**Proposed Rule Model**

**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 271**

**[Insert docket number\_; FRL-\_\_\_\_\_\_ ]**

**[*insert state name*]**: Proposed Authorization of State Hazardous Waste Management Program Revisions

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

**ACTION:** Proposed rule.

**SUMMARY:** **[*insert state name*]** has applied to the Environmental Protection Agency (EPA) forfinalauthorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. EPA has reviewed **[*insert state name*]**’sapplication[s] and hasdetermined that these changes satisfy all requirements needed to qualify for final authorization. Therefore, we are proposing to authorize the State’s changes. EPA seeks public comment prior to taking final action.

**DATES:** Comments must be received on or before **[*insert date 30 days after the date of publication*]**.

**ADDRESSES:** Submit your comments by one of the following methods:

* *Federal eRulemaking Portal*: <https://www.regulations.gov>. Follow the on-line instructions for submitting comments.
* *E-mail*: **[*insert name and email address of appropriate regional contact*]**.
* *Fax*: (prior to faxing, please notify the EPA contact listed below).
* *Mail*: **[*insert name and address of appropriate regional contact*]**.
* *Hand Delivery or Courier*: Deliver your comments to **[*insert name and address of appropriate regional contact*]**. Such deliveries are only accepted during the Regional Office’s normal hours of operation.

*Instructions*: EPA must receive your comments by **[*insert date 30 days after the date of publication*]**. Direct your comments to Docket ID Number \_\_\_\_ **[*insert docket number*]**. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov), or e-mail. The federal [www.regulations.gov](http://www.regulations.gov) website is an “anonymous access” system, which means 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 EPA without going through [www.regulations.gov](http://www.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, 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 EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, 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 EPA’s public docket, visit the EPA Docket Center homepage at [www.epa.gov/epahome/dockets.htm](http://www.epa.gov/epahome/dockets.htm)).

*Docket*: All documents in the docket are listed in the [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov), or in hard copy.

You can view and copy **[*insert state name*]**’s application and associated publicly available materials from **[*insert business hours;* e.g., 8:00 a.m. to 4:00 p.m.]** at the following locations: **[*insert appropriate state addresses*]** and EPA Region **[*insert region number*]**, Library, **[*if applicable* *insert the address, phone number, and contact*]**. Interested persons wanting to examine these documents should make an appointment with the office at least **[*insert number of hours or days*]** in advance.

**[ALTERNATE ADDRESSES SECTION FROM THE ADP LIBRARY]:**

Submit your comments, identified by Docket ID No. **[EPA-[insert R##]-XXXX-20XX-XXXX] [Insert the appropriate docket ID number that appears at the top of your FR document]**, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [www.regulations.gov](http://www.regulations.gov). EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** **[*insert name, address, email address and phone number of the appropriate regional contact*]**.

**SUPPLEMENTARY INFORMATION:**

**A. Why are revisions to state programs necessary?**

States that 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 268, 270, 273, and 279.

***[Include the following paragraph if the State rules authorized in this notice contain provisions which were federally promulgated under HSWA authority.]***

New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized states at the same time that they take effect in unauthorized states. Thus, EPA will implement those requirements and prohibitions in **[*insert state name*]**, including the issuance of new permits implementing those requirements, until the State is granted authorization to do so.

**B. What decisions has EPA made in this rule?**

On **[*insert date*]*,*** **[*insert state name*]** submitted a complete program revision application[s] seeking authorization of changes to its hazardous waste program that correspond to certain Federal rules promulgated between **[*insert dates*]** (also known as RCRA Clusters **[*insert clusters if applicable*]**). EPA concludes that **[*insert state name*]**’s application to revise its authorized program meets all of the statutory and regulatory requirements established under RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, EPA proposes to grant **[*insert state name*]** 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.

**[*insert state name*]** has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian country **[*add if appropriate:* unless the state has explicitly demonstrated its authority and has been expressly authorized by EPA to implement the RCRA hazardous waste program in all or part of Indian country]**) and for carrying out the aspects of the RCRA program described in its revised program application, ***[Include the last phrase in this sentence if the State rules contain provisions which were federally promulgated under HSWA authority.]*** subject to the limitations of HSWA, as discussed above.

***[Omit the above reference to Indian country if the state does not contain any Indian country. Tailor as appropriate for the state after consulting with the Regional Indian law and policy contacts.]***

1. **What is the effect of this proposed authorization decision?**

If **[*insert state name*]** is authorized for the changes described in **[*insert state name*]’s** authorization application, these changes will become part of the authorized State hazardous waste program, and will therefore be federally enforceable. **[*insert state name*]** will continue to have primary enforcement authority and responsibility for its State hazardous waste program. EPA would maintain its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

* Conduct inspections, and require monitoring, tests, analyses and reports;
* Enforce RCRA requirements, including authorized State program requirements, and suspend or revoke permits; and
* Take enforcement actions regardless of whether the State has taken its own actions.

***[Delete the phrase “regardless of whether the State has taken its own actions” if the state is within the jurisdiction of the US Court of Appeals for the Eighth Circuit (AK, IO, MN, MO, ND, NE, and SD), due to the Harmon case]***

This action will not impose additional requirements on the regulated community because the regulations which EPA is proposing to authorize **[*insert state name*]** are already effective under state law, and are not changed by today’s proposed action.

**D. What happens if EPA receives comments that oppose this action?**

If EPA receives comments on this proposed action, we will address all such comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you should do so at this time.

**E. What has [*insert state name*] previously been authorized for?**

***[Insert paragraph briefly describing the state's authorization history prior to submission of this program revision application. The following is an example:]***

**[*insert state name*]** initially received final authorization on **[*insert date of publication of authorization FR notice*]**, effective **[*insert effective date*]** ( FR ) to implement the RCRA hazardous waste management program. EPA granted authorization for changes to **[*insert state name*]**’s program on the following dates: **[*insert date of publication of authorization FR notice*]**, effective **[*insert effective date*]** ( FR ); **[*insert date of publication of authorization FR notice*]**, effective **[*insert effective date*]** ( FR ); . . . , and **[*insert date of publication of authorization FR notice*]**, effective **[*insert effective date*]** ( FR ).

1. **What changes are we proposing with today’s action?**

On **[*insert date of application submission[s]*]**, **[*insert state name*]** submitted a final complete program revision application, seeking authorization of changes to its hazardous waste management program in accordance with 40 CFR 271.21. EPA proposes to determine, subject to receipt of written comments that oppose this action, that **[*insert state name*]**’s hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. Therefore, EPA is proposing to authorize **[*insert state name***] for the following program changes:

***[Insert discussion which summarizes the state’s program revision. Discuss any relevant changes to state statutory and regulatory authority. For clarity, it is recommended that you use a table, such as shown below, to summarize the state’s program revision, or use a concise narrative to reduce printing costs.]***

|  |  |  |
| --- | --- | --- |
| Description of Federal Requirement  (*include checklist #, if relevant)* | Federal Register date and page  (*and/or RCRA statutory authority)* | Analogous State Authority[[1]](#footnote-1) |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

***[Insert title and adoption or effective date of the state rules. If the dates are different for***

***some of the rules, an additional column can be added to the Table*.*]***

**G. Where are the revised State rules different from the Federal rules?**

***[NOTE: Describe any major portions of the State's program which are not part of the RCRA program (e.g., any major State requirements that are broader in scope than the relevant federal requirements; non-delegable provisions). You may wish to insert a paragraph directing the public's attention to certain issues (e.g., the State’s more stringent requirements). The following is an example:]***

When revised state rules differ from the Federal rules in the RCRA state authorization process, EPA determines whether the state rules are equivalent to, more stringent than, or broader in scope than the federal program. Pursuant to Section 3009 of RCRA, 42 U.S.C. 6929, state programs may contain requirements that are more stringent than the federal regulations. Such more stringent requirements can be federally authorized and, once authorized, become federally enforceable. Although the statute does not prevent states from adopting regulations that are broader in scope than the federal program, states cannot receive federal authorization for such regulations, and they are not federally enforceable.

***[Insert discussion as necessary]*** EPA considers the following State requirements to be more stringent than the Federal requirements ***[A similar discussion can be inserted if a state has provisions which are different but still equivalent]***:

* [***insert state reference(s)***] because the State requires.......;
* [***insert state reference(s)***] because the State requires.......; and
* [***insert state reference(s)***] because the State requires.....

These requirements would become part of **[*insert state name*]**’s authorized program and would be federally enforceable.

EPA also considers the following State requirements go beyond the scope of the Federal program:

* [***insert state reference(s)***] because the State requires.......;
* [***insert state reference(s)***] because the State requires.......; and
* [***insert state reference(s)***] because the State requires.....

Broader-in-scope requirements do not become part of the authorized program and EPA cannot enforce them. Although regulated entities must comply with these requirements in accordance with State law, they are not RCRA requirements.

EPA cannot authorize the Federal requirements at **[*insert federal regulation reference(s)*]**. Although **[*insert state name*]** has adopted these requirements **[by reference/verbatim from the federal regulations -*cite the state regs*]**, EPA would continue to implement those requirements.

***[If there are no differences in the State requirements being authorized, you can use the following language for Section G:]***

There are no State requirements in the program revisions listed above that are considered to be more stringent or broader in scope than the Federal requirements.

**H. Who handles permits after the final authorization takes effect?**

***[Insert discussion of the status of state hazardous waste permits issued before the state is authorized. It must be clear what happens, if anything, at the date of authorization. The following is an example:]***

When the final authorization takes effect, **[*insert state name*]**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 that EPA issued prior to the effective date of this authorization until ***[insert language from MOA explaining when EPA administration of permits terminates]***. EPA will not issue any new permits or new portions of permits for the provisions listed in the Table above after the effective date of the final authorization. EPA will continue to implement and issue permits for HSWA requirements for which **[*insert state name*]** is not yet authorized. EPA has the authority to enforce state-issued permits after the State is authorized.

**I. How does today’s action affect Indian country (18 U.S.C. 1151) in [*insert state name*]?** ***[Omit if the state does not contain any Indian country. Tailor as appropriate in consultation with the Regional Indian law and policy contacts.]***

**[*insert state name*]** is not authorized to carry out its hazardous waste program in Indian country within the State, which includes [***insert a list of the Indian country (use bullets, see example below)***].

* All lands within the exterior boundaries of Indian reservations within or abutting the State of [insert state name];
* Any land held in trust by the U.S. for an Indian tribe; and
* Any other land, whether on or off an Indian reservation, that qualifies as Indian country.

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

***[or]***

In **[*date*]**(**[*FR number*]**), **[*insert state name*]** received authorization to implement its hazardous waste program in **[all of the/ certain]** Indian country within the State, including the following lands [***insert a list of the Indian country (use bullets)***]. **[*State*]**’s hazardous waste regulations apply in these lands in lieu of the federal regulations, and the State issues and enforces hazardous waste permits in those lands. The State also implements in those Indian lands the changes to the State’s hazardous waste program that EPA is authorizing through this rule.

**J. What is codification and will EPA codify [*insert state name*]’s hazardous waste program as proposed in this rule?**

Codification is the process of placing citations and references to 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 adding those citations and references to the authorized State rules in 40 CFR part 272. EPA is not proposing to codify the authorization of [***insert state name***]’s changes at this time. However, EPA reserves the ability to amend 40 CFR part 272, subpart **[*insert appropriate subpart***] for the authorization of **[*state*]**’s program changes **[*or* program*, if program not codified at all*]** at a later date.

**K. Statutory and Executive Order Reviews**

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action proposes to authorize State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as today’s proposed authorization of [state’s] revised hazardous waste program under RCRA are exempted under Executive Order 12866. 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 proposes to authorize 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 (2 U.S.C. 1531–1538). 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 proposes to authorize 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 action 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 section 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 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 proposing 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. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action 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 action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*.). “Burden” is defined at 5 CFR 1320.3(b). Executive Order 12898 (59 FR 7629, February 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 action proposes authorization of 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, this proposed rule is not subject to Executive Order 12898.

**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, and 6974(b).

Dated:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name,

Regional Administrator, Region XX.

1. [↑](#footnote-ref-1)