

US EPA ARCHIVE DOCUMENT

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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 22, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: December 19, 2003.

**Kerrigan G. Clough,**

*Acting Regional Administrator, Region 8.*

■ 40 CFR part 52, subpart QQ is amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart QQ—South Dakota

■ 2. Section 52.2170 is amended by adding paragraph (c)(22) to read as follows:

#### § 52.2170 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(22) On June 27, 2002, the designee of the Governor of South Dakota submitted revisions to the State Implementation Plan. The June 27, 2002 submittal consists of revisions to the Administrative Rules of South Dakota. These revisions add a new chapter 74:36:18, "Regulations for State Facilities in the Rapid City Area". Chapter 74:36:18 regulates fugitive emissions of particulate matter from state facilities and state contractors that conduct a construction activity or continuous operation activity within the Rapid City air quality control zone.

(i) Incorporation by reference.

(A) Chapter 74:36:18 of the Administrative Rules of South Dakota, effective July 1, 2002.

[FR Doc. 04-1035 Filed 1-16-04; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[FRL-7609-6]

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

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

**ACTION:** Immediate final rule.

**SUMMARY:** Pennsylvania has applied to EPA for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for final authorization and is authorizing Pennsylvania'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 Pennsylvania's changes to its hazardous waste program will take effect. If we receive comments that oppose this action, or portions thereof, we will publish a document in the **Federal Register** withdrawing the relevant portions of this rule, before they take effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize changes to Pennsylvania's program that were the subject of adverse comments.

**DATES:** This final authorization will become effective on March 22, 2004, unless EPA receives adverse written comments by February 19, 2004. If EPA receives any such comments, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization, or portions thereof, will not take effect as scheduled.

**ADDRESSES:** Send written comments to Charles Bentley, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814-3379. Comments may also be submitted electronically to:

*bentley.pete@epa.gov*, or by facsimile at (215) 814-3163. Comments in electronic format should identify this specific notice. You can view and copy Pennsylvania's application from 8 a.m. to 4:30 p.m., Monday through Friday at the following locations: Pennsylvania Department of Environmental Protection, Bureau of Land Recycling and Waste Management, P.O. Box 8471, Rachel Carson State Office Building, Harrisburg, PA 17105-8471, Phone number (717) 787-6239; Pennsylvania Department of Environmental Protection, Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, Phone number: (412) 442-4120; and EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103-2029, Phone number: (215) 814-5254. Persons with a disability may use the AT&T Relay Service to contact Pennsylvania Department of Environmental Protection by calling (800) 654-5984 (TDD users), or (800) 654-5988 (voice users).

#### FOR FURTHER INFORMATION CONTACT:

Charles Bentley, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029, Phone number: (215) 814-3379.

#### 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 to become more stringent or broader in scope, States must change their programs and apply to EPA to authorize the changes. Authorization of 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 revise 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 Has EPA Made in This Rule?

EPA concludes that Pennsylvania's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Pennsylvania final authorization to operate its hazardous waste program with the changes described in its application for program revisions,

subject to the procedures described in Section E, below. Pennsylvania has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those HSWA requirements and prohibitions for which Pennsylvania has not been authorized, including issuing HSWA permits, until the State is granted authorization to do so.

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

This decision serves to authorize revisions to Pennsylvania's authorized hazardous waste program. This action does not impose additional requirements on the regulated community because the regulations for which Pennsylvania is being authorized by today's action are already effective and are not changed by today's action. Pennsylvania has enforcement responsibilities under its state hazardous waste program for violations of its program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

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

**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 Pennsylvania's program changes. If EPA receives comments which oppose this authorization, or portions thereof, that document will serve as a proposal to authorize the changes to Pennsylvania's program that were the subject of adverse comment.

**E. What Happens if EPA Receives Comments That Oppose This Action?**

If EPA receives comments that oppose this authorization, or portions thereof, we will withdraw this rule, or portions thereof, by publishing a document in the **Federal Register** before the rule would become effective. EPA will base any further decision on the authorization of Pennsylvania's program changes on the proposal mentioned in the previous section. 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 the authorization of a particular change to the State's 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 Pennsylvania Previously Been Authorized for?**

Initially, Pennsylvania received final authorization to implement its hazardous waste management program effective May 29, 1986 (51 FR 17739). EPA granted authorization for changes to Pennsylvania's regulatory program on May 10, 2000, effective July 10, 2000 (65 FR 29973).

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

On September 25, 2003, Pennsylvania submitted a program revision application in accordance with 40 CFR 271.21, seeking authorization of provisions of its hazardous waste program corresponding to changes made to the Federal hazardous waste regulations between July 7, 1999, and June 28, 2001. The Commonwealth's provisions for which it is seeking authorization are identical to the corresponding Federal provisions because the Commonwealth has incorporated the Federal provisions by reference. The EPA has reviewed Pennsylvania's application, and now makes an immediate final decision, subject to receipt of adverse written comment, that Pennsylvania's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant Pennsylvania final authorization for the program modifications contained in the program revision application.

Pennsylvania's program revision application includes regulatory changes to the Commonwealth's authorized hazardous waste program, including the adoption of the Federal hazardous waste regulations published between July 7, 1999 and June 28, 2001, with certain exceptions noted in this section. Pennsylvania is today seeking authority to administer the Federal requirements that are listed in the following chart. This chart also lists the Commonwealth's analogous provisions that are being recognized as equivalent to the corresponding Federal requirements. The regulatory references are to Title 25, Pennsylvania Code (25 Pa.Code), Chapters 260a through 266a, 266b, 268a, and 270a, effective May 1, 1999. Pennsylvania's authority to incorporate subsequent changes to the Federal program is found at 25 Pa. Code, Chapter 260a.3(e).

Federal Register citation and date promulgated <sup>1</sup>	Federal requirement	Analogous Pennsylvania authority
64 FR 56,469, 10–20–99, (RCRA Revision Checklist 183).	40 CFR, Parts 261.32; 262.34(a)(4); 268.7(a)(3)(iii); 268.40(j); 268.40, Table; 268.49(c)(1)(A); and 268.49(c)(1)(B).	25 Pa. Code, Chapter 260a.3(e); Incorporated by reference at 25 Pa. Code, Chapters 261a.1, 262a.10, and 268a.1.
65 FR 12,378, 3–08–00, (RCRA Revision Checklist 184).	40 CFR Parts 262.34(a)(4); 262.34(g), introduction; 262.34(g)(1); 262.34(g)(2); 262.34(g)(3); 262.34(g)(4), introduction; 262.34(g)(4)(i), introduction; 262.34(g)(4)(i)(A); 262.34(g)(4)(i)(B); 262.34(g)(4)(i)(C), introduction; 262.34(g)(4)(i)(C)(1)&(2); 262.34(g)(4)(ii); 262.34(g)(4)(iii); 262.34(g)(4)(iv); 262.34(g)(4)(v); 262.34(h); and 262.34(i).	25 Pa. Code, Chapter 260a.3(e); Incorporated by reference at 25 Pa. Code, Chapter 262a.10.

Federal Register citation and date promulgated <sup>1</sup>	Federal requirement	Analogous Pennsylvania authority
65 FR 14,472, 3–17–00, (RCRA Revision Checklist 185).	40 CFR Parts 261.32, Table; 261.33(f), Table; 261, Appendix VII; 261, Appendix VIII; 268.33; 268.40, Table; 268.48(a), Table.	25 Pa. Code, Chapter 260a.3(e); Incorporated by reference at 25 Pa. Code, Chapters 261a.1 and 268a.1.
65 FR 36,365, 6–8–00, (RCRA Revision Checklist 187).	40 CFR Parts 261.31(a), Table and 268, Appendix VII .....	25 Pa. Code, Chapter 260a.3(e); Incorporated by reference at 25 Pa. Code, Chapters 261a.1 and 268a.1.
65 FR 67,068, 11–8–00, (RCRA Revision Checklist 189).	40 CFR Parts 261.32; 261, Appendix VII; 261, Appendix VIII; 268.33(a); 268.33(b), introduction; 268.33(b)(1); 268.33(b)(2); 268.33(b)(3); 268.33(b)(4); 268.33(b)(5); 268.33(c); 268.33(d), introduction; 268.33(d)(1); 268.33(d)(2); 268.40, Table; and 268.48(a), Table.	25 Pa. Code, Chapter 260a.3(e); Incorporated by reference at 25 Pa. Code, Chapters 261a.1 and 268a.1.
65 FR 81,373, 12–26–00, (RCRA Revision Checklist 190).	40 CFR Parts 268.32(a); 268.32(b), introduction; 268.32(b)(1)(i); 268.32(b)(1)(ii); 268.32(b)(2)(i); 268.32(b)(2)(ii); 268.32(b)(3); 268.32(b)(4); 268.48(a), Table UTS; 268.49(d); and 268, Appendix III.	25 Pa. Code, Chapter 260a.3(e); Incorporated by reference at 25 Pa. Code Chapter 268a.1.
66 FR 27,2166, 5–16–01, (RCRA Revision Checklist 192A).	40 CFR Parts 261.3(a)(2)(iii); 261.3(a)(2)(iv); 261.3(c)(2)(i); 261.3(g)(1); 261.3(g)(2); 261.3(g)(2)(i); 261.3(g)(2)(ii); 261.3(g)(3); 261.3(h)(1); 261.3(h)(2); 261.3(h)(2)(i); 261.3(h)(2)(ii); and 261.3(h)(3).	25 Pa. Code, Chapter 260a.3(e); Incorporated by reference at 25 Pa. Code, Chapter 261a.1.
66 FR 27,266, 5–16–01, (RCRA Revision Checklist 192B).	40 CFR Part 268, Appendix VII, Table I .....	25 Pa. Code, Chapter 260a.3(e); Incorporated by reference at 25 Pa. Code, Chapter 268a.1.
66 FR 34,374, 6–28–01, (RCRA Revision Checklist 193).	40 CFR Part 260.11(a)(11) .....	25 Pa. Code, Chapter 260a.3(e); Incorporated by reference at 25 Pa. Code, Chapter 260a.1.

<sup>1</sup> 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>.

The Commonwealth is not seeking authorization for the following RCRA revisions that occurred between July 7, 1999 and June 28, 2000, which contain elements of the Federal used oil regulations. The Commonwealth's used oil regulations are being revised to resemble more closely the Federal standards.

Federal requirement	Regulatory explanation
64 FR 52,828, 9–30–99, as amended at 64 FR 63, 209, 11–19–99, (RCRA Revision Checklists 182 and 182.1).	NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (MACT Rule).
65 FR 42,292, 7–10–00, as amended at 66 FR 24,270, 5–14–01, and 66 FR 35,087, 7–3–01, (RCRA Revision Checklist 188).	NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors; Technical Corrections.

**H. Where Are the Revised Commonwealth Rules Different From the Federal Rules?**

There are no differences in the provisions being authorized today. The Commonwealth's provisions for which it is seeking authorization are identical to the Federal provisions because the Commonwealth has incorporated the Federal provisions by reference.

**I. Who Handles Permits After This Authorization Takes Effect?**

After authorization, Pennsylvania 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 it issued prior to the effective date of this authorization. Until such time as formal transfer of EPA permit responsibility to Pennsylvania occurs and EPA terminates its permit, EPA and Pennsylvania agree to

coordinate the administration of permits in order to maintain consistency. EPA will not issue any additional new permits or new portions of permits for the provisions listed in Section G after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Pennsylvania is not yet authorized.

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

Pennsylvania is not seeking authorization to operate the program on Indian lands, since there are no Federally-recognized Indian Lands in Pennsylvania.

**K. What Is Codification and Is EPA Codifying Pennsylvania'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. EPA does this by referencing the authorized State rules in 40 CFR part 272. EPA reserves the amendment of 40 CFR part 272, subpart NN, for this authorization of Pennsylvania's program changes until a later date.

**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 (see **SUPPLEMENTARY INFORMATION: Section A. Why Are Revisions to State Programs Necessary?**). Therefore, this rule complies with applicable executive orders and statutory provisions as follows.

1. *Executive Order 12866: Regulatory Planning Review*—The Office of Management and Budget has exempted

this rule from its review under Executive Order (EO) 12866.

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

3. *Regulatory Flexibility Act*—After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

4. *Unfunded Mandates Reform Act*—Because this rule approves 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.

5. *Executive Order 13132: Federalism*—EO 12132 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*—EO 13175 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 EO 13045 because it is not economically significant and it is not based on health or safety risks.

8. *Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*—This rule is not subject to EO 13211 because it is not a significant regulatory action as defined in EO 12866.

9. *National Technology Transfer Advancement Act*—EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus, Section 12(d) of the National Technology Transfer and Advancement Act does not apply to this rule.

10. *Congressional Review Act*—EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective on March 22, 2004.

#### 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: December 4, 2003.

**James W. Newsom,**

*Acting Regional Administrator, EPA Region III.*

[FR Doc. 04-1042 Filed 1-16-04; 8:45 am]

**BILLING CODE 6560-50-P**

wide range of new and innovative unlicensed devices and thereby increase wireless broadband access and investment.

**DATES:** Effective February 19, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ahmed Lahjouji, Office of Engineering and Technology, (202) 418-2061, TTY (202) 418-2989, e-mail [Ahmed.Lahjouji@fcc.gov](mailto:Ahmed.Lahjouji@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, ET Docket 03-122, FCC 03-287, adopted November 12, 2003, and released November 18, 2003. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC Consumer & Governmental Affairs Bureau at (202) 418-0531 (voice), (202) 418-7365 (TTY).

#### Summary of the Report and Order

1. The Report amends part 15 of our rules to make an additional 255 megahertz of spectrum available in the 5.470-5.725 GHz band for unlicensed National Information Infrastructure (U-NII) devices, including Radio Local Area Networks (RLANs). This action aligns the frequency bands used by U-NII devices in the United States with bands in other parts of the world, thus decreasing development and manufacturing costs for U.S. manufacturers by allowing for the same products to be used in most parts of the world. We believe that the increased demand that will result from expanding the markets for U-NII devices, coupled with the operational flexibility provided by the U-NII rules, will lead manufacturers to develop a wide range of new and innovative unlicensed devices and thereby increase wireless broadband access and investment.

2. There has been tremendous growth in demand for unlicensed wireless devices in recent years, particularly for devices used for wireless local area networking and broadband access to the internet. Sales of wireless local area network equipment have grown more than 150% since the year 2000. Companies are now offering broadband

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2 and 15

[ET Docket No. 03-122; FCC 03-287]

#### Unlicensed Devices in the 5 GHz Band

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Commission's rules to make an additional 255 megahertz of spectrum available in the 5.470-5.725 GHz band for unlicensed National Information Infrastructure (U-NII) devices, including Radio Local Area Networks (RLANs). This action will align the frequency bands used by U-NII devices in the United States with bands in other parts of the world, thus decreasing development and manufacturing costs for U.S. manufacturers by allowing for the same products to be used in most parts of the world. We believe that the increased demand that will result from expanding the markets for U-NII devices, coupled with the operational flexibility provided by the U-NII rules, will lead manufacturers to develop a