



BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R05-RCRA-2015-0555; FRL-9958-05-Region 5]

Illinois: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting the State of Illinois 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 March 18, 2016, 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 in the Federal Register]*.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R05-RCRA-2015-0555. 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 Illinois' 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 Illinois Environmental Protection Agency, 1021 North Grand Avenue, East, Springfield, Illinois, contact: Todd Marvel (217) 524-5024.

FOR FURTHER INFORMATION CONTACT: Gary Westefer, Illinois Regulatory Specialist, U.S. EPA Region 5, LR-8J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-7450, e-mail *westefer.gary@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA Section 3006(b) of RCRA, 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 Rule?

We conclude that Illinois' application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we are granting Illinois final authorization to operate its hazardous waste program with the changes described in the authorization application. Illinois 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 Illinois, 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 Illinois that are subject to RCRA to comply with the newly-authorized state requirements instead of the equivalent Federal requirements in order to comply with RCRA. Illinois 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;
1. 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 March 18 2016 (81 FR 14808), EPA proposed to authorize changes to Illinois' hazardous waste program and opened the decision to public comment. The Agency received no comments on this proposal. EPA found Illinois RCRA program to be satisfactory.

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

Illinois initially received final authorization effective January 31, 1986 (51 FR 3778, January 30, 1986) to implement the RCRA hazardous waste management program.

Subsequently the EPA granted authorization for changes to the Illinois program effective March 5, 1988 (53 FR 126, January 5, 1988); April 30, 1990 (55 FR 7320, March 1, 1990); June 3, 1991 (56 FR 13595, April 3, 1991); August 15, 1994 (59 FR 30525, June 14, 1994); May 14, 1996, (61 FR 10684, March 15, 1996); and October 4, 1996 (61 FR 40520, August 5, 1996).

F. What Changes Are We Proposing with This Action?

On October 19, 2015, Illinois submitted a final program revision application, seeking authorization of changes in accordance with 40 CFR 271.21. We have determined that Illinois' hazardous waste program revisions satisfy all of the requirements necessary to qualify for Final Authorization. Therefore we are granting Illinois Final Authorization for the following program changes (a table with the complete state analogues is provided in the March 18, 2016 proposed rule):

Universal Waste Rule, General Provisions, Checklist 142A, May 11, 1995, 60 FR 25492.

Universal Waste Rule, Specific Provisions for Batteries, Checklist 142B, May 11, 1995 60 FR 25492.

Universal Waste Rule, Specific Provisions for Pesticides, Checklist 142C, May 11, 1995 60 FR 25492.

Universal Waste Rule, Specific Provisions for Thermostats, Checklist 142D, May 11, 1995, 60 FR 25492.

Universal Waste Rule, Provisions for Petitions to Add a New Universal Waste, Checklist 142E, May 11, 1995, 60 FR 25492.

RCRA Expanded Public Participation, Checklist 148, December 11, 1995, 60 FR 63417.

Identification and Listing of Hazardous Waste, Amendments to Definition of Solid Waste, Checklist 150, March 26, 1996, 61 FR 13103.

Imports and Exports of Hazardous Waste, Checklist 152, April 12, 1996, 61 FR 16290.

Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments and Containers, Checklist 154, November 25, 1996, 61 FR 59931; as amended, Checklist 154.1, December 12, 1994, 59 FR 62896; as amended, Checklist 154.2, May 19, 1995, 60 FR 26828; as amended, Checklist 154.3, September 29, 1995, 60 FR 50426; as amended, Checklist 154.4, November 13, 1995, 60 FR 56952; as amended, Checklist 154.5, February 9, 1996, 61 FR 4903; as amended Checklist 154.6, June 5, 1996, 61 FR 28508.

Land Disposal Restrictions Phase III – Emergency Extension of the K088 Capacity Variance, Checklist 155, January 14, 1997, 62 FR 1992.

Land Disposal Restrictions: Phase IV Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions From RCRA for Certain Processed Materials and Miscellaneous Hazardous Waste Provisions, Checklist 157, May 12, 1997, 62 FR 25998.

Hazardous Waste Management System; Testing and Monitoring Activities, Checklist 158, June 13, 1997, 62 FR 32452.

Land Disposal Restrictions: Phase III – Emergency Extension of the K088 National Capacity Variance, Checklist 160, July 14, 1997, 62 FR 37694.

Organic Air Emission Standards for Tanks, Surface Impoundments and Containers; Clarification and Technical Amendment, Checklist 163, December 8, 1997, 62 FR 64636.

Kraft Mill Steam Stripper Exclusion, Checklist 164, April 15, 1998, 63 FR 18504.

Emergency Revisions of LDR Treatment Standards, Checklist 172, September 9, 1998, 63 FR 48124.

Land Disposal Restrictions Treatment Standards (Spent Potliners), Checklist 173, September 24, 1998, 63 FR 51254.

Universal Waste Rule; Technical Amendment (Conditionally Optional), Checklist 176, December 24, 1998, 63 FR 71225.

Organic Air Emission Standards, Checklist 177, January 21, 1999, 64 FR 3381.

Test Procedures for the Analysis of Oil and Grease and Non-Polar Material, Checklist 180, May 14, 1999, 64 FR 26315.

NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (MACT Rule), Checklist 182, September 30, 1999, 64 FR 52827; as amended, Checklist 182.1, November 19, 1999, 64 FR 63209.

Waste Water Treatment Sludges from Metal Finishing Industry; 180 Day Accumulation Time, Checklist 184, March 8, 2000, 65 FR 12378.

Organobromine Production Wastes, Checklist 185, March 17, 2000, 65 FR 14472.

NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors, Checklist 188, July 10, 2000, 65 FR 42292; as amended: Second Technical Correction, Checklist 188.1, May 14, 2001, 66 FR 24270; as amended: Checklist 188.2, July 3, 2001, 66 FR 35087.

Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes, Checklist 189, November 8, 2000, 65 FR 67068.

Deferral of Phase IV Standards for PCBs as a Constituent Subject to Treatment in Soil, Checklist 190, December 26, 2000, 65 FR 81373.

Storage, Treatment, Transportation and Disposal of Mixed Waste, Checklist 191, May 16, 2001, 66 FR 27218.

Change of EPA Mailing Address, Additional Technical Amendments and Corrections, Checklist 193, June 28, 2001, 66 FR 34374.

Hazardous Air Pollutant Standards for Combustors: Interim Standards, Checklist 197, February 13, 2002, 67 FR 6792.

Hazardous Air Pollutant Standards for Combustors; Corrections, Checklist 198, February 14, 2002, 67 FR 6968.

Land Disposal Restrictions: National Treatment Variance To Designate New Treatment Subcategories for Radioactively Contaminated Cadmium-, Mercury-, and Silver-Containing Batteries, Checklist 201, November 21, 2002, 67 FR 62618.

NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors – Corrections, Checklist 202, December 19, 2002, 67 FR 77687.

NESHAP: Surface Coating of Automobiles and Light Duty Trucks, Checklist 205, October 26, 2004, 69 FR 22601.

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.

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

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

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

Illinois has not applied for the federal requirements at 40 CFR 260.21, 264.149, 264.150, 265.149, 265.150, 268.5, 268.6, 268.42(b), 268.44, and 270.3. EPA will continue to implement those requirements.

More Stringent Rules:

In 35 IAC 722.122 and 722.123(a)(4), Illinois requires more manifest copies than the Federal rules. In 35 IAC 724.213(d)(3) Illinois adds requirements to the contingent corrective measures plan found in 40 CFR 264.113(e)(4)(i). In 35 IAC 722.141, 724.175 and 725.175, Illinois requires an annual report instead of the biennial report required in 40 CFR 262.22, 264.75 and 265.75. Illinois has added 35 IAC 724.156(i) to facilitate State notification. In 35 IAC 725.245, Illinois does not allow the extension of time to submit the financial test and corporate guarantee documents to the agency as federally allowed in 40 CFR 265.145(e)(4). In 35 IAC 725.414, Illinois prohibits all liquids in landfills; the federal rules allow for exceptions in 40 CFR 265.314(f)(1) and (2). Illinois' 35 IAC Part 729 prohibits disposal of certain hazardous wastes in landfills. This part has no direct equivalent Federal part, but is a counterpart of the land ban regulations at 40 CFR part 268 and the landfill requirements at 40 CFR parts 264 and 265. In 35 IAC 728.106(e) Illinois requires at least a 90 day notice when a facility wants to make changes to unit design; EPA in 40 CFR 268.6(e) only requires a 30 day notice. In 35 IAC 703.271(e) Illinois adds some additional cases where a permit must be modified.

Broader in Scope Rules:

In 35 IAC 721.103(g), Illinois does not allow the exemption allowed in the federal rules at 40 CFR 261.3(g)(4). In 35 IAC 739.146, Illinois adds subsection (a)(6) which covers special waste (35 IAC Part 808). This special waste is not regulated in the RCRA subtitle C program. 35 IAC 739.146(a)(6) adds information requirements. The same requirements are also added in 35 IAC 739.156, 739.165, and 739.174.

Universal Waste Lamps Rules Not Authorized:

Illinois allows Lamp Crushing under its current version of the Universal Waste Rule (35 IAC 733.105, 733.113(d), 733.133(d), and 733.134(e)), and has not applied for authorization of the Universal Waste Lamps Rule. In the future, EPA will determine whether to prohibit crushing of lamps, or decide under what conditions lamp crushing may be permitted. Until the issue is resolved, no state that allows crushing may be authorized for the Universal Waste Lamps rule and the Illinois version of the Universal Waste Lamps Rule is not part of the Illinois authorized program.

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

Illinois 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 the proposed authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in Section F above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Illinois is not yet authorized.

I. How Does This Action Affect Indian Country (18 U.S.C. 1151) in Illinois?

Illinois 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 Illinois;
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 on these lands.

J. How Does Proportionate Share Liability Affect Illinois’ RCRA Program

Illinois’ RCRA authorities are not impacted by the proportionate share liability (PSL) provision of the Illinois Environmental Protection Act, 415 ILCS 5/58.9(a)(1). Section 58.9(a)(1) provides, in pertinent part:

“Notwithstanding any other provisions of this Act to the contrary,... in no event may the Agency, the State of Illinois, or any person bring an action pursuant to this Act or the Groundwater Protection Act to require any person to conduct remedial action or to seek recovery of costs for remedial activity conducted by the State of Illinois or any person beyond the remediation of releases of regulated substances that may be attributed to being proximately caused by such person’s act of omission or beyond such person’s proportionate degree of responsibility for costs of the remedial action of releases of regulated substances that were proximately caused or contributed to by 2 or more persons.”

Section 58.9 is part of Title XVII (Site Remediation Program) of the Illinois Environmental Protection Act. Title XVII does not apply to a particular site if “...(ii) the site is a treatment, storage, or disposal site for which a permit has been issued, or that is subject to closure requirements under federal or state solid or hazardous waste laws” (415 ILCS 5/58.1(a)(2)(ii)). Hazardous waste treatment, storage, and disposal facilities under Subtitle C of RCRA fall within the exclusion at Section 58.1(a)(2)(ii). These facilities are subject to closure and post-closure care requirements under the Act (415 ILCS 5/22.17) and Illinois program rules that are identical in substance to federal rules at 40 CFR part 264 (35 Ill. Adm. Code 724). The Illinois Appellate Court has held that the PSL does not apply to sites that are outside the scope of Title XVII. *People of the State of Illinois v. State Oil*, 822 N.E. 2d 876 (Ill. App. 2004). Therefore the exclusion at Section 58.1(a)(2)(ii) renders Title XVII, including Section 58.9, inapplicable to sites upon which RCRA regulated facilities are located. Based on this exclusion, and as indicated by the Illinois Attorney General in the Attorney General Statement included in the State’s October 19, 2015 final program revision application, the PSL provision does not impact the adequacy of Illinois’ RCRA authorities.

K. What Is Codification and Is EPA Codifying Illinois’ 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. Illinois’ authorized rules, up to and including those revised June 3, 1991, have previously been codified through the incorporation-by-reference effective March 31, 1992 (57 FR 3722, January 31, 1992). EPA is not codifying

the authorization of Illinois' changes at this time. We reserve the amendment of 40 CFR part 272, subpart O, for the codification of Illinois' program changes until a later date.

L. 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 12866: 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 proposes authorization of 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 in the Federal Register]*.

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: December 23, 2016.

Robert A. Kaplan,
Acting Regional Administrator, Region 5.

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