



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 271 and 272

[EPA-R08-RCRA-2023-0033; FRL-10606-02-R8]

Montana: Final Authorization of State Hazardous Waste Management Program Revisions and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The State of Montana Department of Environmental Quality has applied to the Environmental Protection Agency (EPA) for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the State's changes through this direct final action. The EPA uses the regulations entitled "Approved State Hazardous Waste Management Programs" to provide notice of the authorization status of State programs and to incorporate by reference those provisions of State statutes and regulations that will be subject to the EPA's inspection and enforcement. This rule also codifies in the regulations the approval of Montana's hazardous waste management program and incorporates by reference the authorized provisions of the State's regulations.

DATES: This direct final rule is effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] unless EPA receives adverse written comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. If the EPA receives any such comment, we will publish a timely withdrawal of this direct final rule in the *Federal Register* informing the public that the rule will not take effect. The Director of the Federal Register approves the incorporation by reference as of [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-RCRA-2023-0033; FRL-10606-02-R8 by one of the following methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the on-line instructions for submitting comments.
2. *E-mail:* lin.moye@epa.gov.
3. *Fax:* (303) 312-6341 (prior to faxing, please notify the EPA contact listed below).
4. *Mail, Hand Delivery or Courier:* Moyer Lin, Resource Conservation and Recovery Act Branch, EPA Region 8, Mailcode 8P-R, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Courier or hand deliveries are only accepted during the Regional Office's normal hours of operation. The public is advised to call in advance to verify business hours. Special arrangements should be made for deliveries of boxed information.

Instructions: EPA must receive your comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Direct your comments to EPA-R08-RCRA-2023-0033; FRL-10606-02-R8. The EPA's policy is that all comments received will be included in the public docket without change and may be available online at <https://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 <https://regulations.gov>, or e-mail. The Federal <https://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 <https://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 with any CD 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.

Docket: All documents in the docket are listed in the <https://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 through <https://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: Moye Lin, Resource Conservation and Recovery Act Branch, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129; telephone number: (303) 312-6667; email address: lin.moye@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Authorization of Revisions to Montana's Hazardous Waste Program

A. Why are revisions to State programs necessary?

States which 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.

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

On May 31, 2022, Montana submitted a final complete program revision application

seeking authorization of changes to its hazardous waste program. The EPA concludes that Montana's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Montana final authorization to operate its hazardous waste program with the changes described in the authorization application.

Montana has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs), 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), for all areas within the State, except for (1) lands located within formal Indian Reservations within or abutting the State of Montana, including Blackfeet Indian Reservation, Crow Tribe of Montana Indian Reservation, Flathead Indian Reservation, Fort Belknap Indian Reservation, Fort Peck Indian Reservation, Northern Cheyenne Indian Reservation, Rocky Boy's Indian Reservation, (2) any land held in trust by the United States for an Indian tribe, (3) and any other land, whether on or off a reservation that qualifies as "Indian country" within the meaning of 18 U.S.C. 1151. 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 Montana, including issuing permits, until Montana is authorized to do so.

C. What is the effect of today's authorization decision?

The effect of this decision is that a facility in Montana subject to RCRA will have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. The State of Montana will continue to have enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Conduct inspections and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements; suspend or revoke permits; and

- Take enforcement actions after notice to and consultation with the State.

This action to approve these provisions would not impose additional requirements on the regulated community because the regulations for which the State of Montana is requesting authorization are already effective under State law and are not changed by the act of authorization.

D. Why is the EPA using a direct final rule?

The EPA is publishing this rule without a prior proposal because we view this as a noncontroversial action and anticipate no adverse comment. However, in the “Proposed Rules” section of this *Federal Register*, we are publishing a separate document that will serve as the proposed rule allowing the public an opportunity to comment. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

E. What happens if EPA receives comments opposing this action?

If EPA receives comments that oppose this authorization, we will publish a timely withdrawal in the *Federal Register* informing the public that this direct final rule will not take effect. We will address all public comments in a later *Federal Register*. You will not have another opportunity to comment, therefore, if you want to comment on this action, you must do so at this time.

F. For what has Montana previously been authorized?

Montana initially received final authorization on July 11, 1984, effective July 25, 1984 (49 FR 28245) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on: January 19, 1994, effective March 21, 1994 (59 FR 2752); October 25, 1996, effective December 24, 1996 (61 FR 55223); December 26, 2000, effective December 26, 2000 (65 FR 81381); September 30, 2005, effective November 29, 2005 (70 FR 57152); and, April 27, 2009, effective June 26, 2009 (79 FR 18997).

G. What changes is EPA authorizing with this action?

On May 31, 2022, the State of Montana submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a final decision, subject to receipt of written comments that oppose this action, that Montana's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Therefore, we grant Montana final authorization for the following changes:

1. Program revision changes for Federal rules

The State of Montana revisions consist of regulations which specifically govern Federal hazardous waste revisions promulgated between July 1, 2006 and June 30, 2021, Revision Checklists 214, 215, 217, 218, 220, 222 and 223, Rule 225, and Revision Checklists 226 through 243 (RCRA Clusters XVII through XXIX). The State requirements from its Hazardous Waste Rules, Administrative Rules of Montana (ARM), Environmental Quality, Title 17, Chapter 53, sections 17.53.101 through 17.53.1502 are listed in the chart below.

Description of Federal Requirement	Federal Register Date and Page	Analogous State Authority
1. Corrections to Errors in the Code of Federal Regulations (Checklist 214)	71 FR 40254; 07/14/06	Administrative Rules of Montana (ARM) Title 17, Chapter 53, 17.53.301(1), 17.53.404(1), 17.53.405(5), 17.53.501(1), 17.53.601(1), 17.53.801(1), 17.53.901(1), 17.53.1001(1), 17.53.1501(1), 17.53.1101(1), 17.53.1201(1), 17.53.1301(1), 17.53.1401(1)
2. Cathode Ray Tubes Rule (Checklist 215)	74 FR 42928; 07/28/06	ARM 17.53.301(1), 17.53.501(1), 17.53.107(3)
3. NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) Amendments (Checklist 217)	73 FR 18970; 04/08/08	ARM 17.53.801(1), 17.53.1001(1)

Description of Federal Requirement	Federal Register Date and Page	Analogous State Authority
4. F019 Exemption for Wastewater Treatment Sludges from Auto Manufacturing Zinc Phosphating Processes (Checklist 218)	73 FR 31756; 06/04/08	ARM 17.53.501(1)
5. Academic Laboratories Generator Standards (Checklist 220)	73 FR 72912; 12/1/08	ARM 17.53.501(1), 17.53.601(1)
6. OECD Requirements; Export Shipments of Spent Lead-Acid Batteries (Checklist 222)	75 FR 1236; 01/08/10	ARM 17.53.601(1), 17.53.107(3), 17.53.602(7), 17.53.602(10), 17.53.701(1), 17.53.801(1), 17.53.107(3), 17.53.901(1), 17.53.1001(1)
7. Hazardous Waste Technical Corrections and Clarifications (Checklist 223)	75 FR 1298; 03/18/10 75 FR 31713-31717; 06/04/10	ARM 17.53.301(1), 17.53.501(1), 17.53.601(1), 17.53.701(1), 17.53.801(1), 17.53.901(1), 17.53.1001(1), 17.53.1101(1), 17.53.1201(1)
8. Removal of Saccharin and Its Salts from the List of Hazardous Constituents (Rule 225)	75 FR 78918; 12/17/10	ARM 17.53.501(1), 17.53.1101(1)
9. Academic Laboratories Generator Standards Technical Corrections (Checklist 226)	75 FR 79304; 12/20/10	ARM 17.53.601(1)
10. Revision of the Land Disposal Treatment Standards for Carbamate Wastes (Checklist 227)	76 FR 34147; 06/13/11	ARM 17.53.1101(1)
11. Hazardous Waste Technical Corrections and Clarifications Checklist 228)	77 FR 22229; 04/13/12	ARM 17.53.501(1), 17.53.1001(1)
12. Solvent Contaminated Wipes (Checklist 229)	78 FR 46448; 07/31/13	ARM 17.53.301(1), 17.53.501(1)
13. Conditional Exclusion for Carbon Dioxide (CO ₂) Streams in Geologic Sequestration Activities (Checklist 230)	79 FR 350; 1/3/14	ARM 17.53.301(1), 17.53.501(1)
14. Hazardous Waste Electronic Manifest Rules (Special Consolidated Checklist for Checklists 231 and 239A)	79 FR 7518; 02/07/14 83 FR 420; 01/03/18	ARM 17.53.107(2), 17.53.107(3), 17.53.201, 17.53.404(1), 17.53.405, 17.53.601(1), 17.53.602(11) (removed), 17.53.701(1), 17.53.801(1), 17.53.802(5), 17.53.901(1), 17.53.902(6)
15. Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule (Checklist 232)	79 FR 36220; 6/26/14	ARM 17.53.107(3), 17.53.301(1), 17.53.501(1)

Description of Federal Requirement	Federal Register Date and Page	Analogous State Authority
16. Revisions to the Definition of Solid Waste (Checklists 233A, B, C, D2, and E)	80 FR 1694-1814; 01/13/15 83 FR 24664-24671; 05/30/18	ARM 17.53.301(1), 17.53.404(1), 17.53.501(1), 17.53.1201(1)
17. Response to Vacatures of the Comparable Fuels Rule and the Gasification Rule (Checklist 234)	80 FR 18777; 4/8/15	ARM 17.53.501(1)
18. Disposal of Coal Combustion Residuals from Electric Utilities (Checklist 235)	80 FR 21302; 4/17/15	ARM 17.53.501(1)
19. Imports and Exports of Hazardous Waste (Checklist 236)	81 FR 85696; 11/28/16 82 FR 41015; 8/29/17 83 FR 38263; 8/6/18	ARM 17.53.105(3), 17.53.107(3), 17.53.301(1), 17.53.404(1), 17.53.501(1), 17.53.601(1), 17.53.602(7), 17.53.602(8), 17.53.602(9), 17.53.602(10), 17.53.701(1), 17.53.702(1), 17.53.801(1), 17.53.901(1), 17.53.1001(1), 17.53.1501(1), 17.53.1301(1)
20. Hazardous Waste Generator Improvements Rule (Checklist 237)	81 FR 85732; 11/28/16	ARM 17.53.111(2) introductory paragraph and (2)(a), 17.53.301(1), 17.53.301(2)(q), 17.53.404(1), 17.53.405(5), 17.53.501, 17.53.502(5), 17.53.601(1), 17.53.602(2) through (4), (7), and (9) through (13), 17.53.603, 17.53.604, 17.53.701(1), 17.53.702(1), 17.53.801(1), 17.53.802(3), (4), and (6), 17.53.803, 17.53.901(1), 17.53.902(4) through (6), 17.53.903, 17.53.1001(1), 17.53.1101(1), 17.53.1201(1), 17.53.1301(1), 17.53.1401(1), 17.53.1501(1)
21. Confidentiality Determinations for Hazardous Waste Export and Import Documents (Checklist 238)	83 FR 60894; 12/26/17	ARM 17.53.107(3), 17.53.201, 17.53.404, 17.53.501(1), 17.53.601(1), 17.53.602(7)
22. Safe Management of Recalled Airbags (Checklist 240)	83 FR 61552; 11/30/18	ARM 17.53.301(1), 17.53.501(1), 17.53.601(1)

Description of Federal Requirement	Federal Register Date and Page	Analogous State Authority
23. Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine (Checklist 241)	84 FR 5816; 02/22/19	ARM 17.53.111(7), 17.53.501(1), 17.53.601(1), 17.53.801(1), 17.53.901(1), 17.53.1001(1), 17.53.1002(9), 17.53.1101(1), 17.53.1201(1), 17.53.1301(1)
24. Universal Waste Regulations; Addition of Aerosol Cans Checklist 242)	84 FR 67202; 12/9/19	ARM 17.153.301(1), 17.53.501(1), 17.53.801(1), 17.53.901(1), 17.53.1101(1), 17.53.1201(1), 17.53.1301(1)
25. Modernizing Ignitable Liquids Determinations (Checklist 243)	85 FR 40594; 07/7/20	ARM 17.53.105(3), 17.53.404(1), 17.53.501(1)

2. State-Initiated Changes

Montana has made amendments to its regulations that are not directly related to any of the Federal rules addressed in Item G.1 above. These State-initiated changes are either conforming changes made to existing authorized provisions, or the adoption of provisions that clarify and make the State's regulations internally consistent. The State's regulations, as amended by these provisions, provide authority which remains equivalent to and no less stringent than the Federal laws and regulations. These State-initiated changes are submitted under the requirements of 40 CFR 271.21(a) and include the following provisions from the Administrative Rules of Montana (ARM), as amended, effective May 14, 2022: ARM 17.53.105(4); 17.53.107(1) introductory paragraph; 17.53.111(1); 17.53.111(3); 17.53.111(4) (except phrase addressing fees); 17.53.111(5); 17.53.406; 17.53.602(1); 17.53.1202(1); 17.53.1202(21); and 17.53.1303. In addition, effective December 25, 2009, Montana made State-initiated changes to adopt 40 CFR part 267 by reference at ARM 17.53.1501 and 17.53.1502. The State had previously adopted the final rule, Standardized Permit for RCRA Hazardous Waste Management Facilities, (September 8, 2005, 70 FR 53419) without the 40 CFR part 267 provisions. Sections 17.53.1501 and 17.53.1502 have been reviewed by EPA and are acceptable to be authorized.

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

The Montana revisions being authorized in this rule include provisions that contain purely Federal functions which are not delegable to States. The non-delegable Federal program areas include import/export requirements reserved as part of the Federal foreign relations function, and manifest registry and electronic manifest functions administered solely by the EPA. Montana has appropriately adopted these provisions by leaving the authority with the EPA for implementation and enforcement.

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 RCRA section 3009, 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.

We consider the following State requirements to be more stringent than the Federal requirements: ARM 17.53.502(5), 17.53.602(3), (10), (11), and (12), 17.53.603(1) introductory paragraph, 17.53.603(2), (3), and (4) because Montana requires an annual report in lieu of the Federal biennial reporting requirement. Additionally, we consider the following State requirement to be broader in scope than the Federal: ARM 17.53.111(6) because Montana requires transporters obtain a registration from the State.

I. Who handles permits after the authorization takes effect?

The State of Montana will continue to issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits, which we issued prior to the effective date of this authorization, until Montana has equivalent instruments in place. EPA will continue

to implement and issue permits for HSWA requirements for which Montana is not yet authorized.

J. How does today's action affect Indian Country (18 U.S.C.1151) in Montana?

Montana is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. This includes, but is not limited to:

1. Lands within the exterior boundaries of the following Indian Reservations located within or abutting the State of Montana:
 - a. Blackfeet Tribe of the Blackfeet Indian Reservation
 - b. Crow Tribe of Montana
 - c. Confederated Salish and Kootenai Tribes of the Flathead Reservation
 - d. Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
 - e. Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation
 - f. Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation
 - g. Chippewa Cree Indians of the Rocky Boy's Reservation
2. Any land held in trust by the U.S. for an Indian tribe; and
3. Any other land, whether on or off a reservation that qualifies as Indian country within the meaning of 18 U.S.C. 1151.

Therefore, this program revision does not extend to Indian country where the EPA will continue to implement and administer the RCRA program.

II. Incorporation by Reference

A. What is codification?

Codification is the process of including the statutes and regulations that comprise the State's authorized hazardous waste management program into the CFR. Section 3006(b) of RCRA, as amended, allows the Environmental Protection Agency (EPA) to authorize State hazardous waste management programs. The State regulations authorized by EPA supplant the Federal regulations concerning the same matter with the result that after authorization, EPA

enforces the authorized regulations. Infrequently, State statutory language which acts to regulate a matter is also authorized by EPA with the consequence that EPA enforces the authorized statutory provision. EPA does not authorize State enforcement authorities and does not authorize State procedural requirements. EPA codifies the authorized State program in 40 CFR part 272 and incorporates by reference State statutes and regulations that make up the approved program, which is Federally enforceable in accordance with sections 3007, 3008, 3013, and 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934 and 6973, and any other applicable statutory and regulatory provisions.

B. What is the history of the codification of Montana's hazardous waste management program?

The EPA first incorporated by reference Montana's authorized hazardous waste program effective January 31, 1986 (51 FR 3954) and program revisions effective March 8, 2006 (71 FR 11536). In this action, EPA is revising Subpart BB of 40 CFR part 272 to include the authorization revision actions described in this document.

C. What codification decisions have we made in this rule?

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference of the authorized hazardous waste management program of the State of Montana. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Montana rules described in section I.G. of this preamble and set forth in the amendments to 40 CFR 272.1351. The EPA has made, and will continue to make, these documents available electronically through <https://www.regulations.gov>. For alternative access to docket materials, please contact the person identified in the **ADDRESSES** section of this preamble.

This action codifies EPA's authorization of Montana's base hazardous waste management program and its revisions to that program. The codification reflects the State program that would be in effect at the time EPA's authorized revisions to the Montana hazardous waste management program addressed in this direct final rule become final. This action does not reopen any decision EPA previously made concerning the authorization of the State's hazardous

waste management program. EPA is not requesting comments on its decisions published in the *Federal Register* documents referenced in section I.F. of this document concerning revisions to the authorized program in Montana.

The EPA is incorporating by reference EPA's approval of Montana's hazardous waste management program by amending Subpart BB to 40 CFR part 272. The action amends § 272.1351 and incorporates by reference Montana's authorized hazardous waste regulations, as amended, effective May 14, 2022. Section 272.1351 also references the demonstration of adequate enforcement authority, including procedural and enforcement provisions, which provide the legal basis for the State's implementation of the hazardous waste management program. In addition, § 272.1351 references the Memorandum of Agreement, the Attorney General's Statements and the Program Description, which are evaluated as part of the approval process of the hazardous waste management program in accordance with Subtitle C of RCRA.

D. What is the effect of Montana's codification on enforcement?

EPA retains the authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013 and 7003, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in all authorized States. With respect to enforcement actions, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State analogs to these provisions. Therefore, the EPA is not incorporating by reference Montana's inspection and enforcement authorities, nor are those authorities part of Montana's approved State program which operates in lieu of the Federal program. 40 CFR 272.1351(c)(2) lists these authorities for informational purposes, and because EPA also considered them in determining the adequacy of Montana's procedural and enforcement authorities. Montana's authority to inspect and enforce the State's hazardous waste management program requirements continues to operate independently under State law.

E. What State provisions are not part of the codification?

The public is reminded that some provisions of Montana's hazardous waste management

program are not part of the federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are “broader in scope” than RCRA subtitle C (see 40 CFR 271.1(i));

(2) State procedural and enforcement authorities which are necessary to establish the ability of the State’s program to enforce compliance but which do not supplant the Federal statutory enforcement and procedural authorities.

State provisions that are “broader in scope” than the Federal program are not incorporated by reference in 40 CFR part 272. For reference and clarity, EPA lists in 40 CFR 272.1351(c)(3) the Montana statutory provisions which are “broader in scope” than the Federal program and which are not part of the authorized program being incorporated by reference. While “broader in scope” provisions are not part of the authorized program and cannot be enforced by EPA, the State may enforce such provisions under State law.

F. What will be the effect of codification on Federal HSWA requirements?

With respect to any requirement(s) pursuant to HSWA for which the State has not yet been authorized, and which EPA has identified as taking effect immediately in States with authorized hazardous waste management programs, EPA will enforce those Federal HSWA standards until the State is authorized for those provisions.

The codification does not affect Federal HSWA requirements for which the State is not authorized. EPA has authority to implement HSWA requirements in all States, including States with authorized hazardous waste management programs, until the States become authorized for such requirements or prohibitions, unless EPA has identified the HSWA requirement(s) as an optional or as a less stringent requirement of the Federal program. A HSWA requirement or prohibition, unless identified by EPA as optional or as less stringent, supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985).

Some existing State requirements may be similar to the HSWA requirements implemented by EPA. However, until EPA authorizes those State requirements, EPA enforces the HSWA requirements and not the State analogs.

III. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Therefore, this action is not subject to review by OMB. This action authorizes and codifies State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. 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 authorizes and codifies 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 (Pub. L. 104-4). 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 authorizes and codifies 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 rule 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 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 issuing 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 the rule 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 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.*).

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 rule authorizes 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, the rule is not subject to Executive Order 12898.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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). This action will be effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

List of Subjects

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.

40 CFR Part 272

Environmental protection, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Intergovernmental relations, Water pollution control, Water supply.

Authority: This rule 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: August 8, 2023

KC Becker,
Regional Administrator, Region 8.

For the reasons set forth in the preamble, under the authority at 42 U.S.C. 6912(a), 6926, and 6974(b), EPA is granting final authorization under 40 CFR part 271 to the State of Montana for revisions to its hazardous waste program under the Resource Conservation and Recovery Act and is amending 40 CFR part 272 as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Revise § 272.2 to read as follows:

§ 272.2 Incorporation by reference.

(a) Material listed as incorporated by reference in part 272 was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the *Federal Register*.

(b) Copies of materials incorporated by reference may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: fr.inspection@nara.gov, or go to: <https://www.archives.gov/federal->

register/cfr/ibr-locations.html. Copies of materials incorporated by reference may be obtained or inspected at the EPA Docket Center, Office of Land and Emergency Management Docket (by scheduled appointment only), located at WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004, or send mail to Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and at the library of the appropriate Regional Office listed below:

(1) Region 1 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont): 5 Post Office Square, 1st floor, Boston, MA 02109-3912; phone number: (617) 918-1313,

(2) Region 2 (New Jersey, New York, Puerto Rico, Virgin Islands): Federal Office Building, 290 Broadway, 23rd Floor, New York, NY 10007-1866; phone number: (212) 637-3185),

(3) Region 3 (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia): Four Penn Center, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103-2852; phone number: (215) 814-5254,

(4) Region 4 (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee): 61 Forsyth Street, SW, Sam Nunn Atlanta Federal Center, 9th Floor, Atlanta, GA 30303, (513) 569-7703,

(5) Region 5 (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin): 77 West Jackson Boulevard, Chicago, IL 60604; phone number: (312) 886- 6822,

(6) Region 6 (Arkansas, Louisiana, New Mexico, Oklahoma, Texas): 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102; phone number: (214) 665-853,

(7) Region 7 (Iowa, Kansas, Missouri, Nebraska); 11201 Renner Boulevard, Lenexa, Kansas 66219; phone number: (919) 541-2777,

(8) Region 8 (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming): 1595 Wynkoop St., Denver, CO 80202-2405; phone number: (303) 312-6667,

(9) Region 9 (Arizona, California, Hawaii, Nevada, Guam, American Samoa, Commonwealth of the Northern Mariana Islands): 75 Hawthorne Street, San Francisco, CA 94105; phone number: (415) 947-4406,

(10) Region 10 (Alaska, Idaho, Oregon, Washington): 1200 Sixth Avenue, Seattle, WA 98101; phone number: (206) 553-1289.

(c) For an informational listing of the state and local requirements incorporated in this part, see appendix A to this part.

3. Revise § 272.1351 to read as follows:

§ 272.1351 Montana State-Administered Program: Final Authorization.

(a) *History of the State of Montana authorization.* Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), Montana has final authorization for the following elements as submitted to EPA in Montana's base program application for final authorization which was approved by EPA effective on July 25, 1984. Subsequent program revision applications were approved effective on March 21, 1994, December 24, 1996, December 26, 2000, November 29, 2005, June 26, 2009, and [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

(b) *Enforcement authority.* The State of Montana has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State statutes and regulations--(1) Incorporation by reference.* The Montana regulations cited in paragraph (c)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* The Director of the Federal Register approves this incorporation by reference in accordance with 5

U.S.C. 552(a) and 1 CFR part 51. For the availability of this information at the National Archives and Records Administration and at the EPA, see § 272.2(b). You may obtain copies of the Montana regulations that are incorporated by reference in this paragraph from Montana Secretary of State Administrative Rules Services P.O. Box 202801 Helena, MT 59620-2801, Phone: (406) 438-6122.

(i) EPA-Approved Montana Regulatory Requirements Applicable to the Hazardous Waste Management Program, dated November 2022.

(ii) [Reserved]

(2) *Legal basis.* The following provisions provide the legal basis for the State's implementation of the hazardous waste program, but they are not being incorporated by reference and do not replace Federal authorities:

(i) Montana Code Annotated (MCA) 2021, Title 2, "Government Structure and Administration," Chapter 3, Public Participation in Governmental Operations, sections 2-3-102 introductory paragraph through 2-3-102(2), 2-3-103(1), 2-3-104, 2-3-105, 2-3-111, 2-3-112, 2-3-221, 2-3-301; Chapter 4, Administrative Procedure Act, sections 2-4-103, 2-4-307, 2-4-315; Chapter 6, Public Records, sections 2-6-1003 and 2-6-1006; Chapter 15, Executive Branch Officers and Agencies, sections 2-15-3501 and 2-15-3502.

(ii) Montana Code Annotated (MCA) 2022, Title 25, Civil Procedure: Chapter 20, Rules of Civil Procedure, Rule 24(a) and (b).

(iii) Montana Code Annotated (MCA) 2021, Title 27, Civil Liability, Remedies, and Limitations: Chapter 30, Nuisances, section 27-30-204.

(iv) Montana Code Annotated (MCA) 2021, Title 30, Trade and Commerce: Chapter 14, Unfair Trade Practices and Consumer Protection, sections 30-14-402, *et seq.*

(v) Montana Code Annotated (MCA) 2021, Title 75, Environmental Protection: Chapter 10, Waste and Litter Control, sections 75-10-107, 75-10-203, 75-10-402(3), 75-10-403(except 75-10-403(13)), 75-10-404(1) introductory paragraph and (1)(a), 75-10-404(1)(b) through (e),

75-10-404(2), 75-10-405 (except 75-10-405(1)(i), (1)(j) and (2)(a)), 75-10-406, 75-10-408, 75-10-409, 75-10-410, 75-10-411, 75-10-413, 75-10-414, 75-10-415, 75-10-416, 75-10-417, 75-10-418, 75-10-419, 75-10-420, 75-10-421, 75-10-422, 75-10-424, 75-10-425, 75-10-426, 75-10-427, 75-10-441 and 75-10-442; Chapter 20, Major Facility Siting.

(vi) Administrative Rules of Montana (ARM), effective May 14, 2022, Title 17, Environmental Quality: Chapter 53, Hazardous Waste, sections 17.53.104, 17.53.201, 17.53.202, 17.53.206, 17.53.207, 17.53.208, 17.53.212, 17.53.213, 17.53.214, 17.53.215, 17.53.1202(6)(m) and (n), 17.53.1202(7).

(3) *Related legal provisions.* The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, are not incorporated by reference and are not federally enforceable:

(i) Montana Code Annotated (MCA) 2021, Title 75, Environmental Protection: Chapter 10, Waste and Litter Control, sections 75-10-403(13), 75-10-405(1)(i) and (j), 75-10-405(2)(a), 75-10-431, 75-10-432, 75-10-433, and 75-10-434.

(ii) Administrative Rules of Montana (ARM), effective May 14, 2022, Title 17, Environmental Quality, Chapter 53, Hazardous Waste, sections 17.53.111(4) (phrase addressing fees), 17.53.111(6), 17.53.112, 17.53.113, 17.53.301(2)(p) (phrase addressing fees), 17.53.703, 17.53.1202(6)(l), and 17.53.1202(18).

(4) *Memorandum of agreement.* The Memorandum of Agreement between EPA Region 8 and the State of Montana, signed by the State of Montana Department of Environmental Quality on August 22, 2018, and by the EPA Regional Administrator on August 2, 2018, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(5) *Statement of legal authority.* Independent Legal Counsel Statement, accompanied by an Attorney General concurrence letter signed by the Attorney General of Montana on December 27, 1983 as amended June 7, 1984 and revisions, supplements and addenda to that Statement

accompanied by Attorney General concurrence letters dated September 23, 1993, March 28, 1995, June 29, 1995, April 4, 2005, January 31, 2008 and May 31, 2022, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Program description.* The Program Description and any other materials submitted as supplements thereto, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272 is amended by revising the entry “Montana” to read as follows:

Appendix A to part 272—State Requirements

* * * * *

Montana

The regulatory provisions include: Administrative Rules of Montana, Title 17, Environmental Quality, Chapter 53, Hazardous Waste, effective May 14, 2022, sections 17.53.101, 17.53.102, 17.53.105, 17.53.107, 17.53.111(1), 17.53.111(2), 17.53.111(3), 17.53.111(4) (except the phrase “and receives the registration fee required by ARM 17.53.113”), 17.53.111(5), 17.53.111(7), 17.53.301 (except the phrase addressing fees at 17.53.301(2)(p)), 17.53.404, 17.53.405, 17.53.406, 17.53.501, 17.53.502, 17.53.601, 17.53.602, 17.53.603, 17.53.604, 17.53.701, 17.53.702, 17.53.704, 17.53.706, 17.53.707, 17.53.708, 17.53.801, 17.53.802, 17.53.803, 17.53.901, 17.53.902, 17.53.903, 17.53.1001, 17.53.1002, 17.53.1003, 17.53.1004, 17.53.1101, 17.53.1102, 17.53.1201, 17.53.1202 (except 17.53.1202(6)(l), (6)(m), (6)(n), (7) and (18)), 17.53.1203, 17.53.1301, 17.53.1302, 17.53.1303, 17.53.1401, 17.53.1402, 17.53.1501, and 1502.

Copies of the Montana regulations that are incorporated by reference are available from the Montana Secretary of State, Administrative Rules Services, P.O. Box 202801, Helena, MT

59620-2801 (Phone: 406-438-6122)

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