



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[EPA-R05-RCRA-2017-0381; FRL-9985-15-Region 5]

### Michigan: Proposed Authorization of State Hazardous Waste Management Program Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

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

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

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R5-RCRA-2017-0381 at [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from [www.regulations.gov](http://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit comments 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>.

**FOR FURTHER INFORMATION, CONTACT:** Judith Greenberg, Region 5, RCRA/TSCA Programs Section, RCRA Branch, Land and Chemicals Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, LR-8J, Chicago, Illinois 60604, phone number: (312) 886-4179, email: [greenberg.judith@epa.gov](mailto:greenberg.judith@epa.gov).

**SUPPLEMENTARY INFORMATION:**

*A. Why are revisions to state programs necessary?*

States that 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 Michigan's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Michigan's final authorization to operate its hazardous waste program with the changes described in the authorization application. Michigan 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 program revision 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 Michigan, including issuing permits, until the State is granted authorization to do so.

*C. What will be the effect if Michigan is authorized for these changes?*

If Michigan is authorized for these changes as described in Michigan's authorization revision application, these changes will become a part of the authorized state hazardous waste program, and therefore will be federally enforceable. Michigan will continue to have primary enforcement authority and responsibility for its state hazardous waste program. EPA would retain its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections which may include but are not limited to requiring monitoring, tests, analyses and/or reports;
- Enforce RCRA requirements which may include, but are not limited to, suspending, terminating, modifying and/or revoking permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action, if approved, will not impose additional requirements on the regulated community because the regulations for which Michigan 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 Michigan previously been authorized for?*

Michigan initially received final authorization on October 16, 1986, effective October 30, 1986 (51 FR 36804-36805), to implement the RCRA hazardous waste management program. We granted authorization for changes to Michigan's program on November 24, 1989, effective January 23, 1990 (54 FR 48608); on January 24, 1991, effective June 24, 1991 (56 FR 18517); on October 1, 1993, effective November 30, 1993 (58 FR 51244); on January 13, 1995, effective January 13, 1995 (60 FR 3095); on February 8, 1996, effective April 8, 1996 (61 FR 4742); on November 14, 1997, effective November 14, 1997 (62 FR 61775); on March 2, 1999, effective June 1, 1999 (64 FR 10111); on July 31, 2002, effective July 31, 2002 (67 FR 49617); on March 9, 2006, effective March 9, 2006 (71 FR 12141); on January 7, 2008 (73 FR 1077), effective January 7, 2008; on March 2, 2010, effective March 2, 2010 (75 FR 9345); and on August 28, 2015 (80 FR 52194).

*F. What changes are we proposing with today's action?*

On March 2, 2018, Michigan submitted a final program revision application, seeking authorization of changes in accordance with 40 CFR 271.21. EPA proposes to make a final determination that Michigan's hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. Therefore, we are proposing to authorize, subject to receipt of written comments that oppose this action, the following program changes:

### Michigan's Analogs to the Federal Requirements

Description of Federal Requirement	Federal Register date and page	Analogous State Authority (MAC R 299.* * *, effective April 5, 2017, unless otherwise specified)
Conditional Exclusions for Solvent Contaminated Wipes, Checklist 229	July 13, 2013, 78 FR 46448	9105(bb), 9107(y), 9109(pp), and 9204(1)(z) and (2)(q)
Conditional Exclusion for Carbon Dioxide (CO2) Streams in Geologic Sequestration Activities, Checklist 230	January 3, 2014, 79 FR 350	9201(b), effective September 22, 1998, and 9204(13)
Hazardous Waste Electronic Manifest Rule, Checklist 231	February 7, 2014, 79 FR 7518	9103(a), (b), (o), and (ff), 9304(1)(c), (2), and (6), 9409(1) and (5); 9601(2)(c), effective December 16, 2004, 9608, 9608(1), (6), (7), and (9), and (12), and 11003(1)(l), (m) and (o)
Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule, Checklist 232	June 26, 2014, 79 FR 26220	9102(y), 9231(1)(f) and (7), and 11003(1)(i) and (j)
Revisions to the Definition of Solid Waste Checklist 233A	January 13, 2015, 80 FR 1694	9202(7), (8), and (9), and 11003(1)(i)
Revisions to the Definition of Solid Waste Checklist 233B	January 13, 2015, 80 FR 1694	9102(r), 9104(d), 9232, 9232(1), and 9202
Revisions to the Definition of Solid Waste Checklist 233C	January 13, 2015, 80 FR 1694	9107(bb)
Revisions to the Definition of Solid Waste Checklist 233D2	January 13, 2015, 80 FR 1694	9103(e), (s), and (aa), 9104, 9105(b), 9107(b), 9108(h), 9202(1)(b) and (aa), 9204, 9204(1)(aa) and (bb), 9202(6), (7), and (9), 9234(1) and (2), 9519((5)(a)(ix) and (x), and 11003(1)(i) and (j)
Revisions to the Definition of Solid Waste Checklist 233E	January 13, 2015, 80 FR 1694	9107(i), 9202(1)(b)(iii) and (1)(cc), 9233(1), (2), (3), and (4), and 11003(1)(j)
Response to Vacatures of the Comparable Fuels Rule and the Gasification Rule, Checklist 234	April 8, 2015, 80 FR 18777	9104(a), 9204(1)(l) and (w), and 9230
Disposal of Coal Combustion Residuals	April 17, 2015, 80 FR 21302	9204(2)(c), (d), and (e)

from Electric Utilities, Checklist 235		
---	--	--

**Table 2–Equivalent State-Initiated Changes**

State citation MAC R 299.* * *	Effective date(s) of State- initiated modification	Description of modification
9204(2)(h) (vii) and (x)	April 5, 2017	<p>A. The phrase “including waste scrap leather from automotive seat design activities” has been added to paragraph (vii) to clarify that such materials are included in the waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries category.</p> <p>A. Paragraph (x) has been added to include boiler chemical cleaning waste from electric utility boiler maintenance using water and tetra ammonium ethylene diamine tetra acetic acid (a.k.a. ammoniated EDTA) among the specific wastes that, if they meet the standards in subdivision (h), are not hazardous wastes for the purposes for Part 111, Hazardous Waste Management, of Michigan’s Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, and its rules</p>
9206(3)(q)	4/5/2017	The items considered textiles have been modified to reflect the new federal term “wipes” that the U.S. Environmental Protection Agency defined as part of the <i>Solvent-</i>

		<i>Contaminated Wipes Rule.</i>
9225	4/5/2017	Table 205b has been modified to remove duplicate entry for nitrobenzene and add back in 1,3-Pentadiene, which is part of the Part 111 rules, but was inadvertently deleted from the printed copies of the rules.
9226	4/5/2017	Certain state “U” wastes have been deleted from Table 205c.
9506, 9621, and 11001	4/5/2017	These rules have been revised to reflect updates to the ASTM standards.
9608(1)	4/5/2017	This subrule has been revised to clarify that if a facility receives a hazardous waste shipment from a conditionally exempt small quantity generator that is accompanied by a manifest, the facility is not required to submit a copy of that manifest to the director or his or her designee.

*G. Which revised state rules are different from the federal rules?*

Michigan 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.

Michigan 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 Michigan plans to regulate them under State law if those State additions go into effect.

Michigan’s program is 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 MAC R 299.9232 and R 299.9204(1)(bb). 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 of 40 CFR 260.43 (2008) and 40 CFR 261.4(a)(24) and (25) (2008) from the 2008 DSW Rule.”

*H. Who handles permits after the final authorization takes effect?*

Michigan 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 Michigan is not yet authorized.

*I. How does today’s action affect Indian Country (18 U.S.C. 1151) in Michigan?*

Michigan is not authorized to carry out its hazardous waste program in Indian Country within the State, as defined in 18 U.S.C. 1151. This includes:

1. All lands within the exterior boundaries of Indian reservations within the State of Michigan;
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, authorizing Michigan for these revisions would not affect Indian Country in Michigan. EPA would continue to implement and administer the RCRA program in Indian Country. It is EPA’s long-standing position that the term “Indian lands” used in past Michigan hazardous waste approvals is synonymous with the term “Indian Country.” Washington Dep’t of Ecology v. U.S. EPA, 752 F.2d 1465, 1467, n.1 (9<sup>th</sup> Cir. 1985). See 40 CFR 144.3 and 258.2.

*J. What is codification and is EPA codifying Michigan's hazardous waste program as authorized in this rule?*

Codification is the process of placing a state's statutes and regulations that comprise a 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. Michigan's rules, up to and including those revised October 19, 1991, have previously been codified through incorporation-by-reference effective April 24, 1989 (54 FR 7421, February 21, 1989); as amended effective March 31, 1992 (57 FR 3724, January 31, 1992). We reserve the amendment of 40 CFR part 272, subpart X, for the codification of Michigan'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 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 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 (2 U.S.C. §§1531-1538).

#### *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 this action 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).

*13. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as today's final authorization of Michigan's revised hazardous waste management program under RCRA are exempted under Executive Order 12866.

**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:** 42 U.S.C. 6905, 6912(a), 6926, and 6939g.

Dated: September 18, 2018.

Cathy Stepp,  
Regional Administrator, Region 5.  
[FR Doc. 2018-21883 Filed: 10/9/2018 8:45 am; Publication Date: 10/10/2018]