



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R10-RCRA-2018-0298; FRL-9983-15-Region 10]

Idaho: Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Idaho has applied to the EPA for authorization of certain changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. The EPA has reviewed Idaho's application and has determined that these changes satisfy all requirements needed to qualify for final authorization and is proposing to authorize the State's changes. The EPA seeks public comment prior to taking final action.

DATES: Comments on this proposed action must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-RCRA-2018-0298 by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- E-mail: mccullough.barbara@epa.gov.

- Mail: Barbara McCullough, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 155, Mail Stop OAW-150, Seattle, Washington 98101.
- Hand Delivery: Barbara McCullough, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 155, Mail Stop OAW-150, Seattle, Washington 98101. 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 No. EPA-R10-RCRA-2018-0298. The 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 www.regulations.gov or e-mail. The www.regulations.gov website is an “anonymous access” system, which means the 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 the 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 through www.regulations.gov, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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 the EPA's public docket visit the EPA Docket Center homepage at www.epa.gov/dockets.

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 at the EPA Region 10 Library, 1200 Sixth Avenue, First Floor Lobby, Seattle, Washington 98101. The EPA Region 10 Library is open from 9:00 a.m. to noon, and 1:00 to 4:00 p.m. PST Monday through Friday, excluding legal holidays. The EPA Region 10 Library telephone number is (206) 553-1289.

FOR FURTHER INFORMATION CONTACT: Barbara McCullough, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 155, Mail Stop OAW-150, Seattle, Washington 98101, e-mail: mccullough.barbara@epa.gov or phone number (206) 553-2416.

SUPPLEMENTARY INFORMATION:

I. Proposed Authorization Revision

A. Why are revisions to state programs necessary?

States that 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 their 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 codified in Title 40 of the Code of Federal Regulations (CFR) Parts 124, 260 through 268, 270, 273, and 279.

B. What decisions have we made in this proposed rule?

The EPA has determined that Idaho's application to revise its authorized program meets the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Idaho final authorization to operate its hazardous waste management program with the changes described in the authorization application. Idaho will continue to 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 the EPA promulgates under the authority of HSWA, and which are not less stringent than existing requirements, take effect in authorized States before the States are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Idaho, including issuing permits, until Idaho is granted authorization to do so.

C. What is the effect of this proposed authorization decision?

If Idaho is authorized for these changes, a facility in Idaho subject to RCRA will have to comply with the authorized State requirements in lieu of the corresponding Federal requirements to comply with RCRA. Additionally, such facilities will have to comply with any applicable

Federal requirements, such as HSWA regulations issued by the EPA for which the State has not received authorization and RCRA requirements that are not supplanted by authorized State requirements. Idaho continues to have enforcement authorities and responsibilities under its State hazardous waste management program for violations of its program. However, the EPA retains authority under RCRA sections 3007, 3008, 3013, and 7003, which includes, among others, the authority to:

- Conduct inspections, which may include but is not limited to requiring monitoring, tests, analyses, and/or reports;
- Enforce RCRA requirements, which may include but is not limited to suspending, terminating, modifying, and/or revoking permits; and
- Take enforcement actions regardless of whether Idaho 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 Idaho is requesting authorization are already effective under State law and are not changed by the act of authorization.

D. What happens if the EPA receives comments on this action?

If the EPA receives comments on this action, we will address those comments in a later final action. You may not have another opportunity to comment. If you want to comment on this proposed authorization, you should do so at this time.

E. What has Idaho previously been authorized for?

Idaho initially received final authorization for its hazardous waste management program effective April 9, 1990 (55 FR 11015, March 26, 1990). Subsequently, the EPA authorized

revisions to the State's program effective June 5, 1992 (57 FR 11580, April 6, 1992), August 10, 1992 (57 FR 24757, June 11, 1992), June 11, 1995 (60 FR 18549, April 12, 1995), January 19, 1999 (63 FR 56086, October 21, 1998), July 1, 2002 (67 FR 44069, July 1, 2002), March 10, 2004 (69 FR 11322, March 10, 2004), July 22, 2005 (70 FR 42273, July 22, 2005), February 26, 2007 (72 FR 8283, February 26, 2007), December 23, 2008 (73 FR 78647, December 23, 2008), July 11, 2012 (77 FR 34229, June 11, 2012) and September 21, 2015 (80 FR 20726, August 20, 2015).

F. What changes are we proposing to authorize?

On March 29, 2018, Idaho submitted a program revision application to the EPA requesting authorization for all delegable Federal hazardous waste regulations codified as of July 1, 2016, incorporated by reference in IDAPA 58.01.05.000 *et seq*, which were adopted and effective in the State of Idaho on March 29, 2017. This authorization revision request includes the following federal rules for which Idaho is being authorized for the first time: Conditional Exclusions from Solid and Hazardous Waste for Solvent Contaminated Wipes(78 FR 46448, July 31, 2013) ; Conditional Exclusion for Carbon Dioxide Streams in Geologic Sequestration Activities (79 FR 350, January 3, 2014); Modification of the Hazardous Waste Manifest System- Electronic Manifests (79 FR 7518, February 7, 2014); Identification and Listing of Hazardous Waste- CFR Correction (79 FR 35290, June 20, 2014); Revisions to the Export Provisions of Cathode Ray Tube Rule (79 FR 36220, June 26, 2014); Definition of Solid Waste (80 FR 1694, January 13, 2015); Response to Vacatures of the Comparable Fuels Rule and the Gasification Rule (80 FR 18777, April 8, 2015); Disposal of Coal Combustion Residuals from Electric Utilities (80 FR 21302, April 17, 2015); Disposal of Coal Combustion Residuals from Electric Utilities-

Correction of the Effective Date (80 FR 37988, July 2, 2015); and Transboundary Shipments of Hazardous Wastes Between OECD Member Countries - Revisions to the List of OECD Member Countries (80 FR 37992, July 2, 2015).

The EPA proposes to authorize Idaho's revised hazardous waste program in its entirety through July 1, 2016, as described above. The EPA seeks public comment prior to taking final action.

G. Where are the revised State rules different from the Federal rules?

Under RCRA section 3009, the EPA may not authorize State law that is less stringent than the Federal program. Any State law that is less stringent does not supplant the Federal regulations. State law that is broader in scope than the Federal program requirements is not authorized. State law that is equivalent to, and State law that is more stringent than, the Federal program may be authorized, in which case those provisions are enforceable by the EPA. This section discusses certain rules in this proposed action where the EPA has made the finding that Idaho's program is broader in scope, and discusses certain portions of the Federal program that are not delegable to the State because of the Federal government's special role in foreign policy matters and because of national concerns that arise with certain decisions.

Idaho is currently broader in scope than the Federal program in its adoption of 40 CFR 260.43 (2015) and 40 CFR 261.4(a)(24) (2015) at IDAPA 58.01.05.004 and 58.01.05.005. Both of these regulations include provisions from the 2015 Definition of Solid Waste (DSW) Rule that have been vacated and replaced with the less stringent requirements found at 40 CFR 260.43 (2018) and 40 CFR 261.4(a)(24) and (25) (2018), which were reinstated from the 2008 DSW Rule. Idaho will be revising its regulations to include this update as required by the vacatur to be equivalent to the Federal program.

The EPA cannot delegate certain Federal requirements associated with the following rules: Modification of the Hazardous Waste Manifest System- Electronic Manifests (79 FR 7518, February 7, 2014), Revisions to the Export Provisions of Cathode Ray Tube Rule (79 FR 36220, June 26, 2014), and Transboundary Shipments of Hazardous Wastes Between OECD Member Countries - Revisions to the List of OECD Member Countries (80 FR 37992, July 2, 2015). Idaho has adopted these requirements and appropriately preserved EPA's authority to implement them.

H. Who handles permits after the authorization takes effect?

Idaho will continue to issue permits for all the provisions for which it is authorized and will administer the permits it issues. If the EPA issued permits prior to authorizing Idaho for these revisions, these permits would continue in force until the effective date of the State's issuance or denial of a State hazardous waste permit, at which time the EPA would modify the existing EPA permit to expire at an earlier date, terminate the existing EPA permit for cause, or allow the existing EPA permit to otherwise expire by its terms, except for those facilities located in Indian country. The EPA will not issue new permits or new portions of permits for provisions for which Idaho is authorized. The EPA will continue to implement and issue permits for HSWA requirements for which Idaho is not authorized.

I. How does this action affect Indian country (18 U.S.C. 1151) in Idaho?

Idaho 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 Idaho;
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 program revision does not extend to Indian country where the EPA will continue to implement and administer the RCRA program.

II. Statutory and Executive Order Reviews

This action proposes to revise the State of Idaho's authorized hazardous waste management program pursuant to section 3006 of RCRA and imposes no requirements other than those currently imposed by State law. This authorization complies with applicable executive orders and statutory provisions as follows:

A. Executive Order 12866

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), Federal agencies must determine whether the regulatory action is "significant", and therefore subject to OMB review and the requirements of the EO. The EO defines "significant regulatory action" as one that is likely to result in a rule that may: (1) have an annual effect on the economy of \$100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients

thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the EO. The EPA has determined that this proposed authorization is not a "significant regulatory action" under the terms of EO 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this proposed authorization does not establish or modify any information or recordkeeping requirements for the regulated community and only seeks to propose authorization for the pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing, and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in title 40 of the CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed authorization on small entities, small entity is defined as: (1) a small business defined by the Small Business Administration's size regulations at 13 CFR part 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. I certify that this proposed authorization will not have a significant economic impact on a substantial number of small entities because the proposed authorization will only have the effect of authorizing pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104-4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal

governments, in the aggregate, or to the private sector, of \$100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the rule an explanation why the alternative was not adopted.

Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. This proposed authorization contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments or the private sector. It proposes to impose no new enforceable duty on any state, local or tribal governments or the private sector. Similarly, the EPA has also determined that this proposed authorization contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, this proposed authorization is not subject to the requirements of Sections 202 and 203 of the UMRA.

E. Executive Order 13132: Federalism

This proposed authorization does not have federalism implications. It 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 various levels of government, as specified in E.O. 13132 (64 FR 43255, August 10, 1999). This document proposes to authorize pre-existing State rules. Thus, E.O. 13132 does not apply to this proposed authorization.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (59 FR 22951, November 9, 2000), requires the EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This proposed authorization does not have tribal implications, as specified in E.O. 13175 because the EPA retains its authority over Indian Country. Thus, E.O. 13175 does not apply to this proposed authorization.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5-501 of the E.O. has the potential to influence the regulation. This action is not subject to E.O. 13045 because it proposes to approve a state program.

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

This proposed authorization 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” as defined under E.O. 12866, as discussed in detail above.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), (Pub. L. 104-113, 12(d)) (15 U.S.C. 272), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Federal agency decides not to use available and applicable voluntary consensus standards. This proposed authorization does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

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

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. The EPA has determined that this proposed authorization will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. This proposed authorization does not affect the level of protection provided to human health or the environment because this document proposes to authorize pre-existing State rules which are equivalent to and no less stringent than existing Federal requirements.

K. The Congressional Review Act, 5 U.S.C. 801–808

The Congressional Review Act, 5 U.S.C. 801–808, 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).

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 proposed action is issued under the authority of sections 1006, 2002(a), 3006, and 3024 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6905, 6912(a), 6926, and 6939g.

Dated: August 22, 2018.

Chris Hladick,

Regional Administrator, EPA Region 10.

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