



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 271**

**[EPA-R10-RCRA-2018-0298; FRL-9995-77-Region 10]**

**Idaho: Authorization of State Hazardous Waste Management Program Revisions**

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

**ACTION:** Final authorization.

**SUMMARY:** Idaho applied to the Environmental Protection Agency (EPA) for final authorization of certain changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. The EPA reviewed Idaho's application and has determined that these changes satisfy all requirements needed to qualify for final authorization. The EPA published a proposed rule on September 5, 2018, prior to taking this final action to authorize these changes. The EPA received five comments, one of which was supportive of this authorization action and four of which were not applicable to this authorization action.

**DATES:** This final authorization is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Barbara McCullough, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 155, Mail Stop 15-H04, Seattle, Washington 98101, e-mail: [mccullough.barbara@epa.gov](mailto:mccullough.barbara@epa.gov) or phone number (206) 553–2416.

**SUPPLEMENTARY INFORMATION:**

**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 266, 268, 270, 273, and 279.

Idaho State's hazardous waste management program was initially approved on March 26, 1990 and became effective on April 9, 1990. As explained in Section E in this document, it has been revised and reauthorized numerous times since then. On March 18, 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 is authorizing Idaho's revised hazardous waste program in its entirety through July 1, 2016, as described above.

#### **B. What decisions has the EPA made in this rule?**

The EPA has reviewed Idaho's application to revise its authorized program and has determined that it meets the statutory and regulatory requirements established by RCRA. Therefore, the EPA is granting 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 (18 U.S.C. 1151)) 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 authorization decision?**

A person in Idaho subject to RCRA must comply with the authorized State requirements in lieu of the corresponding Federal requirements. Additionally, such persons 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;
- Abate conditions that may present an imminent and substantial endangerment to human health and the environment;
- 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 were the comments received on this authorization action?**

The EPA published a proposed rule under Docket ID No. EPA-R10-2018-0298 on September 5, 2018 (83 FR 45068), prior to taking this final action to authorize these changes. The EPA received five comments during the public comment period of this action. All of the comments received are included in the docket for this action. One of the comments received was supportive of Idaho updating its hazardous waste program to continue its alignment with the federal hazardous waste program. The remaining four comments covered a variety of topics, including: a comparison between American regulations and Chinese regulations; hydroelectric powerplants; waste altering marine life in the ocean; and alleged violations of RCRA at the Department of Energy's Idaho National Laboratory. We do not consider these comments to be germane or relevant to this action and therefore not adverse to this action. The comments lack the required specificity to the proposed hazardous waste program regulatory revision and the relevant requirements of RCRA. Moreover, none of these four comments addressed a specific regulation or provision in question or recommended a different action on this authorization revision from what EPA proposed.

#### **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 is the EPA authorizing with this action?**

The EPA is authorizing revisions to Idaho's authorized program described in Idaho's official program revision application, submitted to the EPA on March 29, 2018, and deemed complete by the EPA on April 4, 2018. The EPA has determined that Idaho's hazardous waste management program revisions as described in the March 29, 2018 State's authorization revision application satisfy the requirements necessary to qualify for final authorization. Regulatory revisions that are less stringent than the Federal program requirements are not authorized. Idaho's authorized hazardous waste management program, as amended by these provisions, remains equivalent to, consistent with, and is no less stringent than the Federal RCRA program. Therefore, the EPA is authorizing the State for the following program changes: 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).

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

Under RCRA section 3009, the EPA may not authorize State rules that are less stringent than the Federal program. Any State rules that are less stringent do not supplant the Federal regulations. State rules that are broader in scope than the Federal program requirements are allowed but are not authorized. State rules that are equivalent to, and State rules that are 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 action where the EPA has made the finding that Idaho's program is more stringent, and also 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 more stringent 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 has 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?**

The EPA's decision to authorize the Idaho hazardous waste management program does not include any land that is, or becomes after the date of this authorization, "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 final rule revises 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 rule complies with applicable executive orders and statutory provisions as follows:

### **1. 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 final authorization is not a "significant regulatory action" under the terms of EO 12866 and is therefore not subject to OMB review.

## **2. 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 final authorization does not establish or modify any information or recordkeeping requirements for the regulated community and only seeks to finalize 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.

### **3. 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 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 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 final authorization will not have a significant economic impact on a substantial number of small entities because the final 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.

### **4. 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 final 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

final authorization contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, this final authorization is not subject to the requirements of Sections 202 and 203 of the UMRA.

## **5. Executive Order 13132: Federalism**

This final 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 authorizes pre-existing State rules. Thus, E.O. 13132 does not apply to this final authorization. In the spirit of E.O. 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicited comment on this authorization from State and local officials.

## **6. 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 final 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 final authorization.

## **7. 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 approves a state program.

## **8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use**

This final 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.

## **9. 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 authorization does not involve technical

standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

#### **10. 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 final authorization will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. This final authorization does not affect the level of protection provided to human health or the environment because this document authorizes pre-existing State rules which are equivalent to and no less stringent than existing Federal requirements.

#### **11. 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. The 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 final 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: June 13, 2019.

Michelle Pirzadeh,

Deputy Regional Administrator, EPA Region 10.

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