



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R05-RCRA-2017-0381; FRL-9967-23-Region 5]

Ohio: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Ohio has applied to EPA for Final Authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Ohio's application with regards to federal requirements, and is proposing to authorize the state's changes.

DATES: Comments on this proposed rule must be received on or before **[insert date 30 days after the date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-RCRA-2017-0381 by one of the following methods:

http://www.regulations.gov: Follow the on-line instructions for submitting comments.

E-mail: westefer.gary@epa.gov.

Mail: Gary Westefer, Ohio Regulatory Specialist, LR-17J, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand Delivery: Gary Westefer, LR-17J, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the normal

business hours of operation; special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID Number EPA-R05-RCRA-2017-0381. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, 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 or 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 <http://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 of the information is not publicly available; e.g., CBI or other

information for which 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 <http://www.regulations.gov> or in hard copy. You may view and copy Ohio's application from 9:00 a.m. to 4:00 p.m. at the following addresses: U.S. EPA Region 5, LR-17J, 77 West Jackson Boulevard, Chicago, Illinois, contact: Gary Westefer (312) 886-7450; or Ohio Environmental Protection Agency, Lazarus Government Center, 50 West Town Street, Suite 700, Columbus, Ohio, contact: Katherine (Kit) Arthur (614) 644-2932.

FOR FURTHER INFORMATION CONTACT: Gary Westefer, Ohio Regulatory Specialist, U.S. EPA Region 5, LR-17J, 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 have made a tentative decision that Ohio's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Ohio final authorization to operate its hazardous waste program with the changes described in the authorization application. Ohio 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 Ohio, including issuing permits, until the state is granted authorization to do so.

C. What Will be the Effect if Ohio is Authorized for These Changes?

If Ohio is authorized for these changes, a facility in Ohio subject to RCRA will have to comply with the authorized state requirements instead of the corresponding federal requirements in order to comply with RCRA. Additionally, such facilities will have to comply with any applicable federal requirements such as, for example, HSWA regulations issued by the EPA for which the state has not received authorization. Ohio continues to have enforcement authorities and 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, authority to:

1. Conduct inspections which may include but are not limited to requiring monitoring, tests, analyses and/or reports;

1. Enforce RCRA requirements which may include but are not limited to suspending, terminating, modifying and/or revoking permits; and
3. Take enforcement actions regardless of whether the state has taken its own actions.

The action to approve these revisions will not impose additional requirements on the regulated community because the regulations for which Ohio is requesting authorization are already effective under state law, and will not be changed by the act of authorization.

D. What Happens if EPA Receives Adverse Comments On This Action?

If EPA receives adverse comments on this authorization, we will address all public comments in a later Federal Register. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. What Has Ohio Previously Been Authorized for?

Ohio initially received final authorization on June 28, 1989, effective June 30, 1989 (54 FR 27170, June 28, 1989) to implement the RCRA hazardous waste management program. Subsequently the EPA granted authorization for changes to the Ohio program effective June 7, 1991 (56 FR 14203, April 8, 1991) as corrected June 19, 1991, effective August 19, 1991 (56 FR 28088); effective September 25, 1995 (60 FR 38502, July 27, 1995); effective December 23, 1996 (61 FR 54950, October 23, 1996); effective January 24, 2003 (68 FR 3429, January 24, 2003); effective January 20, 2006, (71 FR 3220, January 20, 2006); effective October 29, 2007, (72 FR 61063, October 29, 2007, and effective March 19, 2012 (77 FR 25966, March 19, 2012).

F. What Changes Are We Proposing with This Action?

On June 13, 2017, Ohio submitted a final program revision application, seeking authorization of changes in accordance with 40 CFR 271.21. We have determined that Ohio’s hazardous waste program revisions satisfy all of the requirements necessary to qualify for Final Authorization. We are now proposing to authorize, subject to receipt of written comments that oppose this action, Ohio’s hazardous waste program revision. We propose to grant Ohio Final Authorization for the following program changes:

Table 1– Ohio’s Analogs to the Federal Requirements

Description of Federal Requirement	<u>Federal Register</u> date and page	Analogous State Authority
Deferral of LDR Phase IV Standards for PCB’s as a Constituent Subject to Treatment in Soil Checklist 190	December 26, 2000 65 FR 81373	OAC 3745-270-32, 3745-270-48, 3745-270-49 Effective September 5, 2010
Zinc Fertilizers Made from Recycled Hazardous Secondary Materials Checklist 200	July 24, 2002 67 FR 48393	OAC 3745-51-04, 3745-266-20, 3745-270-40 Effective September 5, 2010
Land Disposal Restrictions: National Treatment Variance to Designate New Treatment Subcategories for Radioactively Contaminated Cadmium, Mercury, and Silver Containing Batteries: Checklist 201	October 7, 2002 67 FR 62617	OAC 3745-270-40 Effective September 5, 2010
Hazardous Waste Management System: Modification of the Hazardous Waste Program: Mercury Containing Equipment Checklist 209	August 5, 2005 70 FR 45507	OAC 3745-50-10, 3745-50-45, 3745-51-09, 3745-54-01, 3745-65-01, 3745-270-01, 3745-273-01, 3745-273-04, 3745-273-09, 3745-273-13, 3745-273-14, 3745-273-32, 3745-273-33, 3745-273-34 Effective September 5, 2010
Resource Conservation	April 4, 2006	OAC 3745-50-24, 3745-50-44,

and Recovery Act Burden Reduction Initiative Checklist 213	71 FR 16861	3745-50-51, 3745-51-04, 3745-54-16, 3745-54-52, 3745-54-56, 3745-54-73, 3745-54-98, 3745-54-99, 3745-54-100, 3745-55-13, 3745-55-15, 3745-55-20, 3745-55-43, 3745-55-45, 3745-55-47, 3745-55-91, 3745-55-92, 3745-55-93, 3745-55-95, 3745-56-51, 3745-56-80, 3745-57-43, 3745-57-47, 3745-57-74, 3745-57-81, 3745-57-83, 3745-57-84, 3745-65-16, 3745-65-52, 3745-65-56, 3745-65-73, 3745-65-93, 3745-66-13, 3745-66-15, 3745-66-20, 3745-66-43, 3745-66-45, 3745-66-47, 3745-66-91, 3745-66-92, 3745-66-93, 3745-66-95, 3745-66-101, 3745-67-21, 3745-67-24, 3745-67-80, 3745-68-05, 3745-69-41, 3745-69-43, 3745-69-44, 3745-205-101, 3745-256-101, 3745-266-102, 3745-266-103, 3745-270-07, 3745-270-09 Effective September 5, 2010
Hazardous Waste Management System: Modification of the Hazardous Waste Program: Cathode Ray Tubes Checklist 215	July 28, 2006 71 FR 42927	OAC 3745-50-10, 3745-51-04, 3745-51-39, 3745-51-40, 3745-51-41 Effective September 5, 2010
Regulation of Oil-Bearing Hazardous Secondary Materials from the Petroleum Refining Industry Processed in a Gasification System to Produce Synthesis Gas Checklist 216	January 2, 2008 73 FR 57	OAC 3745-50-10, 3745-51-04 Effective September 5, 2010
NESHAP: National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Waste Combustors; Amendments Checklist 217	April 8, 2008 73 FR 18970	OAC 3745-57-40 Effective September 5, 2010
Hazardous Waste	June 4, 2008	OAC 3745-51-31

Management System: Identification and Listing of Hazardous Waste: Amendment to Hazardous Waste Code F 019 Checklist 218	73 FR 31756	Effective September 5, 2010
Standards Applicable to Generators of Hazardous Waste: Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material at Laboratories Owned by Colleges and Universities and Other Eligible Academic Entities Formally Affiliated with Colleges and Universities Checklist 220	December 1, 2008 73 FR 72991	OAC 3745-51-05, 3745-52-10, 3745-52-200, 3745-52-201, 3745-52-202, 3745-52-203, 3745-52-204, 3745-52-205, 3745-52-206, 3745-52-207, 3745-52-208, 3745-52-209, 3745-52-210, 3745-52-211, 3745-52-212, 3745-52-213, 3745-52-214, 3745-52-215, 3745-52-216 Effective September 5, 2010

Table 2 – Equivalent State Initiated Changes

State Initiated Change: Manifest Rules	Ohio rules amended per request of HQ memo dated 5/14/2007, regarding manifest rule errors	OAC 3745-54-72, 3745-65-72 Effective September 5, 2010
State Initiated Change: Performance Track	Ohio rules amended per HQ memo dated 3/16/2009, that ended the Performance Track Program	OAC 3745-50-10, 3745-50-51, 3745-52-34, 3745-52-211, 3745-54-15, 3745-65-15, 3745-66-74, 3745-66-95, 3745-66-101, 3745-205-101, 256-101 Effective September 5, 2010
State Initiated Change: Hazardous Waste and	Hazardous Waste and Used Oil:	OAC 3745-50-27, 3745-51-31, 3745-51-33, 3745-54-01, 3745-54-73,

Used Oil: Corrections to 40 CFR	Corrections to 40 CFR (Additional corrections from Checklist 214)	3745-54-97, 3745-54-101, 3745-55-11, 3745-55-40, 3745-55-51, 3745-55-93, 3745-56-21, 3745-56-23, 3745-57-03, 3745-57-04, 3745-57-06, 3745-57-72, 3745-57-74, 3745-57-75, 3745-65-73, 3745-66-11, 3745-66-12, 3745-66-40, 3745-67-21, 3745-67-24, 3745-67-28, 3745-67-55, 3745-67-59, 3745-68-03, 3745-68-05, 3745-68-16, 3745-69-43, 3745-69-45, 3745-205-101, 3745-256-101, 3745-266-109, 3745-270-04, 3745-270-07, 3745-270-42, 3745-270-45, 3745-273-34, 3745-279-01, 3745-279-11, 3745-279-43, 3745-279-52, Effective September 5, 2010
State Initiated Changes	Ohio Rules Reviewed per 119.032, State Initiated Changes (housekeeping)	3745-50-10, 3745-50-11, 3745-50-19, 3745-50-21, 3745-50-27, 3745-50-29, 3745-50-30, 3745-50-38, 3745-50-39, 3745-50-41, 3745-50-42, 3745-50-43, 3745-50-44, 3745-50-45, 3745-50-51, 3745-50-53, 3745-50-58, 3745-50-62, 3745-51-02, 3745-51-03, 3745-51-04, 3745-51-05, 3745-51-06, 3745-51-23, 3745-51-31, 3745-51-33, 3745-51-39, 3745-52-10, 3745-52-11, 3745-52-12, 3745-52-34, 3745-52-44, 3745-54-52, 3745-52-200, 3745-52-203, 3745-52-204, 3745-52-205, 3745-52-206, 3745-53-11, 3745-54-01, 3745-54-03, 3745-54-11, 3745-54-12, 3745-54-15, 3745-54-56, 3745-54-73, 3745-54-77, 3745-54-97, 3745-54-98, 3745-54-100, 3745-55-13, 3745-55-15, 3745-55-42, 3745-55-43, 3745-55-45, 3745-55-47, 3745-55-51, 3745-55-91, 3745-55-92, 3745-55-93, 3745-55-95, 3745-55-96, 3745-55-98, 3745-56-21, 3745-56-23, 3745-56-51, 3745-57-03, 3745-57-06, 3745-57-40, 3745-57-43, 3745-57-72, 3745-57-74, 3745-57-75, 3745-57-81, 3745-57-84, 3745-65-01, 3745-65-11, 3745-65-15, 3745-65-56, 3745-65-73, 3745-65-90, 3745-65-93, 3745-66-11, 3745-66-12, 3745-66-13, 3745-66-15, 3745-66-42, 3745-66-43, 3745-66-44, 3745-66-45, 3745-66-47, 3745-66-74, 3745-66-91,

		3745-66-92, 3745-66-93, 3745-66-95, 3745-66-96, 3745-66-98, 3745-66-101, 3745-67-21, 3745-67-55, 3745-67-59, 3745-68-03, 3745-68-05, 3745-68-10, 3745-68-16, 3745-69-30, 3745-69-41, 3745-69-43, 3745-69-44, 3745-69-45, 3745-205-100, 3745-205-101, 3745-205-200, 3745-205-201, 3745-256-101, 745-256-200, 3745-256-201, 3745-266-20, 3745-266-80, 3745-266-102, 3745-266-103, 3745-266-104, 3745-266-107, 3745-266-109, 3745-266-111, 3745-266-201, 3745-266-202, 3745-266-203, 3745-266-205, 745-266-210, 3745-266-260, 3745-270-01, 3745-270-04, 3745-270-07, 3745-270-09, 3745-270-40, 3745-270-42, 3745-270-45, 3745-270-48, 3745-270-49, 3745-273-09, 3745-273-13, 3745-273-33, 3745-273-60, 3745-279-01, 3745-279-11, 3745-279-42, 3745-279-51, 3745-279-52, 3745-279-62, 3745-279-73, Effective September 5, 2010
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G. Which Revised State Rules Are Different from the Federal Rules?

Ohio has excluded the non-delegable federal requirements at 40 CFR 268.5, 268.6, 268.42(b), 268.44, and 270.3. EPA will continue to implement those requirements.

Only recently receiving the statutory authority, Ohio has not adopted the rules for Subparts AA, BB and CC of 40 CFR Part 264. Until Ohio is authorized for such rules, the federal rules at 40 CFR Part 264 subpart AA, BB and CC and Part 265 subpart AA, BB and CC, which are promulgated under HSWA, still apply in Ohio. On July 14, 2006, U.S. EPA issued a rule making several hundred corrections to errors that had appeared in the *Code of Federal Regulations* (checklist 214). Ohio broke these corrections into several rule makings. Ohio was authorized for several of these rule corrections on March 19, 2012. In addition, a number of the

corrections had already been made in the state rules. This action will authorize several more of the corrections that appear in the U.S. EPA rulemaking of July 14, 2006.

Broader in Scope Rules: Ohio has proposed additions to its Universal Wastes that will add Antifreeze, Aerosol cans and Paint Wastes that are not already regulated as hazardous waste. As such they are not regulated under the RCRA subtitle C program by U.S. EPA, though Ohio EPA plans to regulate them under State law if those State additions go into effect.

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

Ohio 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 the Table above after the effective date of the authorization. EPA will continue to implement and issue permits for HSWA requirements for which Ohio is not yet authorized.

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

Ohio 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 Ohio;
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. What Is Codification and Is EPA Codifying Ohio's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the state's statutes and regulations that comprise the state's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized state rules in 40 CFR part 272. Ohio's authorized rules, up to and including those revised June 7, 1991, have previously been codified through the incorporation-by-reference effective February 4, 1992 (57 FR 4162). We reserve the amendment of 40 CFR part 272, subpart KK for the codification of Ohio's program changes until a later date.

K. Statutory and Executive Order Reviews

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

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

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

2. *Paperwork Reduction Act*

This proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed rule.

10. Executive Order 12988

As required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed 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 proposed 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 rulemaking 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 proposed rule is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994).

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: August 14, 2017.

Robert Kaplan,
Acting Regional Administrator, Region 5.

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