

## I. Background

On March 22, 2004, the EPA issued final regulations allowing RD&D permits to be issued at certain municipal solid waste landfills (69 FR 13242). This new provision may only be implemented by an approved State. While States are not required to seek approval for this new provision, those States that are interested in providing RD&D permits to municipal solid waste landfills must seek approval from EPA before issuing such permits. Missouri received final approval for 40 CFR part 258 provisions on April 13, 1994 (59 FR 17526). This request incorporates the November 27, 1996, rule (61 FR 60328, at 60337), which adds financial mechanisms for local governments, and the April 10, 1998, rule (63 FR 17706, at 17729), which adds financial test and corporate guarantee to financial assurance mechanisms. Approval procedures for new provisions of 40 CFR part 258 are outlined in 40 CFR 239.12. On April 14, 2006, Missouri submitted an application for approval of its RD&D permit provisions and update of the approved MSWLP program.

## II. Decision

After a thorough review, EPA Region 7 determined that Missouri's RD&D provisions as defined under Missouri Solid Waste Management Regulations, 10 CSR 80, and Missouri Solid Waste Management Statute, Title 16: Conservation, Resources and Development, Chapter 260: Environmental Control are adequate to ensure compliance with the Federal criteria as defined at 40 CFR 258.4.

## III. Statutory and Executive Order Reviews

This action approves State solid waste requirements pursuant to Resource Conservation and Recovery Act (RCRA) Section 4005 and imposes no Federal requirements. Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

1. *Executive Order 12866*: Regulatory Planning Review—The Office of Management and Budget has exempted this action from its review under Executive Order (EO) 12866;

2. *Paperwork Reduction Act*: This action does not impose an information collection burden under the Paperwork Reduction Act;

3. *Regulatory Flexibility Act*: After considering the economic impacts of today's action on small entities under the Regulatory Flexibility Act, I certify that this action will not have a significant economic impact on a substantial number of small entities;

4. *Unfunded Mandates Reform Act*: Because this action approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, this action does not contain any unfunded mandate, or significantly or uniquely affect small governments, as described in the Unfunded Mandates Act;

5. *Executive Order 13132*: Federalism—EO 13132 does not apply to this action because this action will not have federalism implications (*i.e.*, there are no substantial direct effects on States, on the relationship between the national government and States, or on the distribution of power and responsibilities between Federal and State governments);

6. *Executive Order 13175*: Consultation and Coordination with Indian Tribal Governments—EO 13175 does not apply to this action because it will not have tribal implications (*i.e.*, there are no substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes);

7. *Executive Order 13045*: Protection of Children from Environmental Health Risks and Safety Risks—This action is not subject to EO 13045 because it is not economically significant and is not based on health or safety risks;

8. *Executive Order 13211*: Actions that Significantly Affect Energy Supply, Distribution, or Use—This action is not subject to EO 13211 because it is not a significant regulatory action as defined in EO 12866;

9. *National Technology Transfer Advancement Act*: EPA approves State programs so long as the State programs meet the criteria delineated in RCRA. It would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets RCRA requirements. Thus, section 12(d) of the National Technology Transfer and Advancement Act does not apply to this action;

10. *Congressional Review Act*: EPA will submit a report containing this action and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) 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**.

## List of Subjects

### 40 CFR Part 239

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Waste treatment and disposal.

### 40 CFR Part 258

Reporting and recordkeeping requirements, Waste treatment disposal, Water pollution control.

**Authority**: This action is issued under the authority of section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

Dated: November 6, 2006.

**John B. Askew**,

*Regional Administrator, Region 7.*

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**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 239 and 258

[EPA-R07-RCRA-2006-0878; FRL-8242-6]

### Adequacy of Nebraska Municipal Solid Waste Landfill Program

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

**ACTION**: Direct final rule.

**SUMMARY**: This action approves Nebraska's Research, Development and Demonstration (RD&D) permit program and updates to the approved Municipal Solid Waste Landfill Permit (MSWLP) program. On March 22, 2004, the EPA issued final regulations allowing RD&D permits to be issued to certain municipal solid waste landfills by approved states. On September 27, 2006, Nebraska submitted an application to the EPA seeking Federal approval of its RD&D requirements and to update Federal approval of its MSWLP program.

**DATES**: This direct final rule is effective January 16, 2007, without further notice unless EPA receives adverse comments by January 16, 2007. If adverse comments are received, EPA will publish a timely response or withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will or will not take effect.

**ADDRESSES**: Submit your comments, identified by Docket ID No. EPA-R07-RCRA-2006-0878, by one of the following methods:

1. <http://www.regulations.gov>. Follow the on-line instruction for submitting comments.

2. *E-mail*:  
[Mclaughlin.chilton@epa.gov](mailto:Mclaughlin.chilton@epa.gov).

3. *Mail*: Send written comments to Chilton McLaughlin, EPA Region 7, Solid Waste/Pollution Prevention Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier*. Deliver your comments to Chilton McLaughlin, EPA Region 7, Solid Waste/Pollution Prevention Branch, 901 North 5th Street, Kansas City, Kansas 66101.

*Instructions*: Direct your comments to Docket ID No. EPA-R07-RCRA-2006-0878. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://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 through <http://www.regulations.gov> or e-mail information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site 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 <http://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.

*Docket*: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Solid Waste/Pollution Prevention Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional

Office's official hours of business are Monday through Friday, 8 to 4:30, excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Chilton McLaughlin at (913) 551-7666, or by e-mail at [Mclaughlin.chilton@epa.gov](mailto:Mclaughlin.chilton@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On March 22, 2004, the EPA issued final regulations allowing RD&D permits to be issued at certain municipal solid waste landfills (69 FR 13242). This new provision may only be implemented by an approved state. While states are not required to seek approval for this new provision, those states that are interested in providing RD&D permits to municipal solid waste landfills must seek approval from EPA before issuing such permits. The current request is for approval to issue RD&D permits. Nebraska received partial approval for 40 CFR part 258 provisions on October 5, 1993 (58 FR 51819).

The provision that it received partial approval for derived from an opinion by the United States Court of Appeals on February 12, 1992, which instructed EPA to require groundwater monitoring at all landfills. The updated state rules impose groundwater monitoring at small, arid landfills. The current request also incorporates the August 7, 1995, rule (60 FR 40105), which corrects the financial assurance criteria; the September 25, 1996, rule (61 FR 50413), which relates to groundwater exemptions of small, arid, remote landfills; the November 27, 1996, rule (61 FR 60328, at 60337), which adds financial mechanisms for local governments; and the April 10, 1998, rule (63 FR 17706, at 17729), which adds a financial test and corporate guarantee to financial assurance mechanisms. Approval procedures for new provisions of 40 CFR part 258 are outlined in 40 CFR 239.12. On September 27, 2006, Nebraska submitted an amended application for approval of its RD&D permit provisions and an update of the approved MSWLP program.

**II. Decision**

After a thorough review, EPA Region 7 determined that Nebraska's RD&D provisions and the updated rules for its Municipal Solid Waste Landfill Permit Program as defined under Nebraska Title 132—Integrated Solid Waste Management Regulations, effective

March 7, 2006, are adequate to ensure compliance with the Federal criteria as defined at 40 CFR 258.4.

**III. Statutory and Executive Order Reviews**

This action approves state solid waste requirements pursuant to Resource Conservation and Recovery Act (RCRA) Section 4005 and imposes no Federal requirements. Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 12866: Regulatory Planning Review—The Office of Management and Budget has exempted this action from its review under Executive Order (EO) 12866;

2. Paperwork Reduction Act—This action does not impose an information collection burden under the Paperwork Reduction Act;

3. Regulatory Flexibility Act—After considering the economic impacts of today's action on small entities under the Regulatory Flexibility Act, I certify that this action will not have a significant economic impact on a substantial number of small entities;

4. Unfunded Mandates Reform Act—Because this action approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, this action does not contain any unfunded mandate, or significantly or uniquely affect small governments, as described in the Unfunded Mandates Act;

5. Executive Order 13132: Federalism—EO 13132 does not apply to this action because this action will not have federalism implications (*i.e.*, there are no substantial direct effects on States, on the relationship between the national government and States, or on the distribution of power and responsibilities between Federal and State governments);

6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments—EO 13175 does not apply to this action because it will not have tribal implications (*i.e.*, there are no substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes);

7. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks—This action is not subject to EO 13045 because it is not economically significant and is not based on health or safety risks;

8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use—This action is not subject to EO 13211 because it is not a significant regulatory action as defined in EO 12866;

9. National Technology Transfer Advancement Act—EPA approves State programs so long as the State programs meet the criteria delineated in RCRA. It would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets RCRA requirements. Thus, section 12(d) of the National Technology Transfer and Advancement Act does not apply to this action;

10. Congressional Review Act—EPA will submit a report containing this action and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) 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**.

#### List of Subjects

##### 40 CFR Part 239

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Waste treatment and disposal.

##### 40 CFR Part 258

Reporting and recordkeeping requirements, Waste treatment disposal, Water pollution control.

**Authority:** This action is issued under the authority of section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

Dated: November 6, 2006.

**John B. Askew,**

*Regional Administrator, Region 7.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 229

[Docket No. 030221039-6295-34; I.D. 110806D]

#### Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule.

**SUMMARY:** The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,809 nm<sup>2</sup> (6,204 km<sup>2</sup>), southeast of Portland, Maine, for 15 days. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

**DATES:** Effective beginning at 0001 hours November 18, 2006, through 2400 hours December 2, 2006.

**ADDRESSES:** Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:** Diane Borggaard, NMFS/Northeast Region, 978-281-9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301-713-2322.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at <http://www.nero.noaa.gov/whaletrp/>.

##### Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear

(and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40°N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15-day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15-day period and asking fishermen not to set any additional gear in the DAM zone during the 15-day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm<sup>2</sup> (139 km<sup>2</sup>)) such that right whale density is equal to or greater than 0.04 right whales per nm<sup>2</sup> (1.85 km<sup>2</sup>). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On November 5, 2006, an aerial survey reported a sighting of 13 right whales in the proximity 43°29' N. lat. and 68°27' W. long. This position lies southeast of the Portland, Maine. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is