



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R09-RCRA-2021-0431; FRL-8828-04-R9]

Arizona: Authorization of State Hazardous Waste Management Program Revisions; Proposed Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: The Environmental Protection Agency (EPA) approved revisions to Arizona's federally authorized hazardous waste program by publishing proposed and direct final rules in the *Federal Register* on September 28, 2021. EPA inadvertently omitted a citation to Checklist 233 in the text of the proposed and direct final rule. With this correction, EPA is clarifying that Arizona has adopted Checklist 233 and is authorized for the Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule published on May 30, 2018. Additionally, EPA is clarifying that Arizona is not required to adopt Checklist 224: Withdrawal of the Emission Comparable Fuel Exclusion. Arizona did not adopt the exclusion contained in Checklist 221, and thus, does not have the exclusion as part of its authorized state program. We are proposing to correct these and related errors. EPA seeks public comment prior to taking final action.

DATES: Comments on this proposed correction must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-RCRA-2021-0431, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, *etc.*) must be accompanied by a written comment. The written comment is considered the official comment

and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Sorcha Vaughan, EPA Region 9, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947-4217 or by email at vaughan.sorcha@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Why are corrections to the revised state program authorization necessary?

States that have received final authorization from EPA under Section 3006(b) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must change their programs to maintain consistency and stringency with the federal rules and must ask EPA to authorize the changes. EPA's *Federal Register* notices regarding proposed authorization of revisions to state hazardous waste management programs provide the public with an opportunity to comment and also offer details with respect to the scope of the revised program authorizations on which both the general public and the regulated community may rely. Where these notices omit critical information or fail to clearly delineate the scope of authorized program revisions, corrections may be necessary and/or appropriate.

B. What corrections is EPA making to this rule?

EPA authorized changes to Arizona's hazardous waste program with the proposed and direct to final rule on September 28, 2021 (86 FR 53558). EPA is now proposing to correct this updated authorization by: (1) clarifying that Arizona has adopted and is authorized for Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule 83 FR 24664 (May 5,

2018); and (2) recognizing that because Arizona did not adopt the exclusion contained in Checklist 221 the adoption of Checklist 224 is unnecessary. These proposed corrections to the scope of Arizona's authorized hazardous waste program would become effective if finalized.

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

EPA will consider all comments received during the comment period and address them in a final rule. You may not have another opportunity to comment. If you want to comment on the corrections proposed here, you must do so at this time.

D. What has Arizona previously been authorized for?

Arizona initially received final authorization to implement its base hazardous waste management program on November 20, 1985. Arizona received authorization for revisions to its program on August 6, 1991 (56 FR 37290 effective October 7, 1991), July 13, 1992 (57 FR 30905 effective September 11, 1992), November 23, 1992 (57 FR 54932 effective January 22, 1993), October 27, 1993 (58 FR 57745 effective December 27, 1993), July 18, 1995 (60 FR 36731 effective June 12, 1995), March 7, 1997 (62 FR 10464 effective May 6, 1997), October 28, 1998 (63 FR 57605-57608 effective December 28, 1998), March 17, 2004 (69 FR 12544 effective March 17, 2004, originally published on October 27, 2000 (65 FR 64369)), December 20, 2017 (82 FR 60550 effective January 20, 2018), and September 28, 2021 (86 FR 53558 effective November 29, 2021).

E. What changes is EPA proposing to authorize with this action?

EPA proposes to correct and clarify the terms of the September 28, 2021, authorization of Arizona's hazardous waste program with respect to the definition of a solid waste. EPA also proposes to acknowledge that Arizona is not required to seek authorization for Checklist 224, as it did not adopt the associated exclusion from Checklist 221 into its state regulations.

1. Proposed Changes to the State Analogues to the Federal Program Table

EPA is recreating in this proposal the *State Analogues to the Federal Program* table that was published in the proposed authorization update **Federal Register** notice at 86 FR 53558

(Sept. 28, 2021). EPA inadvertently omitted from the proposed and final rules that under Checklist 233 Arizona has adopted and was authorized for in 83 FR 24664 (May 30, 2018) Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule. The corrections proposed in this rule, and described above, would require modifications to the *State Analogues to the Federal Program* table published on September 28, 2021 (86 FR 53558), as follows:

Description of Federal Requirement and Checklist number	Federal Register Volume, Page and Date	Arizona Administrative Register (A.A.R) and Effective Date	Arizona Administrative Code (A.A.C) Implementing Rule Sections
NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) Amendments (217)	73 FR 18970 (4/8/2008)	21 A.A.R 1246 (9/05/2015)	R18-8-264 (A) R18-8-266 (A)
F019 Exemption for Wastewater Treatment Sludges from Auto Manufacturing Zinc Phosphating Processes	73 FR 31756 (6/04/2008)	21 A.A.R 1246 (9/05/2015)	R18-8-261 (A)
Revisions to DSW Rule (219)	73 FR 64668-64788 (10/30/2008)	26 A.A.R 2949 (11/03/2020)	R18-8-260 (C) R18-8-261 (A) R18-8-270 (A)
Academic Laboratories Generator Standards (220)	73 FR 72912 (12/01/2008)	21 A.A.R 1246 (9/05/2015)	R18-8-262 (A)
OECD Requirements; Export Shipments of Spent Lead-Acid Batteries (222)	75 FR 1236-1262 (1/8/2010)	21 A.A.R 1246 (9/05/2015)	R 18-8-262 (A) R18-8-263 (A) R18-8-264 (A) R18-8-264 (A) R18-8-266 (A)
Technical Corrections/Clarifications (223)	75 FR 12989-13009 (3/18/2010), 75 FR 31716-31717 (6/4/2010)	21 A.A.R 1246 (9/05/2015)	R18-8-260 (C) R18-8-262 (A) R18-8-262 (A) R18-8-263(A) R18-8-264 (A) R18-8-265 (A) R18-8-266 (A) R18-8-268 R18-8-270 (A)
Removal of Saccharin and its Salts from the list of	75 FR 78918-78926	21 A.A.R 1246 (9/05/2015)	R18-8-261(A) R18-8-268

HW (225)	(12/17/2010)		
Academic Laboratories Generator Standards Technical Corrections (226)	75 FR 79304 (12/20/2010)	21 A.A.R 1246 (9/05/2015)	R18-8-261 (A) R18-8-262 (A)
Revisions to Treatment Standards of Carbamate Wastes (227)	76 FR 34147-34157 (6/13/2011)	21 A.A.R 1246 (9/05/2015)	R18-8-268
Technical Correction/Clarification (228)	77 FR 22229-22232 (4/13/2012)	21 A.A.R 1246 (9/05/2015)	R18-8-261 (A) R18-8-266 (A)
Conditional Exclusions for Solvent Contaminated Wipes (229)	78 FR 46448-46485 (7/31/2013)	21 A.A.R 1246 (9/05/2015)	R18-8-260 (A) R18-8-261 (A)
Conditional Exclusion for Carbon Dioxide (CO2) Streams in Geologic Sequestration Activities (230)	79 FR 350 (1/03/2014)	25 A.A.R 435 (2/05/2019)	R18-8-260 (C) R18-8-261 (A)
Hazardous Waste Electronic Manifest System (231)	79 FR 7518-7563 (2/7/2014)	25 A.A.R 435 (2/05/2019)	R18-8-260 (C) R18-8-262 (A) R18-8-263 (A) R18-8-264 (A) R18-8-265 (A)
Revisions to Export Provisions of the Cathode Ray Tube (CRT) Rule (232)	79 FR 36220-36231 (6/26/2014)	25 A.A.R 435 (2/05/2019)	R18-8-260 (C) R18-8-261 (A)
Revision to DSW Rule - Non-waste determinations and variances (233)	80 FR 1694-1814 (1/13/2015) 83 FR 24664-24671 (5/30/2018)	26 A.A.R 2949 (11/03/2020)	R18-8-260 (C) R18-8-261 (A) R18-8-270 (A)
Vacatur of Comparable Fuels and Gasification (234)	80 FR 18777-18780 (4/8/2015)	25 A.A.R 435 (2/05/2019)	R18-8-260 (C) R18-8-261 (A)
Disposal of Coal Combustion Residuals from Electric Utilities (235)	80 FR 21302 (4/17/2015)	25 A.A.R 435 (2/05/2019)	R18-8-261 (A)
Imports and Exports of Hazardous Waste (236)	81 FR 85696-85729 (11/28/2016), 82 FR 41015-41016 (8/29/2017)	25 A.A.R 435 (2/05/2019)	R18-8-260 (C) R18-8-261 (A) R18-8-262 (A) R18-8-263 (A) R18-8-264 (A) R18-8-265 (A) R18-8-266 (A) R18-8-273

Generator Improvements Rule (237)	81 FR 85732-85829 (11/28/2016)	25 A.A.R 435 (2/05/2019)	R18-8-260 (C) R18-8-265 (A) R18-8-268 R18-8-270(A) R18-8-273
Confidentiality Determinations for Hazardous Waste Export and Import Documents (238)	82 FR 60894-60901 (12/26/2017)	25 A.A.R 435 (2/05/2019)	R18-8-260 (C) R18-8-261 (A) R18-8-262 (A)
Hazardous Waste Electronic Manifest System User Fee (239)	83 FR 420-462 (1/3/2018)	25 A.A.R 435 (2/05/2019)	R18-8-260 (C) R18-8-262 (A) R18-8-263 (A) R18-8-264 (A) R18-8-265 (A)
Safe Management of Recalled Airbags (240)	83 FR 61552 (11/30/2018)	26 A.A.R 2949 (11/03/2020)	R18-8-260 (C) R18-8-261 (A) R18-8-262 (A)
Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine (241)	84 FR 5816 (2/22/2019)	26 A.A.R 2949 (11/03/2020)	R18-8-260 (C) R18-8-261(A) R18-8-262 (A) R18-8-263 (A) R18-8-264 (A) R18-8-265 (A) R18-8-266(A) R18-8-286 R18-8-270 (A) R18-8-273
Universal Waste Regulations: Addition of Aerosol Cans (242)	84 FR 67202 (12/09/2019)	26 A.A.R 2949 (11/03/2020)	R18-8-260 (C) R18-8-261 (A) R18-8-264 (A) R18-8-265 (A) R18-8-268 R18-8-270 (A) R18-8-273

2. There are several Federal rules that have been vacated, withdrawn, or superseded. As a result, authorization of these rules may be moot. However, for purposes of completeness, these rule checklists are included above with an explanation as to the rule's status in Arizona. Arizona never adopted the RCRA comparable fuel exclusion contained in Checklist 221: Expansion of RCRA Comparable Fuel Exclusion (73 FR 77954, December 19, 2008) therefore adopting Checklist 224: Withdrawal of the Emission Comparable Fuel Exclusion (75 FR 33712, June 15, 2010) would be unnecessary. Arizona's authorized program continues to be equivalent to and no

less stringent than the Federal program without having to make any conforming changes pursuant to the checklists.

F. How does this action affect Indian country (18 U.S.C. 1151) in Arizona?

Arizona is not authorized to carry out its hazardous waste program in Indian country within the state. Therefore, this action has no effect on Indian country. EPA retains jurisdiction over Indian country and will continue to implement and administer the federal RCRA program on these lands.

G. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action (RCRA state authorization) from the requirements of Executive Order 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 proposes corrections to the authorization of state requirements for the purpose of Section 3006 of RCRA and imposes no additional requirements beyond those imposed by state law. Accordingly, 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 correction of the authorization of 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). As explained above, this proposed 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 proposed 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 corrects the *Federal Register* notice in which EPA authorized 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 proposed 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 concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children. This proposed correction 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), the 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 the 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 do not apply. See 15 U.S.C. 272 note, sec. 12(d)(3), Pub. L. No. 104-113, 110 Stat. 783 (Mar. 7, 1996) (exempting compliance with the NTTAA’s requirement to use VCS if compliance is “inconsistent with applicable law”). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed correction to its rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the proposed correction to 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 proposed correction to the rule authorizing Arizona’s revision to DSW Rule Non-waste determinations and variances 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 proposed correction to the Arizona’s Revision to DSW Rule -Non-waste determinations and variances authorization rule authorizes pre-existing state rules which are at least equivalent to, and no less stringent than existing federal requirements, and impose 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 of the final rule correction in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This proposed correction is not a “major rule” as defined by 5 U.S.C. 804(2).

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: November 26, 2023.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

[FR Doc. 2023-27156 Filed: 12/11/2023 8:45 am; Publication Date: 12/12/2023]