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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R05-RCRA-2012-0377; FRL – 9817-9]

Indiana: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting the State of Indiana final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Agency published a proposed rule on October 9, 2012, and provided for public comment. EPA received no comments. No further opportunity for comment will be provided. EPA has determined that these changes satisfy all requirements needed to qualify for final authorization.

DATES: The final authorization will be effective on *[insert date of publication]*.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R05-RCRA-2012-0377. All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some of the information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at www.regulations.gov or in hard copy. You may view and copy Indiana's application from 9:00 am to 4:00 pm at the following addresses: U.S. EPA Region 5, LR-8J, 77 West Jackson Boulevard, Chicago, Illinois 60604, contact: Gary Westefer (312) 886-7450; or Indiana Department of Environmental

Management, 100 North Senate, Indianapolis, Indiana 46204, contact: Dan Watts
(317) 234-5345.

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SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and request EPA to authorize the changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in this Final Rule?

We conclude that Indiana's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Indiana final authorization to operate its hazardous waste program with the changes described in the authorization application. Indiana will have 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 of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized states before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Indiana, including issuing permits, until the state is granted authorization to do so.

C. What Is the Effect of this Final Rule?

This final rule requires all facilities in Indiana that are subject to RCRA to comply with the newly-authorized state requirements instead of the equivalent Federal requirements. Indiana has enforcement responsibilities under its state hazardous waste program for RCRA violations, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include among others, authorize EPA to:

1. do inspections, and require monitoring, tests, analyses, or reports;
2. enforce RCRA requirements and suspend or revoke permits; and
3. take enforcement actions regardless of whether the state has taken its own actions.

This action will not impose additional requirements on the regulated community because the regulations that EPA is authorizing in this action are already in effect, and will not be changed by this action.

D. Proposed Rule

On October 9, 2012 (77 FR 61326), EPA proposed to authorize changes to Indiana's hazardous waste program and opened the decision to public comment. The Agency received no comments on this proposal. EPA found Indiana's RCRA program to be satisfactory.

E. What RCRA Authorization has EPA Previously Granted Indiana to Implement?

Indiana initially received Final Authorization on January 31, 1986, effective January 31, 1986 (51 FR 3955) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on October 31, 1986, effective December 31, 1986 (51 FR 39752); January 5, 1988, effective January 19, 1988 (53 FR 128); July 13, 1989, effective September 11, 1989 (54 FR 29557); July 23, 1991, effective September 23, 1991 (56 FR 33717); July 24, 1991, effective September 23, 1991 (56 FR 33866); July 29, 1991, effective September 27, 1991 (56 FR 35831); July 30, 1991, effective September 30, 1991 (56 FR 36010); August 20, 1996, effective October 21, 1996 (61 FR 43018); September 1, 1999, effective November 30, 1999 (64 FR 47692); January 4, 2001, effective January 4, 2001 (66 FR 733); December 6, 2001 effective December 6, 2001 (66 FR 63331); October 29, 2004, effective October 29, 2004 (69 FR 63100); and November 23, 2005 effective November 23, 2005 (70 FR 70740).

F. What Changes Are We Proposing with Today's Action?

On March 5, 2007, May 1, 2009, and October 25, 2011, Indiana submitted final program revision applications, seeking authorization of its changes in accordance with 40 CFR 271.21. We have determined that Indiana's hazardous waste program revisions satisfy all of the requirements necessary to qualify for Final Authorization. Therefore, we are granting Indiana final authorization for the following program changes (a table with the complete state analogues is provided in the October 9, 2012 proposed rule):

Burning of Hazardous Wastes in Boilers and Industrial Furnaces, Checklist 85,
February 21, 1991 (56 FR 7134);

Burning of Hazardous Wastes in Boilers and Industrial Furnaces; Corrections and Technical
Amendments I, Checklist 94, July 17, 1991 (56 FR 32688);

Burning of Hazardous Wastes in Boilers and Industrial Furnaces; Technical Amendments II,
Checklist 96, August 27, 1991 (56 FR 42504);

Coke Ovens Administrative Stay, Checklist 98, September 5, 1991 (56 FR 43874);

Burning of Hazardous Wastes in Boilers and Industrial Furnaces; Technical Amendments III,
Checklist 111, August 25, 1992 (57 FR 38558);

Burning of Hazardous Wastes in Boilers and Industrial Furnaces; Technical Amendment IV,
Checklist 114, September 30, 1992 (57 FR 44999);

Boilers and Industrial Furnaces; Changes for Consistency with New Air Regulations,
Checklist 125, July 20, 1993 (58 FR 38816);

Boilers and Industrial Furnaces; Administrative Stay and Interim Standards for Bevill Residues,
Checklist 127, November 9, 1993 (58 FR 59598);

Hazardous Air Pollutant Standards; Technical Corrections, Checklist 188.2, July 3, 2001
(66 FR 42292);

Zinc Fertilizers Made From Recycled Hazardous Secondary Materials, Checklist 200, July 24, 2002 (67 FR 48393);

Land Disposal Restrictions: National Treatment Variance to Designate New Treatment Subcategories for Radioactively Contaminated Cadmium, Mercury, and Silver Containing Batteries, Checklist 201, October 7, 2002 (67 FR 62617);

NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors-Corrections, Checklist 202, December 19, 2002 (67 FR 77687);

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards, Checklist 203, July 30, 2003 (68 FR 44659);

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks, Checklist 205, April 26, 2004 (69 FR 22601)

Hazardous Waste – Nonwastewaters From Production of Dyes, Pigments and Food, Drug and Cosmetic Colorants; Mass Loadings-Based Listing, Checklist 206, February 24, 2005 (70 FR 9138), as amended, Checklist 206.1, June 16, 2005 (70 FR 35032);

Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System, Checklist 207, March 4, 2005 (70 FR 10776), as amended, Checklist 207.1, June 16, 2005 (70 FR 35034);

Waste Management System; Testing and Monitoring Activities; Methods Innovation Rule and SW-846 Final Update IIIB, Checklist 208, June 14, 2005 (70 FR 34537), as amended, Checklist 208.1, August 1, 2005 (70 FR 44151);

Hazardous Waste Management System; Modification of the Hazardous Waste Program; Mercury Containing Equipment, Checklist 209, August 5, 2005 (70 FR 45507);

Standardized Permit for RCRA Hazardous Waste Management Facilities, Checklist 210, September 8, 2005 (70 FR 53420);

Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures, Checklist 211, October 4, 2005 (70 FR 57769);

NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II), Checklist 212, October 12, 2005 (70 FR 59402);

Burden Reduction Initiative, Checklist 213, April 4, 2006 (71 FR 16862);

Corrections to Errors in the Code of Federal Regulations, Checklist 214, July 14, 2006 (71 FR 40254);

Cathode Ray Tube Exclusion, Checklist 215, July 28, 2006 (71 FR 42928);

Exclusion of Oil Bearing Secondary Materials Processed in a Gasification System to Produce Synthesis Gas, Checklist 216, January 2, 2008 (73 FR 57);

NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) Amendments, Checklist 217, April 8, 2008 (73 FR 18970);

Wastewater Treatment Sludges from Auto Manufacturing Zinc Phosphating Processes, Checklist 218, June 4, 2008 (73 FR 31756); and

Academic Laboratories Generator Standards, Checklist 220, December 1, 2008 (73 FR 72912).

G. Which Revised State Rules Are Different from the Federal Rules?

Indiana has excluded the non-delegable Federal requirements at 40 CFR 268.5, 268.6, 268.42(b), 268.44, and 270.3. EPA will continue to implement those requirements. In 329 IAC 3.1-6-3, Indiana is more stringent than the Federal requirements: the state has added six hazardous wastes to its acute hazardous waste list that are not acute hazardous wastes in 40 CFR Part 261. In 329 IAC 3.1-9-2, Indiana maintains more stringent levels for groundwater protection for several of the constituents listed in Table 1 of 40 CFR 264.94. There are no “Broader in Scope” or other provisions that are more stringent than the Federal requirements in Indiana’s rules in this application.

H. Who Handles Permits After the Final Authorization Takes Effect?

Indiana will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which EPA issues prior to the effective date of this final rule until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this final rule authorization. EPA will continue to implement and issue permits for HSWA requirements for which Indiana is not yet authorized.

I. How Does Today’s Action Affect Indian Country (18 U.S.C. 1151) in Indiana?

Indiana is not authorized to carry out its hazardous waste program in “Indian Country,” as defined in 18 U.S.C. 1151. Indian Country includes:

1. All lands within the exterior boundaries of Indian Reservations within or abutting the State of Indiana;

2. Any land held in trust by the U.S. for an Indian tribe; and
3. Any other land, whether on or off an Indian reservation that qualifies as Indian

Country.

Therefore, this action has no effect on Indian Country. EPA retains the authority to implement and administer the RCRA program in Indian Country.

J. What Is Codification and Is EPA Codifying Indiana’s Hazardous Waste Program as Authorized in this Rule?

Codification is the process of placing the state’s statutes and regulations that comprise the state’s authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized state rules in 40 CFR part 272. Indiana’s authorized rules, up to and including those revised January 4, 2001, have previously been codified through incorporation-by-reference, effective December 24, 2001 (66 FR 53724, October 24, 2001). We reserve the amendment of 40 CFR part 272, subpart P for the codification of Indiana’s program changes until a later date.

K. Statutory and Executive Order Reviews

This rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no requirements other than those imposed by state law (see Supplementary Information, Section A. Why are Revisions to State Programs Necessary?). Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

1. *Executive Order 18266: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review*

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

2. *Paperwork Reduction Act*

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

3. *Regulatory Flexibility Act*

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

4. *Unfunded Mandates Reform Act*

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

5. *Executive Order 13132: Federalism*

Executive Order 13132 (64 FR 43255, August 10, 1999) does not apply to this rule because it will not have federalism implications (*i.e.*, substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government).

6. *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to this rule because it will not have tribal implications (*i.e.*, substantial direct effects on one or more Indian tribes, or on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes).

7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866 and because the EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action as defined in Executive Order 12866.

9. National Technology Transfer Advancement Act

EPA approves state programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a state program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply to this rule.

10. Executive Order 12988

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

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

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

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

Because this rule authorizes pre-existing state rules and imposes no additional requirements beyond those imposed by state law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994).

13. Congressional Review Act

EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 et seq) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the *Federal Register*. A major rule cannot take effect until sixty (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 final authorization will be effective *[insert date of publication]*.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: May 9, 2013.

Susan Hedman,
Regional Administrator, Region 5.

Billing Code: 6560-50-P

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