



ENVIRONMENTAL PROTECTION AGENCY

6560-50-P

40 CFR Part 271

[EPA-R03-RCRA-2014-0407; FRL-9965-87-Region 3]

Delaware: Final Authorization of State Hazardous Waste Management Program

Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Delaware has applied to the United States Environmental Protection Agency (EPA) for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these revisions satisfy all requirements needed to qualify for final authorization and is authorizing Delaware's revisions through this direct final rule. In the "Proposed Rules" section of this issue of the **Federal Register**, EPA is also publishing a separate document that serves as the proposal to authorize these revisions. EPA believes this action is not controversial and does not expect comments that oppose it. Unless EPA receives written comments that oppose this authorization during the comment period, the decision to authorize Delaware's revisions 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 this direct final rule before it takes effect and the separate

document in the “Proposed Rules” section of this issue of the Federal Register will serve as the proposal to authorize the revisions.

DATES: This final authorization will become effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, unless EPA receives adverse written comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If EPA receives any such comments, 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, identified by Docket ID No. EPA-R03-RCRA-2014-0407, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The 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. The 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>.

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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 is revised to become more stringent or broader in scope, States must revise their programs and apply to EPA to authorize the revisions. Authorization of revisions to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other revisions occur. Most commonly, States must revise their programs because of revisions to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Has EPA Made in this Rule?

On August 19, 2016, Delaware submitted a final program revision application (with

subsequent corrections) seeking authorization of revisions to its hazardous waste program that correspond to certain Federal rules promulgated between July 30, 2003 and July 28, 2006. EPA concludes that Delaware'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 Delaware final authorization to operate its hazardous waste program with the revisions described in its authorization application, and as outlined below in Section G of this document.

Delaware has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its 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 HSWA requirements and prohibitions for which Delaware has not been authorized, including issuing HSWA permits, until the State is granted authorization to do so.

C. What is the Effect of This Authorization Decision?

This action serves to authorize revisions to Delaware's authorized hazardous waste program. This action does not impose additional requirements on the regulated community because the regulations for which Delaware is being authorized by this action are already effective and are not changed by this action. Delaware has enforcement responsibilities under

its state hazardous waste program for violations of its program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Perform inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether Delaware has taken its own actions.

D. Why Wasn't There a Proposed Rule Before This Rule?

Along with this direct final rule, EPA is publishing a separate document in the “Proposed Rules” section of this issue of the **Federal Register** that serves as the proposal to authorize these State program revisions. EPA did not publish a proposal before this rule because EPA views this action as a routine program change and does not expect comments that oppose its approval. EPA is providing an opportunity for public comment now, as described in Section E of this document.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, EPA will withdraw this direct final rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of Delaware’s program revisions on the proposal mentioned in the previous section, after considering all comments received during the comment period. EPA will then 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 must do so at this time.

If EPA receives comments that oppose only the authorization of a particular revision to the State's hazardous waste program, EPA will withdraw that part of this rule, but the authorization of the program revisions that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Delaware Previously Been Authorized for?

Delaware initially received final authorization effective June 22, 1984 (June 8, 1984; 49 FR 23837). EPA granted authorization for revisions to Delaware's regulatory program on August 8, 1996, effective October 7, 1996 (61 FR 41345); August 18, 1998, effective October 19, 1998 (63 FR 44152); July 12, 2000, effective September 11, 2000 (65 FR 42871); August 8, 2002, effective August 8, 2002 (67 FR 51478); March 4, 2004, effective May 3, 2004 (69 FR 10171); and October 7, 2004, effective December 6, 2004 (69 FR 60091).

G. What Revisions is EPA Authorizing with This Action?

On August 19, 2016, Delaware submitted a final program revision application (with subsequent corrections), seeking authorization of additional revisions to its program in accordance with 40 CFR 271.21. Delaware's revision application includes various regulations that are equivalent to, and no less stringent than, selected Federal final hazardous waste rules, as published in the **Federal Register** between July 30, 2003 and July 28, 2006.

EPA now makes a direct final rule, subject to receipt of written comments that oppose this action, that Delaware's hazardous waste program revision application satisfies all of the requirements necessary to qualify for final authorization. Therefore, EPA grants Delaware final authorization for the following program revisions:

1. Program Revision Changes for Federal Rules

Delaware seeks authority to administer the Federal requirements that are listed in Table 1 below. This table lists the Delaware analogs that have been revised; these revisions are being recognized as no less stringent than the analogous Federal requirements.

Delaware's regulatory references are to Delaware's Regulations Governing Hazardous Waste (DRGHW), amended and effective August 21, 2006, December 21, 2007, December 21, 2008, May 21, 2009, and April 21, 2016. Additionally, there are some minor corrections that were promulgated and became effective on or before April 21, 2016. The statutory references are to 7 Delaware Code annotated (1991).

Table 1. Delaware's Analogs to the Federal Requirements

Description of Federal Requirement (Revision Checklists ¹)	Federal Register	Delaware Authority ²
RCRA Cluster XIV		
Recycled Used Oil Management Standards, Revision Checklist 203	68 FR 44659, 7/30/2003	DRGHW 279.74. More stringent provisions: 261.5(j) and 279.10(i).
RCRA Cluster XV		
Nonwastewaters from Dyes and Pigments, Revision Checklist 206	70 FR 9138, 2/24/2005; as amended at 70 FR 35032, 6/16/2005	DRGHW 261.4(b)(15), 261.32, 261 Appendix VII-VIII, 268.20, 268.40/Treatment Standards Table, 268.48/Universal Treatment Standards Table.
Uniform Hazardous Waste Manifest Rule, Revision Checklist 207	70 FR 10776, 6/16/2005; as amended at 70 FR 35034, 6/16/2004	DRGHW 260.10, 261.7(b)(1)(iii)(A)-(B), 262.20(a)(1)-(2) [April 21, 2016], 262.21, 262.27, 262.32(b), 262.33, 262.34(m), 262.54(c) and (e), 262.60(c)-(e), 262/Appendix, 263.20(a), 263.20(g), 263.21, 264.70, 264.71(a), 264.71(b)(4), 264.71(e), 264.72, 264.76, 265.70, 265.71(a), 265.71(b)(4), 265.71(e), 265.72, 265.76.
RCRA CLUSTER XVI		
Universal Waste Rule: Specific Provisions for Mercury Containing Equipment, Revision Checklist 209	70 FR 45508, 8/5/2005	DRGHW 260.10, 261.9(c), 264.1(g)(11)(iii), 265.1(c)(14)(iii), 268.1(f)(3), 122.1(c)(2)(viii)(C), 273.1(a)(3), 273.4, 273.9, 273.13(c), 273.14(d), 273.32(b)(4)-(5), 273.33(c)-(d).
Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures, Revision Checklist 211	70 FR 57769, 10/4/2005	DRGHW 261.3(a)(2)(iv)(A)-(B), (D), (F)-(G).

Description of Federal Requirement (Revision Checklists ¹)	Federal Register	Delaware Authority ²
RCRA CLUSTER XVII		
Corrections to Errors in the Code of Federal Regulations, Revision Checklist 214	71 FR 40254, 7/14/2006	<p>Part 260, Subpart B DRGHW 260.10 [2016]</p> <p>Part 260, Subpart C DRGHW 260.22(a)(1), 260.22(d)(1)(ii), 260.40(a), 260.41 introductory paragraph</p> <p>Part 261, Subpart A DRGHW 261.2(c)(1)(i), 261.3(a)(2)(i), 261.4(a)(20)(v), 261.4(b)(6)(i)(B), 261.4(b)(6)(ii) introductory paragraph, 261.4(b)(6)(ii)(D), 261.4(b)(6)(ii)(F), 261.4(b)(9), 261.4(e)(2)(vi), 261.4(e)(3)(i), 261.6(a)(2)(i)-(iv), [April 21, 2016], 261.6(c)(2)</p> <p>Part 261, Subpart C DRGHW 261.21 [April 21, 2016], 261.24(b)</p> <p>Part 261, Subpart D DRGHW 261.31(a)/Table, 261.32 Table “K107” and “K069” entries, 261.33(e), 261.33(e)/Table [2016], 261.33(f), 261.33(f)/Table, 261.38(c)(1)(i)(C)(4), 261/Appendix VII-VIII</p> <p>Part 262, Subpart C DRGHW 262.34(a)(1)(iv)</p> <p>Part 262, Subpart E DRGHW 262.53(b), 262.56(b), 262.58(a)(1)</p> <p>Part 262, Subpart G DRGHW 262.70</p>

Description of Federal Requirement (Revision Checklists ¹)	Federal Register	Delaware Authority ²
		<p>Part 262, Subpart H DRGHW 262.83(b)(1)(i), 262.83(b)(2)(i), 262.84(e), 262.87(a), 262.87(a)(5) introductory paragraph [2016]</p> <p>Part 264, Subpart A DRGHW 264.1(g)(2), 264.4</p> <p>Part 264, Subpart B DRGHW 264.13(b)(7)(iii)(B), 264.17(b) introductory paragraph, 264.18(a)(2)(iii), 264.18(b)(2)(iii)</p> <p>Part 264, Subpart F DRGHW 264.97(a)(1) introductory paragraph, 264.97(a)(1)(i), 264.97(i)(5), 264.98(a)(2), 264.98(g)(4)(i), 264.99(h)(2) introductory text, 264.101(d)</p> <p>Part 264, Subpart G DRGHW 264.111(c), 264.112(b)(8), 264.115, 264.116, 264.118(c), 264.119(b)(1)(ii)</p>

Description of Federal Requirement (Revision Checklists ¹)	Federal Register	Delaware Authority ²
		<p>Part 264, Subpart H DRGHW 264.140(d)(1), 264.142(b)(2), 264.143(b)(7)-(8), 264.143(e)(5), 264.145(a)(3)(i), 264.145(d)(6), 264.145(f)(11) introductory paragraph, 264.147(h)(1), 264.151(b), 264.151(f) introductory paragraph, 264.151(g) Letter from Chief Financial Officer (including fifth paragraph; item 3; Part A/Alternative I, item *3; Part B/Alternative I, items 10 and 15; Part B/Alternative II, item *7), 264.151(h)(2) (including Guarantee for Liability Coverage; Certification of Valid Claim, Recitals, item 13.(a); Recitals, item 14), 264.151(i), item 2.(e), 264.151(j), item 2.(d), 264.151(k) (including Irrevocable Standby Letter of Credit and Certificate of Valid Claim), 264.151(l), 264.151(l) Certification of Valid Claim, 264.151(m)(1) Certification of Valid Claim/Section 8.(c), 264.151(n)(1) Standby Trust Agreement/Section 3.(c)(1), 264.151(n)(1) Section 3.(e)(3) [April 21, 2016], 264.151(n)(1) Sections 12 and 16</p> <p>Part 264, Subpart I DRGHW 264.175(b)(1)</p> <p>Part 264, Subpart J DRGHW 264.193(c)(4) Note, 264.193(d)(4), 264.193(e)(2)(ii)-(iii), 264.193(e)(2)(v)(A)-(B), 264.193(e)(3)(i)-(ii), 264.193(g)(1)(iii)-(iv), 264.193(g)(2)(i)(A)</p> <p>Part 264, Subpart K DRGHW 264.221(c)(1)(i)(B), 264.221(c)(2)(ii), 264.221(e)(1), 264.221(e)(2)(i)(B)-(C), 264.223(b)(1), 264.226(a)(2)</p>

Description of Federal Requirement (Revision Checklists¹)	Federal Register	Delaware Authority²
		<p>Part 264, Subpart L DRGHW 264.251(a)(2)(i)(A), 264.252, 264.259(b)</p> <p>Part 264, Subpart M DRGHW 264.280(c)(7), 264.280(d) introductory paragraph, 264.283(a)</p> <p>Part 264, Subpart N DRGHW 264.301(c)(2), 264.301(e)(2)(i)(B), 264.302, 264.304(b)(1), 264.314(e)(2), 264.317(a) introductory paragraph</p> <p>Part 264, Subpart O DRGHW 264.344(b)</p> <p>Part 264, Subpart S DRGHW 264.552(e)(4)(iii), 264.552(e)(6)(iii)(E), 264.553(e) introductory paragraph, 264.554(a) introductory paragraph</p> <p>Part 264, Subpart W DRGHW 264.555(e)(6), 264.573(a)(1), 264.573(a)(4)(i), 264.573(a)(5), 264.573(b) introductory paragraph, 264.573(m)(2)-(3)</p> <p>Part 264, Subpart X DRGHW 264.600, 264.601(a) introductory paragraph, 264.601(b)(11), 264.601(c)(4)</p> <p>Part 264, Subpart AA DRGHW 264.1030(c), 264.1033(f)(2)(vii)(B), 264.1034(b)(2), 264.1035(c)(4)(i)-(ii)</p> <p>Part 264, Subpart BB DRGHW 264.1050(f), 264.1058(c)(1), 264.1064(c)(3)</p> <p>Part 264, Subpart CC DRGWH 264.1080(a) and (c), 264.1090(c)</p>

Description of Federal Requirement (Revision Checklists¹)	Federal Register	Delaware Authority²
		<p>Part 264, Subpart DD DRGHW 264.1101(b)(3)(iii), 264.1101(c)(3) introductory paragraph, 264.1101(c)(3)(i), 264.1101(d) introductory paragraph, 264.1102(a), 264/Appendix I/Table 1 and Table 2 (Section 2.(d))</p> <p>Part 265, Subpart A DRGHW 265.1(c)(4)(i), 265.1(c)(6)</p> <p>Part 265, Subpart B DRGHW 265.12(a)(1), 265.14(b)(1), 265.16(b), 265.19(c)(2)</p> <p>Part 265, Subpart D DRGHW 265.56(b)</p> <p>Part 265, Subpart F DRGHW 265.90(e)</p> <p>Part 265, Subpart G DRGHW 265.110(b)(4), 265.111(c), 265.112(b)(5), 265.112(d)(4), 265.113(b) introductory paragraph, 265.117(b) introductory paragraph, 265.119(b)(1)(ii)</p> <p>Part 265, Subpart H DRGHW 265.140(b) introductory paragraph, 265.140(b)(2), 265.142(a), 265.145(e)(11), 265.147(a)(1)(i), 265.147(b)(1)(i)-(ii)</p> <p>Part 265, Subpart I DRGHW 265.174</p> <p>Part 265, Subpart J DRGHW 265.193(e)(2)(v), 265.193(i)(2), 265.194(b)(1)-(2), 265.197(b), 265.201(c) introductory paragraph</p>

Description of Federal Requirement (Revision Checklists ¹)	Federal Register	Delaware Authority ²
		<p>Part 265, Subpart K DRGHW 265.221(a), 265.221(d)(2)(i)(A)-(B), 265.223(b)(1)(Response Actions), 265.228(a)(2)(iii)(D), 265.228(b)(2), 265.229(b)(2) and (b)(3)</p> <p>Part 265, Subpart L DRGHW 265.255(b), 265.259(b)(1)</p> <p>Part 265, Subpart M DRGHW 265.280(a)(4), 265.281(a)(1)</p> <p>Part 265, Subpart N DRGHW 265.301(a), 265.301(d)(1), 265.301(d)(2)(i)(B), 265.302(b), 265.303(b)(1), 265.312(a)(1), 265.314(f)(1)(ii), 265.314(g)(2), 265.316 introductory paragraph, 265.316(c)-(d)</p> <p>Part 265, Subpart Q DRGHW 265.405(a)(1)(i)</p> <p>Part 265, Subpart W DRGHW 265.441(c), 265.443(a)(4)(i), 265.443(b) introductory paragraph, 265.445(b)</p> <p>Part 265, Subpart AA DRGHW 265.1033(f)(2)(ii), 265.1035(b)(2) introductory paragraph, 265.1035(b)(2)(i), 265.1035(c)(4)(i), 265.1063(b)(4)(ii)</p> <p>Part 265, Subpart CC DRGHW 265.1080(a), 265.1085(h)(3) introductory paragraph, 265.1087(b), 265.1090(f)(1)</p>

Description of Federal Requirement (Revision Checklists ¹)	Federal Register	Delaware Authority ²
		<p>Part 265, Subpart DD DRGHW 265.1100(d), 265.1101(b)(4)(i)(B), 265.1101(b)(4)(iii), 265.1101(c)(3) introductory paragraph, 265.1101(d) introductory paragraph, 265 Appendix I/Tables 1 and 2, 265 Appendix V/Table, 265 Appendix VI [2016]</p> <p>Part 266, Subpart F DRGHW 266.70(a)</p> <p>Part 266, Subpart G DRGHW 266.80(a)/Table</p> <p>Part 266, Subpart H DRGHW 266.100(b)(2)(iii), 266.100(d)(3)(i)(A), 266.100(g) introductory paragraph, 266.102(a)(2)(vi), 266.102(e)(3)(i)(E), 266.102(e)(5)(i)(C), 266.102(e)(6)(ii)(B)(2), 266.102(e)(8)(iii), 266.103(a)(4)(vii), 266.103(b)(2)(v)(B)(2), 266.103(b)(5)(ii)(A), 266.103(b)(6)(viii)(A), 266.103(c)(1)(i), 266.103(c)(1)(ii)(A)(2), 266.103(c)(1)(ix) introductory paragraph, 266.103(c)(1)(ix)(A), 266.103(c)(4)(iv)(C)(1), 266.103(g)(1)(i), 266.106(d)(1), 266.109(a)(2)(ii), 266.109(b) introductory paragraph</p> <p>Part 266, Subpart N DRGHW Part 266 subpart N heading</p> <p>Part 266, Appendices DRGHW Part 266 Appendix III-VI, VIII, IX, and XIII</p>

Description of Federal Requirement (Revision Checklists ¹)	Federal Register	Delaware Authority ²
<p>40 CFR 270.1(c)(1)(iii), 270.1(c)(3)(i) introductory paragraph, 270.2</p> <p>40 CFR 270.10(j), 270.11(d)(1)-(2), 270.13(k)(7), 270.14(a), 270.14(b)(11)(ii)(B), 270.14(b)(19)(iii), 270.14(b)(21), 270.17(f), 270.18(b), 270.18(g), 270.20(i)(2), 270.26(c)(15)</p>		<p>Part 268, Subpart A DRGHW 268.2(g), 268.4(a)(3) introductory paragraph, 268.6(c)(5) introductory paragraph, 268.7(a)(1) [more stringent provision], 268.7(a)(3)(ii), 268.7(a)(4)/Table (entry 8), 268.7(b)(3)(ii)/Table (entry 5), 268.7(b)(4)(ii), 268.7(c)(2) [2016], 268.7(d) introductory paragraph, 268.7(d)(1) introductory paragraph, 268.7(d)(1)(i)-(iii), 268.7(d)(2)-(3)</p> <p>Part 268, Subpart B DRGHW 268.14(b)-(c)</p> <p>Part 268, Subpart D DRGHW 268.40(g), 268.40/Table “Treatment Standards for Hazardous Wastes,” 268.42/Table 1, 268.44(c), 268.45/Table 1, 268.48/Table “Universal Treatment Standards,” 268.49(d)</p> <p>Part 268, Subpart E DRGHW 268.50(c) and (g), Part 268 Appendix VIII</p> <p>DRGHW 122.1(a)(2), 122.1(c)(1)(iii), 122.1(c)(3)(i) introductory paragraph, 122.2</p> <p>DRGHW 122.10(j), 122.11(d)(1)-(2), 122.13(k)(7), 122.14(a), 122.14(b)(11)(ii)(B), 122.14(b)(19)(iii), 122.14(b)(21), 122.17(f), 122.18(b) and (g), 122.20(i)(2), 122.26(c)(15)</p>

Description of Federal Requirement (Revision Checklists ¹)	Federal Register	Delaware Authority ²
<p>40 CFR 270.33(b) introductory paragraph</p> <p>40 CFR 270.41(c), 270.42(d)(2)(i), 270.42 Appendix I</p> <p>40 CFR 270.70(a) introductory paragraph, 270.72(b)(2)</p>		<p>DRGHW 122.33(b) introductory paragraph</p> <p>DRGHW 122.41(c), 122.42(d)(2)(i), 122.42 Appendix I</p> <p>DRGHW 122.70(a) introductory paragraph, 122.72(b)(2)</p> <p>Part 273, Subpart A DRGHW 273.9</p> <p>Part 273, Subpart B DRGHW 273.13(b) introductory paragraph, 273.14(a)</p> <p>Part 273, Subpart C DRGHW 273.34(a)</p> <p>Part 279, Subpart A DRGHW 279.1</p> <p>Part 279, Subpart B DRGHW 279.10(b)(2), 279.11, 279.11/Table 1</p> <p>Part 279, Subpart E DRGHW 279.43(c)(3)(i), 279.43(c)(5), 279.44(a), 279.44(c)(2), 279.45(a)</p> <p>Part 279, Subpart F DRGHW 279.52, 279.55(a) introductory paragraph, 279.55(b)(2)(i)(B) [2016], 279.56(a)(2), 279.57(a)(2)(ii), 279.59</p> <p>Part 279, Subpart G DRGHW 279.63(b)(3), 279.64(e)</p>

Description of Federal Requirement (Revision Checklists¹)	Federal Register	Delaware Authority²
		Part 279, Subpart H DRGHW 279.70(b)(1)
Cathode Ray Tubes Rule, Revision Checklist 215	71 FR 42928, 7/28/2006	DRGHW 260.10, 261.4(b)(16), 261.39, 261.40, 262.20 (Certain portions of the regulations are considered broader in scope; see discussion in Section H.1(a)).

¹A Revision Checklist is a document that addresses the specific revisions made to the Federal regulations by one or more related final rules published in the **Federal Register**. EPA develops these checklists as tools to assist States in developing their authorization applications and in documenting specific State analogs to the Federal regulations. For more information see EPA's RCRA State Authorization web page at <https://www.epa.gov/rcra/state-authorization-under-resource-conservation-and-recovery-act-rcra>.

²Unless otherwise indicated, all Delaware citations are from the state's 2009 regulations. Minor modifications that became effective in 2016, but for which the exact effective date is unknown are denoted with a "[2016]" following the regulatory citation.

2. *State-Initiated Changes*

Delaware's program revision application includes State-initiated changes that are not directly related to any of the Revision Checklists in Table 1. These State-initiated revisions to some of Delaware's existing regulations are for the purposes of correcting errors and adding consistency or clarification to the existing regulations. EPA has evaluated the changes and has determined that the State's regulations remain consistent with, and are no less stringent than, the corresponding Federal regulations. EPA grants Delaware final authorization for the State provisions listed in Table 2. The following State-initiated revisions are equivalent and analogous to the numerically identical provisions of the Federal RCRA regulations found at relevant or applicable 40 CFR sections as of July 1, 2007.

Table 2 – Equivalent State-Initiated Changes

Federal RCRA citation (40 CFR)	State citation (DRGHW)
262.21	262.21
262.23	262.23
263.21, 264/265.72	263.21, 264/265.72
264/265.119, 264/265.276	264/265.119, 264/265.276
264.143(h), 264.145(h), 265.143(g), 265.145(g), 264.151(a) and (m)	264.143(h), 264.145(h), 265.143(g), 265.145(g), 264.151(a) and (m)
264.151(a)(1) Section 8(c)	264.151(a)(1) Section 8(c)
266, Appendix IX	266, Appendix IX

H. Where are the Revised Delaware Rules Different From the Federal Rules?

1. Delaware Requirements That Are Broader in Scope

The Delaware hazardous waste program contains certain provisions that are broader in scope than the Federal program. These broader in scope provisions are not part of the program being authorized by this action. EPA cannot enforce requirements that are broader in scope, although compliance with such provisions is required by Delaware law. Examples of broader in scope provisions of Delaware's program include, but are not limited to, the following:

(a) DRGHW 260.10 includes the definition of "cathode ray tube (CRT) generator," which is not found in the Federal regulations. Furthermore, the definition of "CRT processing" found at DRGHW 260.10, and the requirements at DRGHW 261.39, DRGHW 261.40, and DRGHW 261.4(b)(16)(i)-(iii), contain language regarding the management of cathode ray tubes as a solid waste. Under the Federal requirements, used CRTs that meet certain conditions are not a solid waste and would not be regulated. Delaware continues to regulate those used CRTs even if they meet the Federal exclusion requirements. As a result, Delaware's regulation of these excluded CRTs goes beyond the scope of the Federal program and is not a part of the Federally enforceable program.

(b) The Delaware regulations promulgated at DRGHW 263 Subpart E outline provisions for hazardous waste transporter permits. Because there is no counterpart in the Federal regulations that addresses hazardous waste transporter permits, this entire section (DRGHW 263 Subpart E) is broader in scope. Delaware has made changes to subparagraphs 263.102(b)(3) and (4) of DRGHW 263 Subpart E. These subparagraphs set forth conditions that could lead to the modification, denial, termination, or revocation of a hazardous waste transporter permit. There are no provisions in the Federal regulations that address the modification, denial, termination, or revocation of a hazardous waste transporter permit. As a result, these DRGHW provisions go beyond the scope of the Federal program.

2. Delaware Requirements That Are More Stringent Than the Federal Program

Delaware's hazardous waste program contains several provisions that are more stringent than the RCRA program. The more stringent provisions are part of the Federally-authorized program and are, therefore, Federally-enforceable. The specific more stringent provisions are also noted in Table 1 and in Delaware's authorization application. They include, but are not limited to, the following:

(a) The Federal regulations at 40 CFR 261.5(j) state that if a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to the "Standards for the Management of Used Oil." However, Delaware's regulations at DRGHW 261.5(j) state that if a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to several standards including: the Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Standards Applicable to Generators of

Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Standards for the Management of Specific Types of Hazardous Waste; Land Disposal Restrictions; the Hazardous Waste Permit Program; and Procedures for Decision Making. Because Delaware imposes additional standards on waste and used oil mixtures, Delaware's regulations are more stringent than the Federal requirements.

(b) DRGHW 261.41 includes more stringent requirements, at DRGHW 261.41(a), which are not found in 40 CFR 261.41. Specifically, the Delaware provision imposes additional requirements on used, intact Cathode Ray Tubes (CRTs) exported for reuse. When applied to CRTs that are regulated by the Federal requirements, the provisions at DRGHW 261.41(a) are more stringent than the Federal requirements.

(c) The Delaware regulations at DRGHW 262.12(d) require that a generator submit a "RCRA Subtitle C Site Identification Form" (EPA Form 8700-12) whenever there is a change in name, mailing address, contact person, contact address, telephone number, ownership, type of regulated waste activity, description of regulated wastes managed, or if the generator permanently ceases the regulated waste activity. This notification must be submitted to the DNREC Secretary no less than 10 days prior to the implementation of the change(s). The Federal regulations at 40 CFR 262.12 do not require the submission of a "RCRA Subtitle C Site Identification Form" (EPA Form 8700-12) whenever there is a change in name, mailing address, contact person, contact address, telephone number, ownership, type of regulated waste activity, description of regulated wastes managed, or if the generator permanently ceases the

regulated waste activity. Therefore, this provision of Delaware's regulations is more stringent than the Federal requirement.

(d) The Federal requirements in 40 CFR 262.20 detail the procedures generators must follow when preparing a manifest. The paragraph at 40 CFR 262.20(e) includes conditions whereby generators that generate more than 100 kilograms, but less than 1000 kilograms in a calendar month would be exempt from the manifest requirements. Delaware's regulations at DRGHW 262.20 also include guidelines for the preparation of a manifest. However, paragraph 262.20(e) in the DRGHW is labeled as "Reserved". Therefore, the manifest exemption for generators that generate more than 100 kilograms, but less than 1000 kilograms of hazardous waste in a calendar month that is included in the CFR is excluded from Delaware's regulations. Thus, Delaware regulations are considered to be more stringent.

(e) The Federal regulations promulgated at 40 CFR 262.44 state that generators who generate more than 100 kilograms, but less than 1000 kilograms of hazardous waste in a calendar month are subject to reporting and recordkeeping requirements in 40 CFR 262.40(a), (c), and (d); 40 CFR 262.42(b); and 40 CFR 262.43. Delaware's regulations impose additional reporting and recordkeeping requirements on these generators. Specifically, Delaware's regulations at DRGHW 262.44 call for generators who generate more than 100 kilograms, but less than 1000 kilograms to follow the reporting and recordkeeping requirements in DRGHW 262.40(a), (b), (c), and (d); DRGHW 262.42(b); and DRGHW 262.43. Therefore, Delaware's regulations are more stringent than the Federal regulations.

(f) The Delaware regulations at DRGHW 265.176(b) require the owner(s) or operator(s) of waste treatment, storage, and disposal facilities to take precautions to prevent accidental

ignition or reaction of ignitable or reactive waste. Specifically, owner(s) or operator(s) must implement preventative measures including: separating and protecting ignitable or reactive waste from sources of ignition or reaction, confining smoking and open flame to specially designated locations while ignitable or reactive waste is being handled, and conspicuously placing “No smoking” signs wherever there is a hazard from ignitable or reactive waste. The Federal regulation promulgated at 40 CFR 265.176 does not include provisions for owner(s) or operator(s) of waste treatment, storage, and disposal facilities to prevent accidental ignition or reaction of ignitable or reactive waste. Hence, Delaware’s regulation is more stringent.

(g) The Federal regulations at 40 CFR 268.7 include testing, tracking, and recordkeeping requirements for generators, treaters, and disposal facilities. The provision at 40 CFR 268.7(a)(1) states that a generator must determine whether its hazardous waste must be treated before it can be land disposed. It also says that generators can make this determination by either testing the waste or using knowledge of the waste. The provision also gives generators the option to send their waste to a RCRA-permitted hazardous waste facility, where the facility would have to test the hazardous waste. Delaware also has testing, tracking, and recordkeeping requirements for generators, treaters, and disposal facilities, which can be found at DRGHW 268.7. Delaware’s regulations at DRGHW 268.7(a)(1) require that generators determine whether their hazardous waste must be treated before it can be land disposed. Similar to the federal requirements, Delaware’s regulations state that generators can either test the waste or use knowledge of the waste to make this determination. However, Delaware’s regulations do not include a provision to allow generators to send their waste to a RCRA-permitted facility for testing. Therefore, Delaware’s requirements are more stringent than Federal requirements.

(h) The Delaware regulations promulgated at DRGHW 279.10(i) state that marketers and burners of used oil who market used oil containing any quantifiable level of polychlorinated biphenyls (PCBs) are subject to both the “Standards for the Management of Used Oil” set forth in DRGHW Part 279 and the requirements found at 40 CFR 761.20(e). The Federal regulations at 40 CFR 279.10(i), however, list the criteria whereby used oil containing PCBs may become subject to both the “Standards for the Management of Used Oil” and the requirements of 40 CFR Part 761. As a result, under the Federal regulations, marketers and burners of used oil who market used oil containing PCBs may be subject to either the requirements of 40 CFR Part 279 or the requirements of 40 CFR Part 761. Because Delaware always requires compliance with both parts of the regulations, Delaware’s regulations are more stringent.

(i) The Delaware regulations at DRGHW 279.22(b)(3) state that containers and aboveground tanks utilized to store used oil at generator facilities must be closed during storage, except when it is necessary to add or remove oil. The Federal regulations at 40 CFR 279.22(b) do not require that containers and aboveground storage tanks remain closed during storage, thereby making Delaware’s regulations more stringent.

I. Who Handles Permits After the Authorization Takes Effect?

After this authorization revision, Delaware will continue to issue permits covering all the provisions for which it is authorized and will administer all such permits. EPA will continue to administer any RCRA hazardous waste permits or portions of permits that it issued prior to the effective date of this authorization until the timing and process for effective transfer to the State are mutually agreed upon. Until such time as EPA formally transfers responsibility for a permit

to Delaware and EPA terminates its permit, EPA and Delaware agree to coordinate the administration of such permit in order to maintain consistency. EPA will not issue any more new permits or new portions of permits for the provisions listed in Section G after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Delaware is not yet authorized.

J. How Does This Action Affect Indian Country (18 U.S.C. 115) in Delaware?

Delaware is not seeking authority to operate the program on Indian lands, since there are no Federally-recognized Indian Lands in Delaware.

K. What Is Codification and Is EPA Codifying Delaware’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 action by referencing the authorized State rules in 40 CFR part 272. EPA reserves the amendment of 40 CFR part 272, subpart I, for this authorization of Delaware’s program revisions until a later date.

L. Administrative Requirements

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). Therefore, this action is not subject to review by OMB. This action

authorizes State requirements pursuant to RCRA section 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 pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). In any case, Executive Order 13175 does not apply to this rule since there are no Federally recognized tribes in Delaware.

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 concern environmental health or safety risks that may disproportionately affect children. 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 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 satisfies the requirements of RCRA. Thus, the requirements of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 3701, et seq.) do not apply. 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. 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. 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.). 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 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. 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 is effective **[INSERT DATE 60 DAYS AFTER 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, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

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: July 27, 2017.

Cecil Rodrigues,
Acting Regional Administrator,
U.S. EPA Region III.

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