



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R05-RCRA-2018-0376; FRL-10008-91-Region 5]

INDIANA: Proposed Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

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

DATES: Comments must be received on or before *[insert date 45 days after the date of publication in the Federal Register]*.

ADDRESSES: Submit your comments by one of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *E-mail:* gromnicki.jean@epa.gov

Instructions: EPA must receive your comments by [*insert date 45 days after the date of publication in the Federal Register*]. Direct your comments to Docket ID Number EPA-R05-RCRA-2018-0376. 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 federal 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, 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 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 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 electronically in www.regulations.gov. For alternative access to docket materials, please contact the person identified in the “For Further Information Contact” section.

FOR FURTHER INFORMATION CONTACT: Jean Gromnicki, Indiana Regulatory Specialist, U.S. EPA Region 5, LL-17J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6162, e-mail: gromnicki.jean@epa.gov. The EPA Region 5 office is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID 19.

SUPPLEMENTARY INFORMATION:

A. Why are revisions to state programs necessary?

States that have received final authorization from 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 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 268, 270, 273, and 279.

New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized states at the same time that they take effect in unauthorized states. Thus, EPA will implement those requirements and prohibitions in Indiana, including the issuance of new permits implementing those requirements, until the State is granted authorization to do so.

B. What decisions has EPA made in this rule?

On January 23, 2020, Indiana submitted a complete program revision application seeking authorization of changes to its hazardous waste program that correspond to certain Federal rules promulgated between March 18, 2010 and April 8, 2015 (including RCRA Clusters XIX through XXIV). EPA concludes that Indiana's application to revise its authorized program meets all of the statutory and regulatory requirements established under RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, EPA proposes to grant Indiana final authorization to operate its hazardous waste program with the changes described in the authorization application, and as outlined below in Section F of this document.

Indiana has responsibility for permitting treatment, storage, and disposal facilities 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 HSWA, as discussed above.

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

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

- Conduct inspections, and require monitoring, tests, analyses and reports;
- Enforce RCRA requirements, including authorized State program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action will not impose additional requirements on the regulated community because the regulations for which EPA is proposing to authorize Indiana are already effective under state law and are not changed by today's proposed action.

D. What happens if EPA receives comments that oppose this action?

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

E. What has Indiana previously been authorized for?

Indiana initially received Final Authorization on January 31, 1986, effective January 31, 1986 (51 FR 3955) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on October 31, 1986, effective December 31, 1986 (51 FR 39752); January 5, 1988, effective January 19, 1988 (53 FR 128); July 13, 1989, effective September 11, 1989 (54 FR 29557); July 23, 1991, effective September 23, 1991 (56 FR 33717); July 24, 1991, effective September 23, 1991 (56 FR 33866); July 29, 1991, effective September 27, 1991 (56 FR 35831); July 30, 1991, effective September 30, 1991 (56 FR 36010); August 20, 1996, effective October 21, 1996 (61 FR 43018); September 1, 1999, effective November 30, 1999 (64 FR 47692); January 4, 2001 effective January 4, 2001 (66 FR 733); December 6, 2001 effective December 6, 2001 (66 FR 63331); October 29, 2004 (69 FR 63100) effective October 29, 2004; November 23, 2005 (70 FR 70740) effective November 23, 2005; and June 6, 2013 (78 FR 33986) effective June 6, 2013.

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

On January 23, 2020, Indiana submitted a final complete program revision application, seeking authorization of changes to its hazardous waste management program in accordance with 40 CFR 271.21. EPA proposes to determine, subject to receipt of written comments that oppose this action, that Indiana'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, EPA is proposing to authorize Indiana for

the following program changes:

Table 1 - Indiana's Analogs to the Federal Requirements

| Description of Federal Requirement | Federal Register date and page | Analogous state authority |
|---|--|---|
| Hazardous Waste Technical Corrections and Clarifications Checklist 223 | March 18, 2010; 75 FR 12989 and amended on June 4, 2010; 75 FR 31716 | 329 IAC 3.1-4-1(a); 3.1-4-1(b); 3.1-4-5 through 25.1; 3.1-6-1; 3.1-6-2(4); 3.1-6-2(7); 3.1-6-2(10); 3.1-6-3; 3.1-6-4; 3.1-7-1; 3.1-7-2(4); 3.1-8-1; 3.1-8-2(1); 3.1-8-2 (7); 3.1-8-4; 3.1-9-1; 3.1-9-2(8); 3.1-10-1; 3.1-10-2(11); 3.1-10-2(21); 3.1-11-1; 3.1-11-2(3); 3.1-12-1; 3.1-12-2(10); 3.1-13-1 Effective November 5, 2016 |
| Withdrawal of the Emission Comparable Fuel Exclusion under RCRA Checklist 224 | June 15, 2010; 75 FR 33712 | 329 IAC 3.1-6-1 Effective June 28, 2012 |
| Removal of Saccharin and Its Salts from the Lists of Hazardous Wastes Checklist 225 | December 17, 2010; 75 FR 78918 | 329 IAC 3.1-6.1; 3.1-12-1; 3.1-12-2(10) Effective June 28, 2012 |
| Academic Laboratories Generator Standards Technical Corrections Checklist 226 | December 20, 2010; 75 FR 79304 | 329 IAC 3.1-7-1 Effective June 28, 2012 |
| Revisions of the Land Disposal Treatment Standards for Carbamate Wastes Checklist 227 | June 13, 2011; 76 FR 34147 | 329 IAC 3.1-12-1; 3.1-12-2(10) Effective July 3, 2015 |
| Hazardous Waste Technical Corrections and Clarifications Checklist 228 | April 13, 2012; 77 FR 22229 | 329 IAC 3.1-6-1; 3.1-11-1 Effective July 3, 2015 |
| Conditional Exclusions for Solvent Contaminated | July 31, 2013; 78 FR 46448 | 329 IAC 3.1-4-1(a); 3.1-4-1(b); 3.1-4-5 through 25.1; 3.1-6-1; 3.1-6-2(13) Effective July 3, 2015 |

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|--|------------------------------|---|
| Wipes Checklist 229 | | |
| Conditional Exclusions for Carbon Dioxide Streams in Geologic Sequestration Activities Checklist 230 | January 3, 2014; 79 FR 350 | 329 IAC 3.1-4-1(a); 3.1-4-1(b); 3.1-4-5 through 25.1; 3.1-6-1 Effective July 3, 2015 |
| Hazardous Waste Electronic Manifest Rule Checklist 231 | February 7, 2014; 79 FR 7518 | 329 IAC 3.1-2; 3.1-3-1; 3.1-4-1(a); 3.1-4-1(b) through 25.1; 3.1-7-1; 3.1-8-1; 3.1-8-2(1); 3.1-8-2(2); 3.1-9-1; 3.1-9-2(8) Effective November 5, 2016 |
| Revisions to the Export Provisions of the Cathode Ray Tube Rule Checklist 232 | June 26, 2014; 79 FR 36220 | 329 IAC 3.1-4-1(a); 3.1-4-1(b); 3.1-4-5 through 25.1; 3.1-6-1 Effective November 5, 2016 |
| Revisions to the Definition of Solid Waste Checklist 233A | January 13, 2015; 80 FR 1694 | 329 IAC 3.1-5-4; 3.1-5-4(b); 3.1-5-7(a); 3.1-5-7(b) Effective November 5, 2016 |
| Revisions to the Definition of Solid Waste Checklist 233 C | January 13, 2015; 80 FR 1694 | 329 IAC 3.1-6-1; 3.1-6-2(3) Effective November 5, 2016 |
| Revisions to the Definition of Solid Waste Checklist 233E | January 13, 2015; 80 FR 1694 | 329 IAC 3.1-4-1(a); 3.1-4-1(b); 3.1-4-5 through 25.1; 3.1-6-1; 3.1-6-2(2) Effective November 5, 2016 |
| Response to Vacatures of the Comparable Fuels Rule and the Gasification Rule Checklist 234 | April 8, 2015; 80 FR 18777 | 329 IAC 3.1-4-1(a); 3.1-4-1(b); 3.1-4-5 through 25.1; 3.1-6-1 Effective November 5, 2016 |

Indiana is not seeking authorization for the transfer-based exclusion, at 40 CFR 261.4(a)(24) and (25), or the definition of legitimate recycling, at 40 CFR 260.43, at this time.

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

When revised state rules differ from the Federal rules in the RCRA state authorization process, EPA determines whether the state rules are equivalent to, more stringent than, or broader in scope than the federal program. Pursuant to Section 3009 of RCRA, 42 U.S.C. 6929, state programs may contain requirements that are more stringent than the federal regulations. Such more stringent requirements can be federally authorized and, once authorized, become federally enforceable. Although the statute does not prevent states from adopting regulations that are broader in scope than the federal program, states cannot receive federal authorization for such regulations, and they are not federally enforceable.

EPA considers the following State requirements to be more stringent than the Federal requirements:

329 IAC 3.1-6-3, because the State adds six hazardous wastes to the acute hazardous waste list that are not acute hazardous wastes in 40 CFR Part 261.

329 IAC 3.1-9-2, because the State maintains more stringent levels for groundwater protection for several of the constituents listed in Table 1 of 40 CFR 264.94.

These requirements are part of Indiana's authorized program and are federally enforceable.

Broader-in-scope requirements do not become part of the authorized program and EPA cannot

enforce them. Although regulated entities must comply with these requirements in accordance with State law, they are not RCRA requirements.

There are no state requirements in the program revisions Indiana seeks authorization for that are considered to be broader in scope than the Federal requirements.

EPA cannot authorize the Federal requirements at 40 CFR 268.5, 268.6, 268.42(b), 268.44, and 270.3. Indiana has excluded those non-delegable federal requirements. EPA will continue to implement those requirements.

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

When the Final Authorization takes effect, Indiana 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. EPA will not issue any new permits or new portions of permits for the provisions listed in the Table above after the effective date of the final authorization. EPA will continue to implement and issue permits for HSWA requirements for which Indiana is not yet authorized. EPA has the authority to enforce state-issued permits after the State is authorized.

I. How does today's action affect Indian country (18 U.S.C. 1151) in Indiana?

Indiana is not authorized to carry out its hazardous waste program in Indian country

within the State, which includes:

- All lands within the exterior boundaries of Indian reservations within or abutting the State of Indiana;
- Any land held in trust by the U.S. for an Indian tribe; and
- 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 jurisdiction over Indian country and will continue to implement and administer the RCRA program on these lands.

J. What is codification and will EPA codify Indiana’s hazardous waste program as proposed in this rule?

Codification is the process of placing citations and references to the State’s statutes and regulations that comprise the State’s authorized hazardous waste program into the Code of Federal Regulations. EPA does this by adding those citations and references to the authorized State rules in 40 CFR part 272. EPA is not proposing to codify the authorization of Indiana’s changes at this time. However, EPA reserves the ability to amend 40 CFR part 272, subpart P for the authorization of Indiana’s program changes at a later date.

K. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the

requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action proposes to authorize State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as today's proposed authorization of Indiana's revised hazardous waste program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action 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.*). Because this action proposes to authorize 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). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action 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 the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to authorize State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action 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 under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a state’s application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in proposing this 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. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 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. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). “Burden” is defined at 5 CFR 1320.3(b). 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. Because this action proposes authorization of pre-existing State rules which are at least equivalent to, and no less stringent than existing federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, this proposed rule is not subject to Executive Order 12898.

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, and 6974(b).

Dated: April 29, 2020.

Kurt Thiede,
Regional Administrator, Region 5.
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