



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R06-RCRA- 2017- 0324; FRL-9990-04-Region 6]

Oklahoma: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On October 3, 2018, the Environmental Protection Agency (EPA) published a notice of proposed rulemaking (NPRM) to approve a revision to the State of Oklahoma hazardous waste program under the Resource Conservation and Recovery Act (RCRA) and provided for a thirty-day public comment period. The public comment period closed on November 2, 2018 and EPA received five comments. Two of the comments were irrelevant to the proposed rulemaking. EPA received written adverse comments from three sources not to grant the State of Oklahoma the authorized program. The EPA has reviewed and analyzed the concerns raised by the commenters, and now issues this final rule. After consideration of these concerns, EPA is confirming that the program revisions to the State of Oklahoma hazardous waste program satisfy all requirements needed to qualify for final authorization. No further opportunity for comment will be provided.

DATES: This final authorization is effective **[Insert date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. **EPA-R06-RCRA-2017-0324**. All documents in the docket are listed in www.regulation.gov index.

Although listed in the index, some of the information is not publicly available. e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically through www.regulation.gov or in hard copy. You can view and copy Oklahoma's application and associated publicly available materials from 8:30 a.m. to 4:00 p.m., Monday through Friday, at the following locations:

Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101-1677, (405) 702-7180 and EPA, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, phone number (214) 665-8533.

FOR FURTHER INFORMATION, CONTACT: Alima Patterson, (214) 665-8533, patterson.alima@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What revisions is EPA authorizing with this action?

On March 31, 2017, the Oklahoma Department of Environmental Quality (ODEQ) submitted a final complete program revision application seeking authorization of its program revision in accordance with 40 CFR 271.21. EPA now makes a final decision that ODEQ's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. EPA will continue to implement and enforce Hazardous and Solid Waste Amendments of 1984 (HSWA) provisions for which the State is not authorized. For a list of rules that become effective with this Final Rule, please see the NPRM published in the **Federal Register** at 83 FR 49900, October 3, 2018.

II. What were the comments and responses to EPA's proposal?

EPA received comments from five individuals regarding EPA's proposal to authorize revisions to Oklahoma's hazardous waste regulations. In accordance with 40 CFR part 271, EPA provides the following responses to comments regarding authorization of Oklahoma's requested RCRA subtitle C program revision:

Two commenters raised issues that are completely unrelated to this rulemaking and will not be addressed. An additional two commenters raised issues about a separate rulemaking involving a RCRA subtitle D program that is separate from this rulemaking and was addressed in our rulemaking approving Oklahoma's Coal Combustion Residual State program. See, 83 FR 30356; June 28, 2018. See also, Disposal of Coal Combustion Residuals from Electric Utilities 80 FR 21302; April 17, 2015. Those issues are outside the scope of this rulemaking. In addition, one of the commenters stated that EPA should vacate approval of the Oklahoma program because Oklahoma has a significant budget crisis and does not have adequate funds, staff or expertise to take on the task. While it seems that this question is about Oklahoma's Coal Ash program referenced above, and not this revision to Oklahoma's RCRA subtitle C program, we speak to this concern. We believe Oklahoma has the resources and staff expertise to adequately implement the RCRA subtitle C program. This is supported by EPA's oversight and the end-of-year review conducted on September 26, 2018. Oklahoma's overall progress, accomplishment of Performance Partnership Grant (PPG) workplan commitments, and achievement of Government Performance and Results Act (GPRA) goals were discussed and evaluated by EPA. See the FY 18 RCRA Hazardous Waste Program End-of-Year Report, dated October 24, 2018.

One commenter indicated that states should not be allowed to have regulations that are more stringent or broader in scope than those of the national government—that the rules should be

uniform across the country. RCRA directly addresses this issue, under RCRA section 3009 and 40 CFR 271.1(i), states are not precluded from having requirements that are broader in scope or requirements that are more stringent. In this rule, we are not making any broader in scope or more stringent determinations. See, Section G of the October 3, 2018 proposed rule, there are no state requirements that are more stringent or broader in scope than the federal requirements for which Oklahoma is seeking authorization. This same commenter stated that the proposed rule would allow Oklahoma officials to administer and regulate Subtitle C in Indian Country and that Native American land is considered sovereign land and should absolutely not be under the jurisdiction of state governments. EPA responds to this comment as follows: Nothing in this rulemaking authorizes Oklahoma to administer RCRA subtitle C programs in Indian country. This commenter also raised concerns about Oklahoma's proposed change that classifies fossil fuels as nonhazardous waste and that this waste needs to be properly disposed of to slow climate change. Our response is as follows: We believe the commenter is referring to a clarification to 40 CFR 261.4(b)(4) that wastes from the combustion of fossil fuels are not hazardous waste. Oklahoma is required to revise their State RCRA subtitle C program to conform to the Federal rule change. This change has nothing to do with disposal of fossil fuel residual, as noted above this is regulated by a separate RCRA subtitle D program and is beyond the scope of this rulemaking.

III. Final Action

Based on the proposal, administrative record and EPA's responses to the comments received regarding the proposed authorization of the State of Oklahoma hazardous waste management program, EPA is granting final authorization of the state's program. EPA retains its authority

under RCRA sections 3007, 3008, 3013 and 7003 which include, among others, authority to: (1) take enforcement actions regardless of whether the state has taken its own action, (2) enforce RCRA requirements and suspend or revoke permits; and (3) perform inspections, and require monitoring, tests, analyses or reports.

IV. What is codification and is the EPA codifying Oklahoma'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 Regulation (CFR). We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272 subpart LL for this authorization of Oklahoma's program changes until a later date. In this authorization application, the EPA is not codifying the rules documented in this **Federal Register** action.

V. Administrative Requirements

This final authorization revises Oklahoma's authorized hazardous waste management program pursuant to RCRA section 3006 and imposes no requirements other than those currently imposed by state law. For further information on how this authorization complies with applicable executive orders and statutory provisions, please see the proposed rulemaking published in the **Federal Register** (83 FR 49900, October 3, 2018).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian 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: March 7, 2019.

Anne Idsal,

Regional Administrator, Region 6.

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