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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R06-RCRA-2016-0558; FRL-9962-37-Region 6]

Louisiana: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The State of Louisiana has applied to the 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 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 Louisiana's changes to its hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This final authorization will become effective on [insert date 60 days after the date of publication] unless the EPA receives adverse written comment by [insert date 30 days after the date of publication]. If the EPA receives such 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 by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- E-mail: patterson.alima@epa.gov.
- Fax: (214) 665-2182 (prior to faxing, please notify Alima Patterson at (214) 665-8533).
- Mail: Alima Patterson, Regional Authorization Coordinator, RCRA Permit Section (6MM-RP), Multimedia Division, EPA, Region 6, 1445 Ross Avenue, Suite 1200, Dallas Texas 75202-2733.
- Hand Delivery or Courier: Deliver your comments to Alima Patterson, Regional Authorization Coordinator, RCRA Permit Section (6MM-RP), Multimedia Division, EPA, Region 6, 1445 Ross Avenue, Suite 1200, Dallas Texas 75202-2733.

Instructions: EPA must receive your comments by **[insert date 30 days from date of publication of the Federal Register]**. Direct your comments to Docket ID Number EPA-R06-RCRA-2016-0558. The EPA's policy is that all comments received will be included in the public docket without change and may be made 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 e-mail. The Federal regulations.gov Web site 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 e-mail comment directly to the EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, 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. (For additional information about the EPA’s public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>).

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *e.g.* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov>, or Louisiana Department of Environmental Quality, 602 N. Fifth Street, Baton Rouge, Louisiana 70884-2178, phone number (225) 219-3559 and EPA, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, phone number (214) 665-8533. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Regional Authorization Coordinator, RCRA Permit Section (6MM-RP), Multimedia Division, (214) 665-8533, EPA, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and email address patterson.alima@epa.gov.

SUPPLEMENTARY INFORMATION:

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.

B. What decisions have the EPA made in this rule?

On August 5, 2016, the State of Louisiana submitted a final complete program revision application seeking authorization of changes to its hazardous waste program that correspond to certain Federal rules promulgated between February 14, 2014 and June 26, 2014, RCRA Cluster XXIII (Checklists 231 and 232). The EPA concludes that Louisiana's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA,

as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, the EPA grants Louisiana final authorization to operate its hazardous waste program with the changes described in the authorization application, and as outlined below in Section G of this document. The State of Louisiana has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments (HSWA), as discussed above. 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 Louisiana, including issuing permits, until the State is granted authorization to do so.

C. What is the effect of today's authorization decision?

The effect of this decision is that a facility in Louisiana subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Louisiana 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:

- do inspections, and require monitoring, tests, analyses, or reports;
- enforce RCRA requirements and suspend or revoke permits, and
- take enforcement actions after notice to and consultation with the State.

This action does not impose additional requirements on the regulated community because

the regulations for which Louisiana is being authorized by today's action are already effective under State law, and are not changed by today's action.

D. Why is EPA using a direct final rule?

Along with this direct final rule, the EPA is publishing a separate document in the “Proposed Rules” section of this **Federal Register** that serves as the proposal to authorize these State program changes. The EPA did not publish a proposal before this rule, because EPA views this as a routine program change and do not expect comments. The EPA also views the Louisiana program revisions as noncontroversial action and anticipates no adverse comment.

EPA is providing an opportunity for public comment now, as described in Section E of this document.

E. What Happens if the EPA receives comments that oppose this Action?

If EPA receives comments that oppose this authorization, EPA will withdraw this direct final rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous section, after considering all comments received during the comment period. EPA 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 EPA receives comments that oppose only the authorization of a particular change to the State hazardous waste program, EPA will withdraw only 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 in this document. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. For What Has Louisiana Previously Been Authorized?

The State of Louisiana initially received final authorization on February 7, 1985, (50 FR 3348), to implement its base Hazardous Waste Management Program. We granted authorization for changes to their program on November 28, 1989 (54 FR 48889), effective January 29, 1990; August 26, 1991 (56 FR 41958), as corrected October 15, 1991 (56 FR 51762), effective October 25, 1991; November 7, 1994 (59 FR 55368), effective January 23, 1995 (Note: on January 23, 1995 (60 FR 4380), the EPA responded to public adverse comments and affirmed the effective date for the November 7, 1994 final rule). Then on April 11, 1995 (60 FR 18360), the EPA also made administrative corrections for the January 23, 1995 Federal Register document; December 23, 1994 (59 FR 66200), effective March 8, 1995; October 17, 1995 (60 FR 53704), effective January 2, 1996; March 28, 1996 (61 FR 13777), effective June 11, 1996; December 29, 1997 (62 FR 67572), effective March 16, 1998; October 23, 1998 (63 FR 56830), effective December 22, 1998; August 25, 1999 (64 FR 46302), effective October 25, 1999; September 2, 1999 (64 FR 48099), effective November 1, 1999; February 28, 2000 (65 FR 10411), effective April 28, 2000; January 2, 2001 (66 FR 23), effective March 5, 2001; December 9, 2003 (68 FR 68526), effective February 9, 2004; June 10, 2005 (70 FR 33852), effective August 9, 2005; November 13, 2006 (71 FR 66116), effective January 12, 2007; August 16, 2007 (72 FR 45905), effective October 15, 2007; May 20, 2009 (74 FR 23645), effective July 20, 2009; June 24, 2011(76 FR 122), effective August 23, 2011; June 28, 2012 (77 FR 38530), effective August 27,

2012 and September 14, 2015 (80 FR 55032), effective November 14, 2015. On August 5, 2016, Louisiana applied for approval of its program revisions for specific rules in RCRA Clusters XXIII, in accordance with 40 CFR 271.21(b)(3).

Since 1979, through the Environmental Affairs Act, Act 449 enabled the Office of Environmental Affairs within the Louisiana Department of Natural Resources, as well as, the Environmental Control Commission to conduct an effective program designed to regulate those who generate, transport, treat, store, dispose or recycle hazardous waste. During the 1983 Regular Session of the Louisiana Legislature, Act 97 was adopted, which amended and reenacted La. R. S. 30:1051 et seq. as the Environmental Quality Act, renaming the Environmental Affairs Act (Act 1938 of 1979). This Act created Louisiana Department of Environmental Quality (LDEQ), including provisions for new offices within this new Department of Environmental Quality. Act 97 also transferred the duties and responsibilities previously delegated to the Department of Natural Resources, Office of Environmental Affairs to the new Department. The LDEQ has lead agency jurisdictional authority for administering the RCRA Subtitle C program in Louisiana. Also, the LDEQ is designated to facilitate communication between the EPA and the State. During the 1999 Regular Session of Louisiana Legislature, Act 303 revised the La. R. S. 30:2011 et seq., allowing LDEQ to reengineer the Department to perform more efficiently and to meet its strategic goals.

It is the intention of the State, through this application, to demonstrate its equivalence and consistency with the federal statutory tests, which are outlined in the United States EPA regulatory requirements under 40 CFR part 271 for final authorization. The submittal of this

application is in keeping with the spirit and intent of RCRA, which provides equivalent States the opportunity to apply for final delegation to operate all aspects of their hazardous waste management programs in lieu of the federal government. The Louisiana Environmental Quality Act authorizes the State's program, Subtitle II of Title 30 of the Louisiana Revised Statutes. The State's program is equivalent and consistent with the federal program, as outlined in revision checklists 231 and 232, which were adopted and became effective on April 20, 2016.

G. What changes are the EPA authorizing with today's action?

On August 5, 2016, Louisiana submitted a final complete program revision application seeking authorization for 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 Louisiana's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant the State of Louisiana Final authorization for the following changes. The State of Louisiana's program revisions consist of regulations which specifically govern Revision Checklists 231 and 232 in RCRA Cluster XXIII as documented in this **Federal Register** document.

Description of Federal requirement (include checklist #, if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
1. Hazardous Waste Electronic Manifest Rule. (Checklist 231).	79 FR 7518-7563 February 7, 2014.	Environmental Regulatory Code, Louisiana Department of Environmental Quality, ERC Title 33, Part V. Hazardous Waste and Hazardous Materials Subpart 1. Section 109.Electronic Manifest or e-Manifest. Note: States cannot receive authorization to implement EPA’s national e-Manifest system. Therefore, States must not replace language referring to “EPA” with State terms; 109.Electronic, Manifest System or e-Manifest System, 107.User of the electronic manifest system, 1107.A.9, 1107.A.9.a – 9.b, 1107.F, 1107.F.1, 1107.F.1.a -1..d, 1107.F.2 – 7, 1107.G, 1107.G.1, 1107.G.1, 1107.G.1.a –b, 1307.A, 1307.A, 1307.A.1 – 2, 1301.A, 1307.1, 1307.I.1 – 5, 1307.J, 1307.K, 1307.K.1 – 4, 1307.L, 1307.M, 1307.N, 1307.N.1, 1516.B.1, 1516.B.1.a, 1516.B.b, 1516.B1.c – d, 1516.B.1.f, 1516.F, 1516.F.1, 1516.F.2 – 5, 1516.G, 1516.H, 1516.H.1, 1516.H.2 – 4, 1516.1, 1516.J,1516.K, 1516.B.1, 1516.B.1.a – e, 1516.B.1.f, 1516.F, 1516.F.1 – 5, 1516.G, 1516.H, 1516.H.1, 1516 – K 1516.H.2 – 4 and 1516.I, as amended effective April 20, 2016.

Description of Federal requirement (include checklist #, if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
2. Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule. (Checklist 232).	79 FR 36330-36231 June 26, 2014.	Environmental Regulatory Code, Louisiana Department of Environmental Quality, ERC Title 33, Part V. Hazardous Waste and Hazardous Materials Subpart 1. Section 109.CRT Exporter, 4911.A.5.a.i.(f) note LDEQ has adopted the entire rule language of 40 CFR part 261.3(a)(5) which has been incorporated by reference; 4911.A.5.a.ii.x, 4911.A.5.a.ii.x.(a) – c, 4911.A.5.a.ii.xi, 4915, 4915.A, 4915.A.1, 4915.A.1.a – h, 4915.A.2 and 4915.B, as amended effective April 20, 2016.

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

The State of Louisiana regulations listed in this **Federal Register** document are equivalent and consistent with the Federal regulations adopted and are in effect April 20, 2016. There are no provisions that are more stringent or broader in scope.

I. Electronic manifest provisions that are non-delegable to States.

The Federal Hazardous Waste Electronic Manifest Rule (79 FR 7518; February 7, 2014) contains several provisions which are non-delegable to States. Specifically, States cannot receive authorization to establish a Federal user under the electronic manifest requirements, nor can States receive authorization for the electronic signature requirements, resulting in the States' inability to

implement the provisions listed below. However, EPA strongly recommends States adopt these provisions while retaining the EPA rule language unchanged; Louisiana has adopted the Electronic Manifest Rule using this approach. The non-delegable provisions and provisions where States must retain references to “EPA” are: 40 CFR 260.10 “electronic manifest”, “electronic manifest system”, “use of the electronic manifest system”; 262.24(g); 262.25; 263.20(a)(2); 262.20(a)(3)(ii); 263.20(a)(8); 264.71(a)(2)(v); 264.71(j); 265.71(a)(2)(v); and 265.71(j).

J. Who handles permits after the authorization takes effect?

The State of Louisiana 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 we issued prior to the effective date of this authorization. EPA will not issue any more new permits or new portions of permits for the provisions listed in the chart in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which LDEQ is not yet authorized.

K. How does today’s action affect Indian Country (18 U.S.C.1151) in Louisiana?

Louisiana is not authorized to carry out its Hazardous Waste Program in Indian Country within the State. This authority remains with EPA. Therefore, this action has no effect in Indian Country.

L. What is codification and is the EPA codifying Louisiana’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 CFR. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272 subpart T for this authorization of Louisiana's program changes until a later date. In this authorization application, the EPA is not codifying the rules documented in this **Federal Register** notice.

M. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action (RCRA State Authorization) from the requirements of Executive Order 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 State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, 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 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 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), the 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, February 16, 1994) establishes federal executive policy on environmental justice. It's 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 impose 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 nevertheless will be effective [**insert date 60 days after publication of Register**].

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: April 24, 2017.

Samuel Coleman, P.E.,
Acting Regional Administrator,
Region 6.

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