



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R05-RCRA-2014-0689; FRL -9933-29-Region 5]

Michigan: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Michigan applied to the Environmental Protection Agency (EPA) for final authorization of certain changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). On March 31, 2015, EPA published a proposed rule to authorize the changes and opened a public comment period under Docket ID No. EPA-R05-RCRA-2014-0689. The comment period closed on June 1, 2015. EPA received no comments on the proposed rule. EPA has decided that the changes to Michigan's program satisfy all requirements necessary to qualify for final authorization, and EPA is authorizing those changes to Michigan's authorized hazardous waste program in this final rule.

DATES: Final authorization for the changes to the hazardous waste program in Michigan will be effective at 1 p.m. EST on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: *Docket:* All documents in the docket are listed in the *regulations.gov* index under Docket Identification No. EPA-2014-R05-RCRA-2014-0689. Although listed in the index, some of the information is not publicly available, e.g., Confidential Business Information 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 at *regulations.gov* or in hard copy at the following addresses, Monday through Friday, excluding legal holidays, between the hours of 9:00 a.m. to 4:00 p.m.: U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, contact: Judith Greenberg, telephone (312) 886-4179; or Michigan Department of Environmental Quality, Constitution Hall, 525 West Allegan Street, Lansing, Michigan, contact: Ronda Blayer, telephone (517) 284-6555.

FOR FURTHER INFORMATION CONTACT: Judith Greenberg, U.S. EPA, Region 5, Land and Chemicals Division, 77 West Jackson Blvd., Mail Code LR-8J, Chicago, Illinois 60604, email: greenberg.judith@epa.gov, phone number (312) 886-4179.

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 made a final determination that Michigan's revisions to its authorized hazardous waste management program meet all of the statutory and regulatory requirements

established by RCRA for authorization. Therefore, EPA is authorizing the revised State of Michigan hazardous waste management program, as described in the Attorney General's Statement in the June 2014 authorization revision application, and as discussed in section E of this rule. Michigan 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 covered by its revised program application, subject to the limitations of RCRA, including 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 requirements and prohibitions in Michigan, including issuing permits, until the State is granted authorization to do so.

C. What has Michigan previously been authorized for?

Michigan's hazardous waste management program received final authorization effective on October 16, 1986 (51 FR 36804-36805, October 16, 1986). Subsequently, EPA authorized revisions to the State's program effective January 23, 1990 (54 FR 48608, November 24, 1989); January 24, 1991 (56 FR 18517, January 24, 1991); November 30, 1993 (58 FR 51244, October 1, 1993); January 13, 1995 (60 FR 3095, January 13, 1995); April 8, 1996 (61 FR 4742, February 8, 1996); November 14, 1997 (62 FR 61775, November 14, 1997); June 1, 1999 (64 FR 10111, March 2, 1999); July 31, 2002 (67 FR 49617, July 31, 2002); March 9, 2006 (71 FR 12141, March 9, 2006); January 7, 2008 (73 FR 1077, January 7, 2008); and March 2, 2010 (75 FR 9345, March 2, 2010).

D. What is the effect of this authorization decision?

The effect of this decision is that a facility in Michigan subject to RCRA has to comply with the authorized state requirements in lieu of the corresponding federal requirements in order to comply with RCRA, and those authorized requirements will be federally enforceable. Additionally, such persons must comply with any applicable federal requirements, such as, for example, HSWA requirements issued by EPA for which the state has not received authorization, and RCRA requirements that are not supplanted by authorized state-issued requirements. Michigan continues to have enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, and any other applicable statutory and regulatory provisions, which include, among others, authority to:

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

This final action approving these revisions does not impose additional requirements on the regulated community because the regulations for which Michigan is authorized are already effective under state law and are not changed by EPA's final action.

E. What changes are we authorizing with today's action?

This final rule addresses a program revision application that Michigan submitted to EPA in June 2014, in accordance with 40 CFR 271.21, seeking authorization of changes to the state program. On March 31, 2015, EPA published a proposed rule (80 FR 17021) stating the Agency's intent to grant final authorization for revisions to Michigan's hazardous waste

management program. The public comment period on this proposed rule ended on June 1, 2015. EPA received no comments during the public comment period.

EPA has determined that Michigan's changes to its program satisfy all of the requirements necessary to qualify for final authorization. With this final action, EPA authorizes Michigan for the following federal rules (a table with a list of the State analogs is provided in the March 31, 2015, proposed rule) and the following state-initiated changes:

- NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) Amendments, 73 FR 18970, April 8, 2008, Checklist 217¹.
- F019 Exemption for Wastewater Treatment Sludges from Auto Manufacturing Zinc Phosphating Processes, June 4, 2008, 73 FR 31756, Checklist 218.
- Academic Laboratories Generator Standards, December 1, 2008, 73 FR 72912, Checklist 220.
- OECD Requirements: Export Shipments of Spent Lead-Acid Batteries, January 8, 2010, 75 FR 1236, Checklist 222.
- Hazardous Waste Technical Corrections and Clarifications Rule, as amended, March 16, 2010, 75 FR 12989; and June 4, 2010, 75 FR 31716, Checklist 223.
- Removal of Saccharin and Its Salts, December 17, 2010, 75 FR 78918, Checklist 225.
- Corrections to the Academic Generator Standards, December 20, 2010, 75 FR 79304, Checklist 226.

¹ Revision Checklists generally reflect changes to federal regulations pursuant to a particular *Federal Register* notice; EPA publishes these checklists as aids to states to use for development of their authorization revision application. See EPA's RCRA State Authorization website at <http://www.epa.gov/epawaste/laws-regs/state/index.htm>.

- Revisions of the Treatment Standards for Carbamate Wastes, June 13, 2011, 75 FR 34147, Checklist 227.
- Hazardous Waste Technical Corrections and Clarifications, April 13, 2012, 77 FR 22229, Checklist 228.
- Equivalent state-initiated changes:
Michigan administrative rules R 299.9102 (definition of “construction permit” removed), R 299.9106(e) (definition of “operating license” modified), R 299.9224, R 299.9225, R 299.9304(2)(b), R 299.9409(4), R 299.9501 (except second sentence only of paragraph (3)(d)), R 299.9505, R 299.9524, R 299.9603, R 299.9604(2), R 299.9605, R 299.9609, R 299.9610(3), R 299.9612, R 299.9615, R 299.9616, R 299.9623, R 299.9629, R 299.9640, R 299.9707, R 299.9708, R 299.9808, and R 299.9821, effective November 5, 2013.

F. Which revised state rules are different from the federal rules?

The most significant differences between the state rules we are authorizing and their analogous federal rules are summarized below. It should be noted that this summary does not describe every difference or every detail regarding the differences that are described. Members of the regulated community are advised to read the complete rules to ensure that they understand the requirements with which they will need to comply.

EPA has found that aspects of the Michigan program are more stringent than the federal program. All of these more stringent requirements are part of the federally enforceable RCRA program authorized by the EPA and must be complied with in addition to the state requirements which track the minimum federal requirements. These more stringent requirements are found at:

Michigan’s rules at (references are to the Michigan Administrative Code):

R 299.9601(1), (2), (2)(b), (c), (d), (e), (f), (g), (h) and (i); R 299.9608(1), (6) and (8); R 299.9615; and R 299.9702(1) are more stringent than the federal analogs at 40 CFR §§ 265.56(b), 265.71, 265.72, 265.142(a), 265.174, 265.190(a), 265.193, 265.194, 265.197, 265.201, and 265.340(b)(1) since the State rules include provisions that require compliance with standards equivalent to 40 CFR part 264 rather than 40 CFR part 265.

Michigan's rules at R 299.9601(2)(a) and R 299.9602 are more stringent since the rules impose requirements regarding environmental and human health standards generally.

Michigan's rules at R 299.9615(4) are more stringent since the State rules require tank systems to also comply with Michigan 1941 Act 207 standards (which govern above-ground storage tanks).

Michigan's rules at R 299.9623(9) are more stringent since the State rules require incinerators to comply with Michigan Part 55 standards (which address air pollution).

Michigan does not allow containment buildings, making the state requirements more stringent than the federal requirements at 40 CFR 262.10(f), (k)(1) and (k); 262.11(d); 262.41(b); 263.12; 40 CFR part 264 subpart DD; 40 CFR 265 subpart DD; and 40 CFR part 264 appendix I, Tables 1 and 2.

Michigan's rules at R 299.9629(7)-(7)(c) are more stringent, since the State rules require (1) timely notification of an exceedance of a groundwater/surface water interface standard based on acute toxicity and established pursuant to part 201 and part 31 of Act 451; and (2) implementation of interim measures to prevent exceedance at the monitoring wells along with a proposal and schedule for completing corrective action to prevent a discharge that exceeds the standard.

Michigan's rules at R 299.11002(1) and (2) are more stringent than the federal analogs at 40 CFR § 260.11(d) and (d)(1) since the State adopts updated versions of the "Flammable and Combustible Liquids Code."

EPA has also found that aspects of Michigan's revised program are broader in scope than the federal program. State provisions that EPA determines are broader in scope are not part of the federally authorized program and are not federally enforceable. Michigan's program revisions include the following rules that are broader in scope than the federal program (references are to the Michigan Administrative Code): R 299.9226, R 299.9501(3)(d) (second sentence only) and R 299.9507, as amended effective November 5, 2013.

The following Michigan administrative rules that were broader in scope than the federal program were rescinded effective November 5, 2013: R 299.9221 (Table 203b), R 299.9223 (Table 204b), R 299.9904, R 299.9905, R 299.9906, and R 299.11101, R 299.11102, R 299.11103, R 299.11104, R 299.11105, R 299.11106, and R 299.11107.

EPA does not authorize States to administer federal import and export functions in any section of the RCRA hazardous waste regulations. Although states do not receive authorization to administer the federal government's import and export functions, found in 40 CFR part 262, subparts E, F and H, state programs are still required to adopt the federal import and export provisions to maintain their equivalency with the federal program. The State amended the following state import and export rules to include the federal rule on Organization for Economic Cooperation and Development (OECD) Requirements; Export Shipments of Spent Lead-Acid Batteries (75 FR 1236, January 8, 2010): R 299.9301(7); R 299.9309(1), (3) and (4); R 299.9312(1) and (2); R 299.9401(5); R 299.9601(2)(c), (3) and (9); R 299.9605(1) and (4);

R 299.9608(1), (4) and (8); R 299.9804(7) and (8); and R 299.11003(1)(k), (m), (n) and (p) and (2).

G. Who handles permits after final authorization takes effect?

Michigan 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 EPA issued prior to the effective date of the final authorization until they expire or are terminated. EPA will not issue any more new permits or new portions of permits for the provisions listed above after the effective date of the final authorization. EPA will continue to implement and issue permits for HSWA requirements for which Michigan is not yet authorized.

H. How does today's action affect Indian Country (18 U.S.C. 1151) in Michigan?

Michigan is not authorized to carry out its hazardous waste program in Indian Country within the State, as defined in 18 U.S.C. 1151. This includes:

1. All lands within the exterior boundaries of Indian reservations within the State of Michigan;
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, authorizing Michigan for these revisions does not affect Indian Country in Michigan. EPA continues to implement and administer the RCRA program in Indian Country. It is EPA's long-standing position that the term "Indian lands" used in past Michigan hazardous waste approvals is synonymous with the term "Indian Country." Washington Dep't of Ecology v. U.S. EPA, 752 F.2d 1465, 1467, n.1 (9th Cir. 1985). See 40 CFR 144.3 and 258.2.

I. What is codification and is EPA codifying Michigan’s hazardous waste program as authorized in this rule?

Codification is the process of placing a state's statutes and regulations that comprise a 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. Michigan’s rules, up to and including those revised October 19, 1991, have previously been codified through incorporation-by-reference effective April 24, 1989 (54 FR 7421, February 21, 1989); as amended effective March 31, 1992 (57 FR 3724, January 31, 1992). We reserve the amendment of 40 CFR part 272, subpart X, for the codification of Michigan’s program changes until a later date.

J. Statutory and Executive Order Reviews

This proposed rule only authorizes hazardous waste requirements pursuant to RCRA section 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 18266: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

The Office of Management and Budget has exempted this rule from its review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821 January 21, 2011).

2. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

3. *Regulatory Flexibility Act*

This rule authorizes state requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those required by state law. Accordingly, I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

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 of 1995 (Pub. L. 104-4).

5. *Executive Order 13132: Federalism*

Executive Order 13132 (64 FR 43255, August 10, 1999) 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 67249, November 9, 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, or 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 and Safety Risks*

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866 and because the EPA 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 (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, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply to this rule.

10. Executive Order 12988

As required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

11. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings

EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order.

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

Because this rule proposes authorization of 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 (59 FR 7629, February 16, 1994).

13. 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 the publication 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: August 10, 2015.

Susan Hedman,
Regional Administrator, Region 5.

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