

US EPA ARCHIVE DOCUMENT

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 271****[EPA-R10-RCRA-2006-0064; FRL-8188-8]****Oregon: Final Authorization of State Hazardous Waste Management Program Revision****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: On December 14, 2005, Oregon applied to EPA for authorization of changes to its hazardous waste management program under the Resource Conservation and Recovery Act (RCRA). EPA reviewed Oregon's application and published a proposed rule on April 14, 2006 (71 FR 19471) seeking public comment on EPA's preliminary determination to grant authorization of the changes. Since EPA received no comments on the proposed rule, EPA is granting final authorization of the state's changes in this final rule.

DATES: Final authorization for the revisions to the hazardous waste program in Oregon shall be effective at 1 p.m. E.S.T. on June 26, 2006.

ADDRESSES: EPA established a docket for this action under Docket ID No. EPA-R10-RCRA-2006-0064. All documents in the docket are available electronically on the Web site <http://www.regulations.gov>. A hard copy of the authorization application is also available for viewing during normal business hours at the U.S. Environmental Protection Agency Region 10, Office of Air, Waste & Toxics, 1200 Sixth Ave., Seattle, Washington, contact: Jeff Hunt, phone number: (206) 553-0256; or Oregon Department of Environmental Quality, 811 SW Sixth, Portland, Oregon, contact: Scott Latham, phone number (503) 229-5953.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, U.S. Environmental Protection Agency Region 10, Office of Air, Waste & Toxics (AWT-122), 1200 Sixth Ave., Seattle, Washington 98101, phone number: (206) 553-0256, e-mail: hunt.jeff@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?

EPA has determined that Oregon's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we are granting Oregon final authorization to operate its hazardous waste program with the changes described in the authorization application. Oregon will have responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian country (18 U.S.C. 1151) 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 Oregon, including issuing permits, until the State is granted authorization to do so.

C. What Will Be the Effect of This Action?

A facility in Oregon subject to RCRA will have to comply with the authorized State requirements in lieu of the corresponding federal requirements in order to comply with RCRA. Additionally, such persons will have to comply with any applicable federally-issued requirements, such as, for example, HSWA regulations issued by EPA for which the State has not received authorization, and RCRA requirements that are not supplanted by authorized State-issued requirements. Oregon continues to have enforcement

responsibilities under its state hazardous waste management program for violations of its program, but EPA continues to have enforcement authority under RCRA sections 3007, 3008, 3013, and 7003, which includes, among others, the authority to:

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

The action to approve these revisions does not impose additional requirements on the regulated community because the changes to Oregon's authorized hazardous waste program are already effective under State law and are not changed by this action.

D. What Were the Comments to EPA's Proposed Rule?

EPA received no comments during the public comment period which ended May 15, 2006.

E. What Has Oregon Previously Been Authorized for?

Oregon initially received final authorization on January 30, 1986, effective January 31, 1986 (51 FR 3779), to implement the RCRA hazardous waste management program. EPA granted authorization for changes to their program on March 30, 1990, effective on May 29, 1990 (55 FR 11909); August 5, 1994, effective October 4, 1994 (59 FR 39967); June 16, 1995, effective August 15, 1995 (60 FR 31642); October 10, 1995, effective December 7, 1995 (60 FR 52629); and September 10, 2002, effective September 10, 2002 (67 FR 57337).

F. What Changes Are We Authorizing With This Action?

EPA is authorizing revisions to the hazardous waste program described in Oregon's official program revision application, submitted to EPA on December 14, 2005, and deemed complete by EPA on December 22, 2005.

The following table, Table 1, identifies equivalent State regulatory analogues to the Federal regulations which are authorized by this action. All of the referenced analogous State authorities were legally adopted and effective as of October 24, 2003.

TABLE 1.—EQUIVALENT ANALOGUES TO THE FEDERAL REGULATIONS

Description federal requirements CL No. ¹	Federal Register	Analogous state authority (OAR 340-* * *)
Requirements for Preparation, Adoption, and Submittal of Implementation Plans, CL 125.	58 FR 38816, 7/20/1993	-100-0002
LDR Restrictions Phase III, Emergency Extension of the K088 Capacity Variance, CL 155.	62 FR 1992, 1/14/97	-100-0002
LDR Restrictions Phase III, Emergency Extension of the K088 Capacity Variance, CL 160.	62 FR 37694, 7/14/97	-100-0002
Petroleum Refining Process Wastes—Clarification, CL 187	65 FR 36365, 6/8/2000	-100-0002
Hazardous Air Pollutant Standards, Technical Corrections, CL 188	65 FR 42292, 7/10/2000	-100-0002, -101-0001, -104-0001, -105-0001
Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes, CL 189	65 FR 67068, 11/8/2000	-100-0002, -101-0001
LDRs Phase IV—Deferral for PCBs in Soil, CL 190	65 FR 81373, 12/26/2000 ..	-100-0002
Mixed Waste rule, CL 191	66 FR 27218, 5/16/2001	-100-0002
Mixture and Derived-From Rules Revisions, CL 192A	66 FR 27266, 5/16/2001	-100-0002, -101-0001
LDR Restrictions Correction, CL 192B	66 FR 27266, 5/16/2001	-100-0002
Change of Official EPA Mailing Address, CL 193	66 FR 34374, 6/28/2001	-100-0002
Mixture and Derived-From Rules Revision II, CL 194	66 FR 50332, 10/3/2001	-100-0002, -101-0001
Inorganic Chemical Manufacturing Wastes Identification & Listing, CL 195	66 FR 58258, 11/20/2001; 67 FR 17119, 4/9/2002.	-100-0002, -101-0001
CAMU Amendments, CL 196	67 FR 2962, 1/22/2002	-100-0002
Hazardous Air Pollutant Standards for Combustors; Interim Standards, CL 197	67 FR 6792, 2/13/2002	-100-0002, -104-0001, -105-0001
Hazardous Air Pollutant Standards for Combustors; Corrections, CL 198	67 FR 6968, 2/14/2002	-100-0002, 105-0001
Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes & TCLP Use with MGP Waste, CL 199.	67 FR 11251, 3/13/2002	100-0002, 101-0001, 102-0010
Zinc Fertilizer Rule, CL 200	67 FR 48393, 7/24/2002	100-0002; 101-0004; -102-0010

¹ CL No. (Checklist) generally reflects changes made to the Federal regulations pursuant to a particular **Federal Register** notice. EPA publishes these checklists as aids for States to use for the development of their authorization applications. See EPA's RCRA State Authorization web page at <http://www.epa.gov/epaoswer/hazwaste/state/>.

G. What Other Revisions Are We Authorizing in This Action?

During a review of Oregon's regulations, we identified a variety of changes that Oregon had made to previously authorized hazardous waste provisions. EPA brought these changes to the attention of Oregon and confirmed with the State that the State-initiated changes generally correct

typographical errors and printing errors, clarify and make the State's regulations more internally consistent, or bring the State regulations closer to the Federal language. In this rulemaking we are also correcting errors made by EPA in previous authorization **Federal Register** notices for Oregon. 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. The table below, Table 2, shows both the state initiated and the EPA initiated changes authorized by this action. All of the referenced analogous State authorities were legally adopted and already in effect as of December 22, 2005, when EPA determined that the authorization application was complete.

TABLE 2.—REVISIONS TO PREVIOUSLY AUTHORIZED RULES ¹

Description of Federal Requirements, CL No. ²	Federal Register	Analogous State authority (OAR 340-* * *)
Availability of Information		-100-0003, -100-0005(1)-(5); -105-0012.
Generator Requirements, CL II		-100-0002; 102-0011(2), -0012, -0040, -0041, -0050.
Permitting Requirements, CL V		-100-0002; -105-0010, -0012, -0030, -0061; -106-0002.
Small Quantity Generators, CL 23	51 FR 10174, 3/24/86	-100-0002; 101-0033; 102-0034, -0041, -0044; -105-0010.
LDRs (Solvents and Dioxins), CL 34	51 FR 40572, 11/7/86	-100-0002, -100-0010, -102-0011(2)(d) & (e), -105-0014.
Changes to Interim Status Facilities for Hazardous Waste Management Permits; Procedures for Post-Closure Permitting, CL 61.	54 FR 9596, 3/7/89	-100-0002; -105-0001(3) & (4), -0010; -106-0002.
Burning of Hazardous Waste in Boilers and Industrial Furnaces, Corrections & Technical Amendments, CL 94.	56 FR 32688, 7/17/91	-100-0002 -100-0004; -105-0010.
Recycled Used Oil Management Standards, CL 112	57 FR 41566, 9/10/92	-100-0002(2); -111-0000.

TABLE 2.—REVISIONS TO PREVIOUSLY AUTHORIZED RULES ¹—Continued

Description of Federal Requirements, CL No. ²	Federal Register	Analogous State authority (OAR 340-* * *)
Recycled Used Oil Management Standards; Technical Amendments and Corrections, CL 122.	58 FR 33341, 5/3/93; 58 FR 33341, 6/17/93.	-100-0002(2); -111-0000, -0010, -0020, -0032, -0035, -0040, -0050, -0060, -0070.
Recycled Used Oil Management Standards; Technical Amendments and Corrections II, CL 130.	59 FR 10550, 3/4/94	-100-0002; -111-0000; -111-0010.
Universal Waste Rule: General Provisions, CL 142A	60 FR 26942, 5/11/95	-100-0002; -102-0011(e); -113-0000, -0020, -0020(1)-(4), -0030, -0040, -0050.
LDRs Phase III—Decharacterized Wastewaters Carbamate Wastes, and Spent Potliners, CL 151.	61 FR 15566, 4/8/96	-100-0002.
Recycled Used Oil Management Standards; Technical Correction and Clarification, CL 166.	63 FR 24963, 5/6/98	-100-0002; -111-0000, -0032, -0050.
Belvill Exclusion Revisions and Clarification, CL 167E	63 FR 28556, 5/26/98	-100-0002; -101-0001, -0004.
Hazardous Remediation Waste Management Requirement (HWIR-Media), CL 175 ...	63 FR 65874, 11/30/98	-100-0002; -100-0010; -105-0003, -105-0115.
Hazardous Air Pollutant Standards for Combustors, CL 182	64 FR 62828, 9/30/99	-100-0002; -101-0001; -104-0001, -0340; -105-0001.
Universal Waste Rule as of 12/31/02, Special Consolidated Checklist	60 FR 25492, 5/11/95; 63 FR 71225, 12/24/98; 64 FR 36466, 7/6/99.	100-0002, -0010(3)(j); -102-0011(e); -113-0000, -0010, -0020, -0030, -0040, -0050, -0060, -0070.

¹ For further discussion on where the revised State rules differ from the Federal Rules refer to the authorization revision application and the administrative record for this rule.

² CL No. (Checklist) generally reflects changes made to the Federal regulations pursuant to a particular **Federal Register** notice. EPA publishes these checklists as aids for States to use for the development of their authorization applications. See EPA's RCRA State Authorization web page at <http://www.epa.gov/epaoswer/hazwaste/state/>.

H. Who Handles Permits After This Authorization Takes Effect?

Oregon will continue to issue permits for all the provisions for which it is authorized and will administer the permits it issues. For permits issued by EPA prior to this authorization, these permits would continue in force until the effective date of the State's issuance or denial of a State hazardous waste permit, at which time EPA would modify the existing EPA permit to expire at an earlier date, terminate the existing EPA permit for cause, or allow the existing EPA permit to otherwise expire by its term, except for those facilities located in Indian Country. EPA will not issue new permits or new portions of permits for provisions for which Oregon is now authorized. EPA will continue to implement and issue permits for HSWA requirements for which Oregon is not yet authorized.

I. What Is Codification and Is EPA Codifying Oregon'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. This is done by referencing the authorized State rules in

40 CFR Part 272. EPA is reserving the amendment of 40 CFR Part 272, Subpart MM for codification of this current revision to Oregon's program at a later date.

J. How Does This Authorization Action Affect Indian Country (18 U.S.C. 1151) in Oregon?

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

1. All lands within the exterior boundaries of Indian reservations within or abutting the State of Oregon;
2. Any land held in trust by the U.S. for an Indian tribe; and
3. Any other land, whether on or off an Indian reservation that qualifies as Indian country.

Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in these lands.

K. Statutory and Executive Order Reviews

This rule revises the State of Oregon's authorized hazardous waste program pursuant to section 3006 of RCRA and imposes no requirements other than those currently imposed by State law. This rule complies with applicable

executive orders and statutory provisions as follows:

1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant," and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this rule is not a "significant regulatory action" under the terms of Executive

Order 12866 and is therefore not subject to OMB review.

2. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, because this rule does not establish or modify any information or recordkeeping requirements for the regulated community and only seeks to authorize the pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

3. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601, *et seq.*, generally requires federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administrations' Size Regulations at 13 CFR part 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district

with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has determined that this action will not have a significant economic impact on small entities because the rule will only have the effect of authorizing pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law. After considering the economic impacts of this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104-4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the rule an explanation why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. This rule contains no Federal mandates (under the regulatory provisions of Title II of

the UMRA) for State, local or tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Similarly, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, this rule is not subject to the requirements of sections 202 and 203 of the UMRA.

5. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government." This rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. This rule seeks authorization of pre-existing State rules. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (59 FR 22951, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This rule does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency

must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a "significant regulatory action" as defined under Executive Order 12866.

9. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, 12(d) (15 U.S.C. 272) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted

by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not involve "technical standards" as defined by the NTTAA. Therefore, EPA is not considering the use of any voluntary consensus standards.

10. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands. Because this rule authorizes pre-existing State rules and imposes no additional requirements beyond those imposed by State law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

11. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 271

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

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 7, 2006.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

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