



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 271 and 272

[EPA-R08-RCRA-2016-0131; FRL 9947-04-Region 8]

South Dakota: Final Authorization of State Hazardous Waste Management Program Revisions and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The State of South Dakota has applied to the Environmental Protection Agency (EPA) for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the State's changes through this direct final action. The EPA uses the regulations entitled "Approved State Hazardous Waste Management Programs" to provide notice of the authorization status of State programs and to incorporate by reference those provisions of State statutes and regulations that will be subject to the EPA's inspection and enforcement. This rule also codifies in the regulations the approval of South Dakota's hazardous waste management program and incorporates by reference authorized provisions of the State's regulations.

DATES: This rule is effective on **[insert date 60 days after the date of publication in the Federal Register]** unless the EPA receives adverse written comment by **[insert date 30 days after the date of publication in the Federal Register]**. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of **[INSERT date 60 days after date of publication in the Federal Register]**. If the EPA receives adverse comment, it will publish a timely withdrawal of this direct final rule in the

Federal Register and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-R08-RCRA-2016 - 0131** by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
2. *Email:* cosentini.christina@epa.gov.
3. *Fax:* (303) 312-6341 (prior to faxing, please notify the EPA contact listed below).
4. *Mail, Hand Delivery or Courier:* Christina Cosentini, Resource Conservation and Recovery Program, EPA Region 8, Mailcode 8P-R, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Courier or hand deliveries are only accepted during the Regional Office's normal hours of operation. The public is advised to call in advance to verify business hours. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. **EPA-R08-RCRA-2016-0131**. EPA's policy is that all comments received will be included in the public docket without change and may be available online 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 *regulations.gov*, or email. The federal <http://www.regulations.gov> website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *regulations.gov*, your email 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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 form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at: EPA Region 8, from 8 a.m. to 4 p.m., 1595 Wynkoop Street, Denver, Colorado, contact: Christina Cosentini, phone number (303) 312-6231, or the South Dakota Department of Environmental and Natural Resources, from 9 a.m. to 5 p.m., Joe Foss Building, 523 East Capitol Avenue, Pierre, South Dakota 57501, contact: Carrie Jacobson, phone number (605) 773-3153. The public is advised to call in advance to verify business hours.

FOR FURTHER INFORMATION CONTACT: Christina Cosentini, Resource Conservation and Recovery Program, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202; phone number (303) 312-6231; Email address: cosentini.christina@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Authorization of Revisions to South Dakota's Hazardous Waste Program

A. Why are revisions to State programs necessary?

States which have received final authorization from the 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 the 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 the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273 and 279. When states make other changes to their regulations, it is often appropriate for the states to seek authorization for the changes.

B. What decisions have we made in this rule?

We conclude that South Dakota's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant South Dakota final authorization to operate its hazardous waste program with the changes described in the authorization application. South Dakota has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs), 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), for all areas within the State, except for (1) all lands located within formal Indian Reservations within or abutting the State of South Dakota, including the Cheyenne River Indian Reservation, Crow Creek Indian Reservation, Flandreau Indian Reservation, Lower Brule Indian Reservation, Pine Ridge Indian Reservation, Rosebud Indian Reservation, Standing Rock Indian Reservation, Yankton Indian Reservation; (2) any land held in trust by the United States for an Indian tribe; and (3) any other land, whether on or off a reservation that qualifies as "Indian country" within the meaning of 18 U.S.C. 1151. New federal requirements and prohibitions imposed by federal regulations that the EPA promulgates under the authority of HSWA take effect in authorized states before they are authorized for the

requirements. Thus, the EPA will implement those requirements and prohibitions in South Dakota, including issuing permits, until South Dakota is authorized to do so.

C. What is the effect of this authorization decision?

The effect of this decision is that a facility in South Dakota subject to RCRA will have to comply with the authorized State requirements instead of the equivalent federal requirements in order to comply with RCRA. South Dakota has enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

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

This action does not impose additional requirements on the regulated community because the regulations for which South Dakota is being authorized by this direct action are already effective under State law and are not changed by this action.

D. Why is the EPA using a direct final rule?

The EPA is publishing this rule without a prior proposal because we view this as a noncontroversial action and anticipate no adverse comment. However, in the “Proposed Rules” section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to authorize the State program changes if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the ADDRESSES section of this document.

E. What happens if EPA receives comments opposing this action?

If the EPA receives comments that oppose this authorization, we will address all public comments in a later **Federal Register**. You will not have another opportunity to comment, therefore, if you want to comment on this action, you must do so at this time.

F. For what has South Dakota previously been authorized?

South Dakota initially received final authorization on October 19, 1984, effective November 2, 1984 (49 FR 41038) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on: April 17, 1991, effective June 17, 1991 (56 FR 15503); September 8, 1993, effective November 8, 1993 (FR 47216); January 10, 1994, effective March 11, 1994 (59 FR 1275); July 24, 1996, effective September 23, 1996 (61 FR 38392); May 9, 2000, effective June 8, 2000 (65 FR 26755); April 23, 2004, effective May 24, 2004 (69 FR 21962); March 8, 2006, effective March 8, 2006 (71 FR 11533); and August 8, 2012, effective August 8, 2012 (77 FR 47302).

G. What changes are we authorizing with this action?

South Dakota submitted a final complete program revision application on May 12, 2015, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that South Dakota's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant South Dakota final authorization for the following program changes:

1. Program Revision Changes for Federal Rules

The State of South Dakota revisions consist of regulations which specifically govern Federal hazardous waste revisions promulgated from July 1, 2007 through June 30, 2012 (RCRA

Clusters XVIII – XXII), except for the final rules published on January 2, 2008 (73 FR 57; Checklist 216), October 30, 2008 (73 FR 64668, Checklist 219); December 19, 2008 (73 FR 77954, Checklist 221); January 8, 2010 (75 FR 1236, Checklist 222); and June 15, 2010 (75 FR 33712, Checklist 224). The State requirements from its Hazardous Waste Rules, Administrative Rules of South Dakota (ARSD), Article 74:28, effective October 10, 2013, are included in the chart below.

Description of federal requirement	Federal Register date and page	Analogous state authority
1. NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II Amendments (Checklist 217)	73 FR 18970; 8/8/08	ARSD 74:28:25-01 and 74:28:27:01.
2. F019 Exemption for Wastewater Treatment Sludges from Auto Manufacturing Zinc Phosphating Processes (Checklist 218)	73 FR 31756; 6/4/08	ARSD 74:28:22:01.
3. Academic Laboratories Generator Standards (Checklist 220)	73 FR 7291; 12/1/08	ARSD 74:28:22:01 and 74:28:23:01.
4. Hazardous Waste Technical Corrections and Clarifications (Checklist 223)	75 FR 12989; 3/18/10	ARSD 74:28:21:02, 74:28:22:01, 74:28:23:01, 74:28:24:01, 74:28:25:01, 74:28:28:01, 74:28:27:01, 74:28:30:01, 74:28:26:01, and 74:28:23:01.
5. Removal of Saccharin and Its Salts from the Lists of Hazardous Constituents (Rule 225; No Federal checklist)	75 FR 78918; 12/17/10	ARSD 74:28:22:01 and 74:28:30:01.
6. Academic Laboratories Generator Standards Technical Corrections (Checklist 226)	75 FR 79304; 12/20/10	ARSD 74:28:23:01.
7. Revision of the Land Disposal Treatment Standards for Carbamate Wastes (Checklist 227)	76 FR 34147; 6/13/11	ARSD 74:28:30:01.
8. Hazardous Waste Technical	77 FR 22229; 4/13/12	ARSD 74:28:22:01 and

Description of federal requirement	Federal Register date and page	Analogous state authority
Corrections and Clarifications Rule (Checklist 228)		74:28:27:01.

2. State-Initiated Changes

South Dakota has made amendments to its regulations that are not directly related to any of the federal rules addressed in Item G.1 above. These State-initiated changes are either conforming changes made to existing authorized provisions, or the adoption of provisions that clarify and make the State’s regulations internally consistent. The State’s regulations, as amended by these provisions, provide authority which remains equivalent to and no less stringent than the federal laws and regulations. These State-initiated changes are submitted under the requirements of 40 CFR 271.21(a) and include the following provisions from the Administrative Rules of South Dakota (ARSD 74:28), as amended, effective October 10, 2013: 74:28:21:01(1), 74:28:21:01(3), 74:28:21:01(6), 74:28:21:01(8), 74:28:21:01(11), 74:28:25:03, 74:28:25:04, 74:28:25:05, 74:28:28:03, 74:28:28:04, 74:28:28:05, and 74:36:11.01.

H. Where are the revised State rules different from the Federal rules?

South Dakota incorporates the Federal regulations by reference, thus making its hazardous waste program equivalent to the federal program in all areas. The State did not make any changes that are more stringent or broader-in-scope than the federal rules in this rulemaking. In addition, South Dakota did not change any previously more stringent or broader-in-scope provisions to be equivalent to the federal rules.

EPA will continue to implement certain federal requirements that the EPA cannot delegate to States. The requirements include: 1) certain provisions in 40 CFR §§ 261.39(a)(5) and 261.41 part 262, subparts E, F and H, part 263, subpart B, §§ 264.12(a)(2), 264.71(a)(3),

264.71(d), 265.12(a)(2), 265.71(a)(3), and 265.71(d) regarding governmental oversight of exports and imports of hazardous waste; (2) manifest registry functions in 40 CFR parts 262, Subpart B; 3) 268.5, 268.6, 268.42(b), and 268.44(a)-(g) regarding land disposal restrictions; and 4) 279.82(b) regarding State petitions to allow use of used oil as a dust suppressant.

I. Who handles permits after the authorization takes effect?

South Dakota will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits which were issued prior to the effective date of this authorization until South Dakota has equivalent instruments in place. We will not issue any new permits or new portions of permits for the provisions listed in the Table in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which South Dakota is not yet authorized.

J. How does this action affect Indian Country (18 U.S.C. section 1151) in South Dakota?

This determination to approve South Dakota's RCRA program revisions applies to all activities in South Dakota outside of "Indian country," as that term is defined in 18 U.S.C. section 1151, including:

1. All lands within the exterior boundaries of the following Indian reservations located within or abutting the State of South Dakota:
 - a. Cheyenne River Indian Reservation;
 - b. Crow Creek Indian Reservation;
 - c. Flandreau Indian Reservation;
 - d. Lower Brule Indian Reservation;

- e. Pine Ridge Indian Reservation;
 - f. Rosebud Indian Reservation;
 - g. Standing Rock Indian Reservation;
 - h. Yankton Indian Reservation;
- 2. Any land held in trust by the United States for an Indian tribe; and,
 - 3. Any other areas which are “Indian country” within the meaning of 18 U.S.C. 1151.

Under principles of Federal Indian law, states generally do not have authority to regulate in Indian country. *Ala. v. Native Vill. of Venetie Tribal Gov’t.*, 522 U.S. 520 n.1 (1998).

Accordingly, in the absence of an express grant of authority to a state from Congress, EPA typically excludes Indian country from program delegations and authorizations to states. *See* RCRA Authorization regulations at 40 CFR section 271.1(h) (“[I]n many cases States will lack authority to regulate activities on Indian lands.”).

Indian country is defined by federal statute, 18 U.S.C. section 1151, as:

- a. all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;
- b. all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and
- c. all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

It is important to note that the phrase “notwithstanding the issuance of any patent” in 18

U.S.C. section 1151(a) has been interpreted by the U.S. Supreme Court to include fee patents (also known as land titles or land deeds) issued to Indians and non-Indians alike. *See, Seymour v. Superintendent*, 368 U.S. 351, 358 (1962). Accordingly, fee-owned lands, whether owned by Indians or nonmembers of the relevant Indian tribe, which are within the exterior boundaries of Indian reservations, are Indian country. While 18 USC section 1151 on its face relates to criminal jurisdiction, the U.S. Supreme Court has held that it is also relevant for civil regulatory jurisdiction. *See, DeCoteau v. Dist. County Court*, 420 U.S. 425, 427 n.2 (1975).

In addition, tribal trust lands located outside of formal reservations are also Indian country as defined in 18 U.S.C. section 1151. For a detailed legal discussion and explanation of this interpretation of Indian country, *see* Letter from Jack W. McGraw, Acting Regional Administrator, United States Environmental Agency, to Steven M. Pirner, Secretary, South Dakota Department of Environment and Natural Resources (April 2, 2002), printed in 67 FR 45684 through 45687 (July 10, 2002).

II. Incorporation by Reference

A. What is codification?

Codification is the process of including the statutes and regulations that comprise the State's authorized hazardous waste management program into the CFR. Section 3006(b) of RCRA, as amended, allows the Environmental Protection Agency (EPA) to authorize State hazardous waste management programs. The State regulations authorized by the EPA supplant the federal regulations concerning the same matter with the result that after authorization EPA enforces the authorized regulations. Infrequently, State statutory language which acts to regulate a matter is also authorized by the EPA with the consequence that the EPA enforces the authorized statutory provision. The EPA does not authorize State enforcement authorities and

does not authorize State procedural requirements. The EPA codifies the authorized State program in 40 CFR part 272 and incorporates by reference State statutes and regulations that make up the approved program which is federally enforceable in accordance with Sections 3007, 3008, 3013, and 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934 and 6973, and any other applicable statutory and regulatory provisions.

B. What is the history of the codification of South Dakota's hazardous waste management program?

The EPA incorporated by reference South Dakota's then authorized hazardous waste program effective March 8, 2006 (71 FR 11533). In this action, the EPA is revising Subpart QQ of 40 CFR part 272 to include the authorization revision actions described in this document.

C. What decisions have we made in this rule?

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the South Dakota rules described in the amendments to 40 CFR part 272 set forth below. The EPA has made, and will continue to make, these documents available electronically through <http://www.regulations.gov> and in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

This action codifies the EPA's authorization of South Dakota's base hazardous waste management program and its revisions to that program. The codification reflects the State program that would be in effect at the time EPA's authorized revisions to the South Dakota hazardous waste management program addressed in this direct final rule become final. This action does not reopen any decision the EPA previously made concerning the authorization of the State's hazardous waste management program. The EPA is not requesting comments on its

decisions published in the **Federal Register** documents referenced in Section I.F of this preamble concerning revisions to the authorized program in South Dakota.

The EPA is incorporating by reference EPA's approval of South Dakota's hazardous waste management program by amending Subpart QQ to 40 CFR part 272. The action amends section 272.2101 and incorporates by reference South Dakota's authorized hazardous waste regulations, as amended effective October 10, 2013. Section 272.2101 also references the demonstration of adequate enforcement authority, including procedural and enforcement provisions, which provide the legal basis for the State's implementation of the hazardous waste management program. In addition, section 272.2101 references the Memorandum of Agreement, the Attorney General's Statements and the Program Description, which are evaluated as part of the approval process of the hazardous waste management program in accordance with Subtitle C of RCRA.

D. What is the effect of South Dakota's codification on enforcement?

The EPA retains the authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013 and 7003, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in all authorized states. With respect to enforcement actions, the EPA will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the State analogs to these provisions. Therefore, the EPA is not incorporating by reference South Dakota's inspection and enforcement authorities nor are those authorities part of South Dakota's approved State program which operates in lieu of the federal program. 40 CFR 272.2101(c)(2) lists these authorities for informational purposes, and because the EPA also considered them in determining the adequacy of South Dakota's procedural and enforcement authorities. South Dakota's authority to inspect

and enforce the State's hazardous waste management program requirements continues to operate independently under State law.

E. What state provisions are not part of the codification?

The public is reminded that some provisions of South Dakota's hazardous waste management program are not part of the federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are "broader in scope" than RCRA subtitle C (see 40 CFR 271.1(i));

(2) Federal rules for which South Dakota is not authorized, but which have been incorporated into the State regulations because of the way the State adopted federal regulations by reference.

(3) Federal rules for which South Dakota is authorized but which were vacated by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Cir. No. 98-1379 and 98-1379; June 27, 2014).

(4) State procedural and enforcement authorities which are necessary to establish the ability of the State's program to enforce compliance but which do not supplant the Federal statutory enforcement and procedural authorities.

State provisions that are "broader in scope" than the federal program are not incorporated by reference in 40 CFR part 272. For reference and clarity, the EPA lists in 40 CFR 272.2101(c)(3) the South Dakota statutory provisions which are "broader in scope" than the federal program and which are not part of the authorized program being incorporated by reference. While "broader in scope" provisions are not part of the authorized program and cannot be enforced by the EPA, the State may enforce such provisions under State law.

South Dakota has adopted but is not authorized for certain federal final rules published between June 29, 1995 and June 15, 2010. Therefore, the federal amendments to 40 CFR parts 260, 261, 262, 263, 264, 265, 266, 268, 270 and 273 addressed by these Federal rules and included in South Dakota's adoption by reference at ARSD, sections 74:28:21:02, 74:28:22:01, 74:28:23:01, 74:28:24:01, 74:28:25:01, 74:28:28:01, 74:28:27:01, 74:28:30:01, 74:28:26:01 and 74:28:33:01, respectively, are not part of the State's authorized program included in this codification. The EPA has identified in 40 CFR 272.2101(c)(4) those federal regulations which, while adopted by South Dakota, are not authorized by EPA.

F. What will be the effect of codification on Federal HSWA requirements?

With respect to any requirement(s) pursuant to HSWA for which the State has not yet been authorized, and which the EPA has identified as taking effect immediately in States with authorized hazardous waste management programs, EPA will enforce those Federal HSWA standards until the State is authorized for those provisions.

The codification does not affect Federal HSWA requirements for which the State is not authorized. The EPA has authority to implement HSWA requirements in all states, including states with authorized hazardous waste management programs, until the states become authorized for such requirements or prohibitions, unless the EPA has identified the HSWA requirement(s) as an optional or as a less stringent requirement of the federal program. A HSWA requirement or prohibition, unless identified by the EPA as optional or as less stringent, supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985).

Some existing State requirements may be similar to the HSWA requirements implemented by the EPA. However, until the EPA authorizes those State requirements, EPA

enforces the HSWA requirements and not the State analogs.

III. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Therefore this action is not subject to review by OMB. This action authorizes and codifies State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action 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.). Because this action authorizes and codifies 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). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action 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 the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes and codifies State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. 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 under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State’s application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 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. 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.). Executive Order 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule authorizes pre-existing State rules which are at least equivalent to, and no less stringent than existing federal requirements, 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.

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. The EPA will submit a report containing this document 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 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 **[insert date 60 days after publication in the Federal Register]**.

List of Subjects

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.

40 CFR Part 272

Environmental protection, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Intergovernmental relations, Water pollution control, Water supply.

Authority: This rule 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 11, 2016.

Shaun L. McGrath,
Regional Administrator,
Region 8.

For the reasons set forth in the preamble, under the authority at 42 U.S.C. 6912(a), 6926, and 6974(b), EPA is granting final authorization under 40 CFR part 271 to the State of South Dakota for revisions to its hazardous waste program under the Resource Conservation and Recovery Act and is amending 40 CFR part 272 as follows:

PART 272 - APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Revise § 272.2101 to read as follows:

§ 272.2101 South Dakota State-administered program: Final authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), South Dakota has final authorization for the following elements as submitted to EPA in South Dakota's base program application for final authorization which was approved by EPA effective on November 2, 1984. Subsequent program revision applications were approved effective on June 17, 1991, November 8, 1993, March 11, 1994, September 23, 1996, June 8, 2000, May 24, 2004, March 8, 2006, August 8, 2012 and **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN**

THE FEDERAL REGISTER].

(b) The State of South Dakota has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State Statutes and Regulations.* (1) The South Dakota regulations cited in paragraph (c)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 et seq. This incorporation by reference is approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the South Dakota regulations that are incorporated by reference in this paragraph from South Dakota Legislative Research Council, 3rd Floor, State Capitol, 500 East Capitol Avenue, Pierre, South Dakota 57501, (Phone: (605) 773-3251). You may inspect a copy at EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, phone number (303) 312-6231, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(i) The Binder entitled “EPA-Approved South Dakota Regulatory Requirements Applicable to the Hazardous Waste Management Program”, dated February 2016.

(ii) [Reserved]

(2) EPA considered the following statutes and regulations in evaluating the State program but is not incorporating them herein for enforcement purposes:

(i) South Dakota Codified Laws (SDCL), as amended, 2013 Revision, Title 1, State Affairs and Government: Chapter 1-26, Administrative Procedures and Rules, sections 1-26-1(1), 1-26-1(4), 1-26-1(8) introductory paragraph, 1-26-1(8)(a), 1-26-2, 1-26-6.6, 1-26-16 through 1-26-19, 1-26-19.1, 1-26-19.2, 1-26-21, 1-26-27, 1-26-29, 1-26-30, 1-26-30.1, 1-26-30.2, 1-26-30.4, 1-26-31, 1-26-31.1, 1-26-31.2, 1-26-31.4, 1-26-35 and 1-26-36; Chapter 1-27, Public Records and Files, sections 1-27-1, 1-27-3, 1-27-9(2) and 1-27-28, 1-27-31; Chapter 1-32, Executive Reorganization, section 1-32-1(1); Chapter 1-40, Department of Natural Resources, sections 1-40-4.1, 1-40-24, 1-40-31 and 1-40-34.

(ii) SDCL, as amended, 2013 Revision, Title 15, Civil Procedure: Chapter 15-6, Rules of Procedure in Circuit Courts, section 15-6-24(a)-(c).

(iii) SDCL, as amended, 2013 Revision, Title 19, Evidence: Chapter 19-13, Privileges, sections 19-13-2(1), 19-13-2(5), 19-13-3, 19-13-20 and 19-13-22.

(iv) SDCL, as amended, 2013 Revision, Title 21, Judicial Remedies: Chapter 21-8, Injunction, section 21-8-1.

(v) SDCL, as amended, 2013 Revision, Title 22, Crimes: Chapter 22-6, Authorized Punishments, sections 22-6-1 introductory paragraph and 22-6-1(7).

(vi) SDCL, as amended, 2013 Revision, Title 23, Law Enforcement: Chapter 23-5, Criminal Identification, sections 23-5-1, 23-5-10(1), 23-5-10(3), 23-5-10(4) and 23-5-11 first sentence; Chapter 23-6, Criminal Statistics, section 23-6-4.

(vii) SDCL, as amended, 2013 Revision, Title 34, Public Health and Safety: Chapter 34-21, Radiation and Uranium Resources Exposure Control, section 34-21-2(7).

(viii) SDCL, as amended, 2013 Revision, Title 34A, Environmental Protection: Chapter 34A-6, Solid Waste Disposal, section 34A-6-1.3(17); Chapter 34A-10, Remedies for Protection

of Environment, sections 34A-10-1, 34A-10-2, 34A-10-5, 34A-10-11, 34A-10-14 and 34A-10-16, Chapter 34A-11, Hazardous Waste Management, sections 34A-11-1, 34A-11-2 through 34A-11-4, 34A-11-5, 34A-11-8 through 34A-11-12, 34A-11-13 through 34A-11-16, 34A-11-17 through 34A-11-19, 34A-11-21 and 34A-11-22; Chapter 34A-12, Regulated Substance Discharges, sections 34A-12-1(8), 34A-12-4, 34A-12-6, 34A-12-8 through 34A-12-13, 34A-12-13.1 and 34A-12-14.

(ix) SDCL, as amended, 2013 Revision, Title 37, Trade Regulation, Chapter 37-29, Uniform Trade Secrets Act, section 37-29-1(4).

(x) Administrative Rules of South Dakota (ARSD), Article 74:08, Administrative Fees, effective October 10, 2013: Chapter 74:08:01, Fees for Records Reproduction, sections 74:08:01:01 through 74:08:01:07.

(3) The following statutory provisions are broader in scope than the Federal program, are not part of the authorized program, are not incorporated by reference and are not federally enforceable:

(i) SDCL, as amended, 2013 Revision, Title 34A, Environmental Protection, Chapter 34A-11, Hazardous Waste Management, sections 34A-11-12.1, 34A-11-16.1, 34A-11-25 and 34A-11-26.

(ii) [Reserved]

(4) Unauthorized state amendments. (i) South Dakota has adopted but is not authorized for the following federal final rules:

(A) Removal of Legally Obsolete Rules (HSWA/non-HSWA) [60 FR 33912, 06/29/95];

(B) Imports and Exports of Hazardous Waste: Implementation of OECD Council Division (HSWA - Not delegable to States) [61 FR 16290, 04/12/96];

(C) Clarification of Standards for Hazard Waste Land Disposal Restriction Treatment Variances (HSWA) [62 FR 64504, 12/05/97];

(D) Hazardous Waste Combustors; Revised Standards (Non-HSWA – Vacated by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Cir. No. 98-1379 and 98-1379; June 27, 2014) [63 FR 33782, 6/19/98];

(E) Vacatur of Organobromide Production Waste Listings (HSWA) [65 FR 14472, 03/17/00];

(F) National Environmental Performance Track Program (Non-HSWA – terminated by EPA (74 FR 22741, 5/14/09)) [69 FR 21737, 4/22/04; as amended by 69 FR 62217, 10/25/04 and 71 FR 16862, 4/4/06];

(G) Exclusion of Oil-Bearing Secondary Materials Processed in a Gasification System to Produce Synthesis Gas (Non-HSWA - Vacated by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Cir. No. 98-1379 and 98-1379; June 27, 2014) [73 FR 52, 1/2/08];

(H) Revisions to the Definition of Solid Waste (Non-HSWA) [73 FR 64668, 10/30/08];

(I) OECD Requirements; Export Shipments of Spent Lead Acid Batteries (Non-HSWA – Not delegable to States) [75 FR 1236, 1/8/10]; and

(J) Withdrawal of the Emission Comparable Fuel Exclusion (Non-HSWA – Vacated by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Cir. No. 98-1379 and 98-1379; June 27, 2014) [75 FR 33712, 6/15/10].

(ii) Those federal rules written under RCRA provisions that predate HSWA (non-HSWA) which the State has adopted, but for which it is not authorized, are not federally enforceable. In contrast, EPA will continue to enforce the Federal HSWA standards for which South Dakota is not authorized until the State receives specific authorization from the EPA.

(5) Memorandum of Agreement. The Memorandum of Agreement between EPA Region 8 and the State of South Dakota, signed by the Secretary of the South Dakota Department of Natural Resources on December 14, 2015, and by the EPA Regional Administrator on February 18, 2016, although not incorporated by reference, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 et seq.

(6) Statement of legal authority. “Attorney General’s Statement for Final Authorization,” signed by the Attorney General of South Dakota on May 24, 1984, and revisions, supplements and addenda to that Statement dated January 14, 1991, September 11, 1992, September 25, 1992, April 1, 1993, September 24, 1993, December 29, 1994, September 5, 1995, October 23, 1997, October 27, 1997, October 28, 1997, November 5, 1999, June 26, 2000, June 18, 2002, October 19, 2004, May 11, 2009 and May 5, 2015, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 et seq.

(7) Program Description. The Program Description and any other materials submitted as supplements thereto, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 et seq.

3. Appendix A to Part 272, is amended by revising the listing for “South Dakota” to read as follows:

Appendix A to Part 272–State Requirements

* * * * *

South Dakota

The regulatory provisions include:

Administrative Rules of South Dakota, Article 74:28, Hazardous Waste, effective October 10, 2013, sections 74:28:21:01, 74:28:21:02, 74:28:21:03, 74:28:22:01, 74:28:23:01, 74:28:24:01, 74:28:25:01 through 74:28:25:05, 74:28:26:01, 74:28:27:01, 74:28:28:01 through 74:28:28:05, 74:28:29:01, 74:28:30:01 and 74:28:33:01; Article 74:36, Air Pollution Control Program, as of June 25, 2013, section 74:36:11:01.

Copies of the South Dakota regulations that are incorporated by reference are available from South Dakota Legislative Research Council, 3rd Floor, State Capitol, 500 East Capitol Avenue, Pierre, South Dakota 57501, (Phone: (605) 773-3251).

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[FR Doc. 2016-14298 Filed: 6/23/2016 8:45 am; Publication Date: 6/24/2016]