submitted signed Attorney General Certifications for the three applications. New York's revision applications include (1) changes to the

Federal Hazardous Waste program issued by EPA from October 20, 1999 through January 20, 2002; (2) the Project XL Rulemaking for New York State Public Utilities, as published on July 21, 1999 (64 FR 37624) and amended May 24, 2005 (70 FR 29910); (3) the Uniform Hazardous Waste Manifest Rule, published on March 4, 2005 (70 FR 10776) and amended June 16, 2005 (70 FR 35034); and (4) 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 except as noted in Section H, 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: (The New York provisions are set forth in the Title 6, New York Codes, Rules and Regulations (6 NYCRR), Volume A–2A, Hazardous Waste Management System, amended effective September 3, 2005 and the July 15, 2006 Supplement, effective September 5, 2006.)

1. Program Revisions

Description of federal requirement (revision checklists ¹)	Analogous state regulatory authority ²
RCRA CLUSTER³ X	
Land Disposal Restrictions Phase IV—Technical Corrections (10/20/99, 64 FR 56469; Revision Checklist 183).	Title 6 New York Codes, Rules and Regulations (6 NYCRR) 371.4(c)*, 373–1.1(d)(1)(iii)(‘c’)(‘5’), 376.1(g)(1)(iii)(‘c’), 376.4(a)(10), 376.4(a) Table, 376.4(k)(3)(i)(‘a’), 376.4(k)(3)(i)(‘b’). *Broader in scope, see discussion in Section H.
Accumulation Time for Waste Water Treatment Sludges (3/8/00, 65 FR 12378; Revision Checklist 184).	6 NYCRR 373–1.1(d)(1)(iii)(‘c’)(‘5’), 372.2(a)(8)(vi) through (viii).
Organobromine Production Wastes Vacatur (3/17/00, 65 FR 14472; Revision Checklist 185).	6 NYCRR 371.4(c), 371.4(d)(6), Appendices 22 and 23, 376.4(a), 376.4(j).
Petroleum Refining Process Wastes—Clarification (6/8/00, 64 FR 36365; Revision Checklist 187).	6 NYCRR 371.4(b).
RCRA CLUSTER XI	
Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes (11/8/00, 65 FR 67068; Revision Checklist 189).	6 NYCRR 371.4(c), 376.3(c), 376.4(a) Table, 376.4(j) Table, Appendices 22 and 23.
Land Disposal Restrictions Phase IV—Deferral for PCBs in Soil (12/26/00, 65 FR 81373; Revision Checklist 190).	6 NYCRR 376.3(h), 376.4(j) Table UTS, 376.4(k)(4), Appendix 37.
Mixed Waste Rule (5/16/01, 66 FR 27218; Revision Checklist 191)	6 NYCRR 374–1.9.
Mixture and Derived-From Rules Revisions (5/16/01, 66 FR 27266; Revision Checklist 192A).	6 NYCRR 371.1(d)(1)(ii)(‘c’) [reserved], 371.1(d)(1)(ii)(‘d’), 371.1(d)(3)(ii)(‘a’), 371.1(d)(6)(i) through 371.1(d)(6)(iii), 371.1(d)(7).
Change of Official EPA Mailing Address (6/28/01, 66 FR 34374; Revision Checklist 193).	6 NYCRR 370.1(e)(8) note.
RCRA CLUSTER XII	
Mixture and Derived-From Rules Revision II (10/3/01, 66 FR 50332; Revision Checklist 194).	6 NYCRR 371.1(d)(1)(ii)(‘d’), 371.1(d)(6)(iv).
Inorganic Chemical Manufacturing Wastes Identification and Listing (11/20/01, 66 FR 58258; Revision Checklist 195).	6 NYCRR 371.1(e)(2)(xiii), 371.4(c), 376.3(i), 376.4(a) Table, Appendix 22.
CAMU Amendments (1/22/02, 67 FR 2962; Revision Checklist 196)	6 NYCRR 370.2(b)(37), 370.2(b)(158), 373–2.19(a), 373–2.19(b)(1), 373–2.19(c), 373–2.19(e)(1)(i).
RCRA CLUSTER XV	
Uniform Hazardous Waste Manifest Rule (3/4/05, 70 FR 10776; as amended 6/16/05, 70 FR 35034; Revision Checklist 207).	6 NYCRR 370.2(b)(43), 370.2(b)(121), 370.2(b)(122), 371.1(h)(2)(i)(‘c’)(‘1’) and (‘2’), 372.2(b)(1), 372.2(b)(10), 372.2(a)(6)(ii), 372.2(a)(7), 372.2(a)(8)(ix), 372.3(b)(3) [reserved], 372.3(b)(6)(i), 372.3(b)(7)(i) [except (b)(7)(i)(‘d’)], 372.3(b)(4)(ii) and (iii), 372.5(d)(3), 372.5(d)(5), 372.5(j)(3) and (j)(4), 372.7(d)(3), 372.7(d)(4), Appendix 30*, 373–2.5(a), 373–2.5(b)(1) [except (b)(1)(i)(‘c’) and (b)(1)(viii)], 373–2.5(b)(2), 373–2.5(b)(3)(ii) [except (b)(3)(ii)(‘d’) and (‘e’)], 373–2.5(b)(4), 373–3.5(a), 373–3.5(b)(1) [except (b)(1)(i)(‘c’) and (b)(1)(viii)], 373–3.5(b)(2), 373–3.5(b)(3)(ii) [except (b)(3)(ii)(‘d’) and (‘e’)], 373–3.5(b)(4) as amended effective 9/5/06. *Broader in scope: Appendix 30, Instructions for Generators/Item 8., see discussion in Section H.

Description of federal requirement (revision checklists ¹)	Analogous state regulatory authority ²
	(More stringent: Appendix 30, General Information, Distribution; Appendix 30, Instructions for Generators/Item 13. Waste Codes, 372.7(d)(4), 373–2.5(a)(1), 373–2.5(b)(1)(i)(b) introductory paragraph & (b)(1), 373–2.5(b)(1)(i)(b)(5), 373–2.5(b)(1)(vii), 373–2.5(b)(2), 373–3.5(a)(1), 373–3.5(b)(1)(i)(b) introductory paragraph & (b)(1), 373–3.5(b)(1)(i)(b)(5), 373–3.5(b)(1)(vii), 373–3.5(b)(2)).
PROJECT XL ⁴	
Project XL Rulemaking for New York State Public Utilities; Hazardous Waste Management Systems; Final Rule (7/12/99, 64 FR 37624; as amended 5/24/05, 70 FR 29910).	6 NYCRR 372.2(d), 373–1.1(d)(1)(xxi).

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/osw/laws-regs/state/index.htm>.

² The New York provisions are set forth in the Title 6 of the New York Codes, Rules and Regulations (6 NYCRR), as amended through September 3, 2005, unless otherwise specified.

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.

⁴ **Note:** Both the Federal and State requirements for the NY State Public Utilities Project XL will expire on May 24, 2011.

2. State-Initiated Changes

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.

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 September 3, 2005, unless otherwise specified. For clarity, the appropriate effective date is provided in parentheses following the provision(s). More stringent provisions are indicated with an asterisk (*).

Part 370—Hazardous Waste Management System—General: Sections 370.1(e)(1)(xv) and (xvi); 370.1(e)(6)(ii) through (iii); 370.1(e)(2); 370.1(e)(3)(ii) and (iii) (September 5, 2006); 370.1(f) *; and 370.2(b)(55), (b)(105), (b)(135), (b)(136), (b)(137) (reserved).

Part 371—Identification and Listing of Hazardous Waste: Section 371.1(c)(7) *.

Part 372—Hazardous Waste Manifest System and Related Standards or Generators, Transporters and Facilities: Sections 372.2(b)(1)(i), (b)(2) *, (b)(3) *, (b)(6) and (b)(7) (September 5, 2006); 372.3(b)(1), (b)(2), (b)(4) and (b)(5) (September 5, 2006); 372.7(d)(2) (September 5, 2006).

Part 373, Subpart 373–1—Hazardous Waste Treatment, Storage and Disposal Facility Permitting Requirements: Sections 373–1.3(d)(3), 373–1.8(b), 373–1.10(a)(1), (b)(1) and (c)(1).

Part 373, Subpart 373–2—Final Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage

and Disposal Facilities: Sections 373–2.5(b)(1)(viii) * and (b)(5) (September 5, 2006), 373–2.8(a)(3), 373–2.10(g)(4)(i), 373–2.12(g)(2), 373–2.19(d) and (e), 373–2.29(e)(3)(i).

Part 373, Subpart 373–3—Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities: Sections 373–3.5(b)(1)(viii) * and (b)(5), (September 5, 2006); and 373–3.15(a)(2).

Part 376—Land Disposal Restrictions: Sections: 376.1(b)(1)(xi), 376.1(g)(1)(i) except the reference to "376.4(f)", 376.4(g)(1).

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

More Stringent State 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 in Section G and in the State's authorization application, and include, but are not limited to, the following:

1. At 370.1(f), New York requires that laboratory tests or sample analyses be performed by a State-certified laboratory. The Federal program does not contain a lab certification program.

2. In addition to the demonstration and documentation of claims that materials are not solid wastes or are conditionally exempt from regulation required by 40 CFR 261.2(f), at 371.1(c)(7), the State requires the party claiming the exemption to notify the Department before using the exemption.

3. At 373–2.5(b)(1)(viii) and 373–3.5(b)(1)(viii), New York requires treatment, storage and disposal facilities to keep records on shipments accepted from small quantity generators who ship hazardous waste via a reclamation agreement under 40 CFR 262.20(e). The Federal program only has requirements for the generator and transporter of such wastes to keep records related to the agreement and/or shipments.

4. At 373–2.19(c)(1)(iii)(c), New York is more stringent than the Federal requirement at 40 CFR 264.552(a)(3)(iii) because the State does not provide for alternative demonstrations to the department to allow placement of non-hazardous liquid waste in a corrective action management unit (CAMU).

5. New York has several requirements related to the Uniform Hazardous Waste Manifest that are in addition to or more stringent than the corresponding Federal requirement. Such requirements include but are not limited to the following:

a. Unlike 40 CFR 262.20(b) & (c), at 372.2(b)(2)(i) New York requires written communication from the designated and alternate facility confirming their authorization to accept the manifested wastes.

b. At Appendix 30, General Information/Distribution, New York requires the generator to send copies of the forms to the generator State and the disposal facility State.

c. At 372.2(b)(2)(ii), New York requires that the generator know and indicate on the manifest the ultimate disposal method of the waste that is leaving its facility and provide State waste codes that are to be assigned to the ultimate disposal methods and recorded at Item 13 on the manifest. This State requirement is repeated

within the generator manifest instructions for Item 13 in Appendix 30.

d. At the following citations, the State program requires that manifests be mailed to the appropriate parties within 10 calendar days of delivery of the waste to the facility whereas the Federal program allows 30 days to send a copy to the generator: 372.2(b)(3), Appendix 30, General Information/Distribution, 373–2.5(b)(1)(i)(‘b’)(‘5’), 373–3.5(b)(1)(i)(‘b’)(‘5’), 373–2.5(b)(1)(vii), 373–3.5(b)(1)(vii).

e. At 373–2.5(a)(1) and 372–3.5(a)(1), New York does not adopt the Federal exemption from manifesting for waste military munitions at 40 CFR 264.70(a) and 265.70(a).

f. At 373–2.5(b)(1)(i)(‘b’) introductory paragraph & (‘b’)(‘1’) and 373–3.5(b)(1)(i)(‘b’) introductory paragraph & (‘b’)(‘1’) [analogous to 40 CFR 264.71(a)(2) and 265.71(a)(2)], the State program requires the receiving facility owner or operator to examine the manifest for completeness and complete those portions regarding the ultimate disposal method in the event they are unfinished.

g. At 372.7(d)(4), the State requires a copy of the signed and dated shipping paper to be sent to the generator if a manifest is not received within 15 days, whereas the Federal program, under 40 CFR 264.71(b)(4) and 265.71(b)(4), allows 30 days from the date of receipt of a manifest. Additionally, New York requires the facility to complete and submit an unmanifested waste report along with the shipping paper if a manifest is not received. Under 40 CFR 264.76(a), the Federal program only requires the report if the facility does not receive a manifest or a shipping paper.

h. At 373–2.5(b)(2) and 373–3.5(b)(2), the State program requires that an unmanifested waste report be filed with the State within 10 calendar days of acceptance of the shipment whereas at the introductory paragraphs at 40 CFR 264.76(a) and 265.76(a), the Federal provisions allow 15 days to send the report to the Regional Administrator.

Broader in Scope Requirements

We consider the following State requirements to be beyond the scope of the Federal program, and therefore, EPA is not authorizing these requirements:

1. At 373–4, New York implements a Household Hazardous Waste program and 370.2(b)(92) and (b)(93) contain definitions associated with the HHW program. The Federal program excludes household waste from regulation as hazardous waste at 261.4(b)(1).

2. At 371.4(c), New York retains K064, K065, K066, K090 and K091 as

hazardous wastes while EPA has removed them from the table at 40 CFR 261.32 and no longer regulates them as hazardous wastes (64 FR 56469; October 20, 1999).

3. New York’s transporter permit program is broader in scope than the Federal RCRA program which does not issue permits to transporters. The following New York provisions are broader in scope because they include requirements associated with the state’s transporter permit program:

372.2(b)(5)(ii), Appendix 30 Instructions for Generators/Item 8, 373–2.5(b)(3)(ii)(‘d’) & (‘e’), and 373–3.5(b)(3)(ii)(‘d’) & (‘e’).

4. New York subjects PCB wastes to regulation as hazardous waste; however, these wastes are not considered hazardous wastes under the Federal RCRA program. PCB wastes are regulated under the Federal Toxic Substances Control Act (TSCA) at 40 CFR part 761. The following New York provisions are broader in scope because they include requirements associated with the regulation of PCB waste as a state-only hazardous waste: 372.1(e)(9) and 376.1(g)(1)(i).

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.

Non-Delegable Federal Rules

Finally, there are certain non-delegable provisions for which New York is not seeking authorization. These provisions include the EPA Manifest Registry functions at 40 CFR 262.21 adopted by reference at 6 NYCRR 372.2(b)(9) and 370.1(e)(3), and the EPA notification requirements for exports and imports of hazardous waste adopted at 6 NYCRR 372.5(j)(5), 372.3(b)(7)(i)(‘d’), 373–2.5(b)(1)(i)(‘c’) and 373–3.5(b)(1)(i)(‘c’) [analogous to 40 CFR 262.60(e), 263.20(g)(4), 264.71(a)(3) and 265.71(a)(3), respectively]. These Federal rules will continue to be the applicable requirements.

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 still in effect 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 section 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 13132 (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 August 31, 2009.

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: May 19, 2009.

George Pavlou,

Acting Regional Administrator, Region 2.

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