



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R06-RCRA-2015-0109; FRL-9936-00-Region 6]

Texas: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The State of Texas has applied to the United States Environmental Protection Agency (EPA) for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). 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 rule. In the "Proposed Rules" section of today's **Federal Register**, EPA is also publishing a separate document that serves as the proposal to authorize these changes. EPA believes this action is not controversial and does not expect comments that oppose it. Unless EPA receives written comments which oppose this authorization during the comment period, the decision to authorize Texas' changes to its hazardous waste program will take effect. If EPA receives comments that oppose this action, EPA will publish a document in the **Federal Register** withdrawing today's direct final rule before it takes effect, and the separate document in today's "Proposed Rules" section of this **Federal Register** will serve as the proposal to authorize the changes.

DATES: This final authorization is 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, EPA 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: *[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]*.

Instructions: EPA must receive your comments by *[insert date 30 days after the date of publication]*. Direct your comments to **Docket ID Number 0109**. 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, 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 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 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).

Docket: All documents in the docket are listed in the 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, or in hard copy.

You can view and copy Texas' application and associated publicly available materials from 8:30 a.m. to 4 p.m. Monday through Friday at the following locations: Texas Commission on Environmental Quality, (TCEQ) 12100 Park S. Circle, Austin, Texas 78753-3087, (512) 239-6079 and EPA, Region 6, 1445 Ross Avenue, 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, Region 6 Regional Authorization Coordinator, State /Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, (214) 665-8533, EPA Region 6, 1445 Ross Avenue, 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.

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 the State of Texas, including the issuance of new permits implementing those requirements, until the State is granted authorization to do so.

B. What Decisions Have EPA Made in This Rule?

On April 3, 2015, the State of Texas submitted a final complete program revision application seeking authorization of changes to its hazardous waste program that correspond to certain Federal rules promulgated between promulgated between June 13, 2011, and January 3, 2014. The adoption for RCRA Clusters XXI through XXIII (Checklists 227, 229 and 230).

EPA concludes that the State of Texas'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, EPA grants the State of Texas final authorization to operate its hazardous waste program with the changes described in the authorization application, and as outline below in Section G of this document.

The State of Texas has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders (except in Indian Country). In today's action under Section 18 U.S.C. 1151 does not affect Indian Country. Because the State of Texas Hazardous waste Program is not being authorized to operate in Indian Country and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of HSWA, as discussed above). 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 the State of Texas, 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 the State of Texas 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. The State of Texas 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 the State of Texas 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, EPA is publishing a separate document in the “Proposed Rules” section of today’s **Federal Register** that serves as the proposal to authorize these State program changes. EPA did not publish a proposal before today’s rule because EPA views this as a routine program changes and does not expect comments. EPA also views the State of Texas program revisions as noncontroversial action and anticipate 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 the EPA receives comments that oppose this authorization, EPA will withdraw today’s 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 Texas Previously Been Authorized?

The State of Texas initially received final authorization on December 26, 1984 (49 FR 48300), to implement its Base Hazardous Waste Management Program. This authorization was clarified in a notice published March 26, 1985 (50 FR 11858). Texas received authorization for revisions to its program, effective October 4, 1985 (51 FR 3952), February 17, 1987 (51 FR 45320), March 15, 1990 (55 FR 7318), July 23, 1990 (55 FR 21383), October 21, 1991 (56 FR 41626), December 4, 1992 (57 FR 45719), June 27, 1994 (59 FR 16987), June 27, 1994 (59 FR 17273), November 26, 1997 (62 FR 47947), December 3, 1997 (62 FR 49163), October 18, 1999 (64 FR 44836), November 15, 1999 (64 FR 49673), September 11, 2000 (65 FR 43246), June 14, 2005 (70 FR 34371), December 29, 2008, (73 FR 64252), and July 13, 2009 (74 FR 22469). The EPA incorporated by reference Texas' then authorized hazardous waste program effective December 3, 1997 (62 FR 49163), November 15, 1999 (64 FR 49673), December 29, 2008 (73 FR 64252), March 7, 2011 (76 FR 12285) effective May 6, 2011 and March 6, 2012 (77 FR 13200) effective May 7, 2012 and September 3, 2014 (79 FR 52220-52224) effective November 3, 2014.

In 1991, Texas Senate Bill 2 created the Texas Natural Resource Conservation Commission (TNRCC) which combined the functions of the former Texas Water Commission

and the former Texas Air Control Board. The transfer of functions to the TNRCC from the two agencies became effective on September 1, 1993. House Bill 2912, Article 18 of the 77th Texas Legislature, 2001, changed the name of the TNRCC to the Texas Commission on Environmental Quality (TCEQ) and directed the TNRCC to adopt a timetable for phasing in the change of the agency's name. The TNRCC decided to make the change of the agency's name to the TCEQ effective September 1, 2002. The change of name became effective September 1, 2002, and the legislative history of the name change is documented at (See, Act of June 15, 2001, 77th Leg. R. S., Ch 965, Section 18.01, 2001 Tex. Gen. Laws 1985). The TCEQ may perform any act authorized by law either as the TNRCC or as the TCEQ. Id. Therefore, references to the TCEQ are references to TNRCC and to its successor, the TCEQ.

The TCEQ has primary responsibility for administration of laws and regulations concerning hazardous waste. The official State regulations may be found in Title 30, Texas Administrative Code, Chapters 305, 324 and 335, effective February 21, 2013. Some of the State rules incorporate the Federal regulations by reference. Texas Water Code Section 5.103 and Section 5.105 and Texas Health and Safety Code Section 361.017 and Section 361.024 confer on the Texas Commission on Environmental Quality the powers to perform any acts necessary and convenient to the exercise of its jurisdiction. The TCEQ is authorized to administer the RCRA program. However, the Railroad Commission (RRC) has jurisdiction over the discharge, storage, handling, transportation, reclamation, or disposal of waste materials (both hazardous and non- hazardous) that result from the activities associated with the exploration, development, or production of oil or gas or geothermal resources and other activities regulated by the RRC. A list of activities that generate wastes that are subject to the

jurisdiction of the RRC is found at Texas Health and Safety Code Section 401.415. Such wastes are termed “oil and gas wastes.” The TCEQ has responsibility to administer the RCRA program, however, hazardous waste generated at natural gas or natural gas liquids processing plants or reservoir pressure maintenance or repressurizing plants are subject to the jurisdiction of the TCEQ until the RRC is authorized by EPA to administer that waste under RCRA. The TCEQ jurisdiction over Solid waste can be found at Chapter 361, Sections 361.001 through 361.754 of the Texas Health and Safety Code. The TCEQ’s jurisdiction encompasses hazardous and nonhazardous, industrial and municipal Solid waste. The definition of Solid waste can be found at Texas Health and Safety Code Section 361.003(34). When the RRC is authorized by EPA to administer the RCRA program for these wastes, jurisdiction over such hazardous waste will transfer from the TCEQ to the RRC. The EPA has designated the TCEQ as the lead agency to coordinate RCRA activities between the two agencies. The EPA is responsible for the regulation of any hazardous waste for which TCEQ has not been previously authorized.

Further clarification of the jurisdiction between the TCEQ and the RRC can be found in a separate document. This document, a Memorandum of Understanding (MOU), became effective on May 31, 1998.

The TCEQ has the rules necessary to implement EPA’s RCRA Clusters XXI through XXIII, excluding the Hazardous Waste Technical Corrections and Clarification Rule in Cluster XXII (Checklist 228), because the TCEQ needs to make a technical corrections to their adoption of the rule. The State is seeking authorization for Revision of the Land Disposal Treatment Standards for Carbamate Wastes (Checklist 227), Conditional Exclusion for Solvent Contaminated Wipes (Checklist 229) and Conditional Exclusion for Carbon Dioxide (C02)

Streams in Geologic Sequestration Activities (Checklist 230). The Commissioners adopted revisions to the Federal hazardous waste standards promulgated between June 13, 2011, and January 3, 2014. TCEQ regulations 30 Texas Administrative Code Chapter 335 were revised to include these revisions to the RCRA Clusters XXI through XXIII. The TCEQ adopted the Federal regulations on December 10, 2014. The revisions were published in the Texas Register on January 2, 2015 and became effective on January 8, 2015. The TCEQ authority to incorporate Federal rules by reference can be found at Texas Administrative Code 335 Sections 335.28, 335.29 and 335.31.

G. What Changes EPA Authorizing With Today’s Action?

On April 3, 2015 the State of Texas submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make direct final decision, subject to receipt of written comments that oppose this action that the State of Texas’ hazardous waste program revision are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all of requirements necessary to qualify for final authorization. Therefore, EPA grants the State of Texas final authorization for RCRA Cluster XXII through XXIII (Checklists 227, 229 and 230). The State of Texas program revisions consist of regulations which specifically govern Federal Hazardous Waste revisions promulgated between June 13, 2011, and January 3, 2014 which are listed in the chart below.

Description of federal requirement (include checklist #, if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
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<p>1. Revisions of the Land Disposal Treatment Standards for Carbamate Wastes. (Checklist 227)</p>	<p>76 FR 34147-34157 June 13, 2011</p>	<p>Texas Water Code Annotated Sections 5.103 and 5.105, Texas Health & Safety Code Annotated Sections 361.017 and 361.024; 30 Texas Administrative Code, Chapter 335 Section 335.431(c)(1), adopted December 10, 2014 and effective January 8, 2015.</p>
<p>2. Conditional Exclusions for Solvent Contaminated Wipes. (Checklist 229).</p>	<p>78 FR 46448-46485 July 31, 2013.</p>	<p>Texas Water Code Annotated Sections 5.103 and 5.105, Texas Health & Safety Code Annotated Sections 361.017 and 361.024; 30 Texas Administrative Code, Chapter 335 Section 335.1(104), 335.1(141), 335.1(174), 335.1(140)(A)(iv), 335.504(1) adopted December 10, 2014 and effective January 8, 2015.</p>
<p>3. Conditional Exclusion for Carbon Dioxide (CO₂) Streams in Geologic Sequestration Activities. (Checklist 230).</p>	<p>79 FR 350-364 January 3, 2014.</p>	<p>Texas Water Code Annotated Sections 5.103 and 5.105, Texas Health & Safety Code Annotated Sections 361.017 and 361.024; 30 Texas Administrative Code, Chapter 335 Section 335.1(16), and 335.504(1), adopted December 10, 2014 and effective January 8, 2015.</p>

H. Where Are the Revised State Rules Different From the Federal Rules?

The State of Texas hazardous waste program is equivalent to the Federal program in all

areas except where the State program is broader in scope. In the State of Texas, some rules are broader in scope because they cover both hazardous waste and Class 1 nonhazardous waste, whereas the Federal regulations cover only hazardous waste. Other differences which are broader in scope or more stringent contained in the past authorization packages include more frequent public notices for traditional hazardous waste permits and for Standard Permit; financial assurance requirements for persons seeking to acquire a hazardous waste permit through transfer, and deferring of variances and exemptions from the Land Disposal Restrictions to EPA.

I. Who Handles Permits After the Authorization Takes Effect?

The State of Texas 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 Texas is not yet authorized.

J. What Is Codification and Is the EPA Codifying Texas' 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 parts 272. We reserve the amendment of 40 CFR parts 272, subpart SS for this authorization of Texas' program changes until a later date. In this

authorization application the EPA is not codifying the rules documented in this **Federal Register** document.

K. 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 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 preexisting 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, 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 nevertheless will be effective [insert date 60 days after publication in the **Federal 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: October 1, 2015.

Ron Curry,
Regional Administrator,
EPA Region 6.
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