

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 271**

[EPA-R10-RCRA-2011-0973; FRL-9684-6]

**Idaho: Final Authorization of State Hazardous Waste Management Program; Revision****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** Idaho applied to EPA for final authorization of certain changes to its hazardous waste program under the Resource Conservation and Recovery Act, as amended (RCRA). On February 29, 2012, EPA published a proposed rule to authorize the changes and opened a public comment period under Docket ID No. EPA-R10-RCRA-2011-0973. The comment period closed on March 30, 2012. EPA received two comments on the proposed rule. EPA's responses are included in the section B of this final rule labeled "What Were the Comments on EPA's Proposed Rule." EPA has decided that the revisions to the Idaho hazardous waste management program satisfy all the requirements necessary to qualify for final authorization and EPA is authorizing these revisions to Idaho's authorized hazardous waste management program in this final rule.

**DATES:** Final authorization for the revisions to the hazardous waste management program in Idaho shall be effective at 1 p.m. EST on July 11, 2012.

**ADDRESSES:** *Docket:* All documents in the docket are listed in the [www.regulations.gov](http://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 either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the EPA Region 10 Library, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101. The EPA Region 10 Library is open from 9:00 a.m. to noon, and 1:00 to 4:00 p.m. Monday through Friday, excluding legal holidays. The EPA Region 10 Library telephone number is (206) 553-1289.

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**SUPPLEMENTARY INFORMATION:****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 their changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations codified in Title 40 of the Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

Idaho's hazardous waste management program received final authorization effective on April 9, 1990 (55 FR 11015, March 29, 1990). Subsequently, EPA authorized revisions to the State's program effective June 5, 1992 (57 FR 11580, April 6, 1992), August 10, 1992 (57 FR 24757, June 11, 1992), June 11, 1995 (60 FR 18549, April 12, 1995), January 19, 1999 (63 FR 56086, October 21, 1998), July 1, 2002 (67 FR 44069, July 1, 2002), March 10, 2004 (69 FR 11322, March 10, 2004), July 22, 2005 (70 FR 42273, July 22, 2005), February 26, 2007 (72 FR 8283, February 26, 2007), and December 23, 2008 (73 FR 78647, December 23, 2008).

This final rule addresses a program revision application that Idaho submitted to EPA in October 2011, in accordance with 40 CFR 271.21, seeking authorization of changes to the State program. On February 29, 2012, EPA published a proposed (77 FR 12228) stating the Agency's intent to grant final authorization for revisions to Idaho's hazardous waste management program. The public comment period on this proposed rule ended on March 30, 2012.

**B. What were the comments on EPA's proposed rule?**

EPA received two comments during the public comment period which ended March 30, 2012. One commenter questioned whether Idaho's failure to object to the U.S. Department of Energy (DOE)'s decision concerning replacement capability for the disposal of remote-handled low-level radioactive waste (LLW) generated at the Idaho National Laboratory (INL) rendered the Idaho hazardous waste program ineligible for RCRA authorization. The commenter was particularly concerned that the DOE based its decision, a Finding of No Significant Impact

(FONSI), for the Remote-Handled Low-Level Radioactive Waste Onsite Disposal (RHLLWOD) on an Environmental Assessment (EA) under the National Environmental Policy Act (NEPA) rather than on a more detailed Environmental Impact Statement (EIS). EPA does not agree with the commenter. The RHLLWOD will not be used for hazardous waste or mixed waste. Mixed waste is defined at 42 U.S.C. 1004(41) as waste that contains both hazardous waste and source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq. EPA's RCRA regulations at 40 CFR 261.4(a)(4) expressly exclude source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954 from the definition of solid waste. A waste that is not a solid waste cannot be a hazardous waste subject to Subtitle C regulation under RCRA. Consequently, the RHLLWOD, which only handles source, special nuclear or byproduct material and does not handle solid waste, hazardous waste, or mixed waste, is not subject to RCRA or to the Idaho authorized hazardous waste program.

The second commenter, on behalf of the Shoshone-Bannock Tribes, questioned whether Idaho, in implementing its authorized hazardous waste program, was appropriately regulating phosphate (mineral processing) plants within the state. In response to this commenter's concerns, EPA reviewed its own work in regulating mineral processing facilities and revisited Idaho's implementation of the authorized program under the State Review Framework. The State Review Framework is designed to ensure that EPA conducts oversight of state and EPA direct implementation of compliance and enforcement programs to ensure programs are carried out in a nationally consistent manner.

Regulation of mineral processing wastes is an area in which national consistency has been challenging for EPA given the complexity of the processes and wastes in this sector. EPA began to place emphasis on the sector in the fall of 2000. In November 2000, EPA issued an enforcement alert to the regulated community giving notice that some mineral processing facilities might be failing to properly identify and manage hazardous waste regulated under RCRA. In 2003, EPA proposed the sector as an enforcement priority for fiscal years (FYs) 2005 through 2007, (December 10, 2003, 68 FR 68893).

EPA collaborated extensively with states in the development of a strategic plan establishing mineral processing as a strategic initiative and finalized the

national strategy to include mineral processing. Mineral processing was proposed as an enforcement and compliance priority on February 9, 2007, at 72 FR 6239, for FYs 2008 through 2010 (finalized as a priority on October 12, 2007, 72 FR 58084) and on January 4, 2010 (75 FR 146). On February 22, 2010, EPA finalized the proposal as a National Enforcement Initiative—Reducing Pollution from Mineral Processing Operations—for FYs 2011 through 2013.

From 2004 to 2007, as EPA explained in an enforcement update (*October 2007, FY08–FY10 Compliance and Enforcement National Priority: Mineral Processing and Mining*), EPA completed numerous inspections of phosphoric acid and mineral processing facilities. Additional inspections took place from 2007 to 2010. EPA's enforcement work is ongoing and states, including Idaho, have actively supported the national initiative and EPA's work in moving the initiative forward.

With respect to Idaho's authorized hazardous waste program, EPA's findings in the 2010 State Review Framework Final Report (SRF) show the state to have an active and responsive program. Data reviewed by EPA at the time of the SRF showed over 200 regulatory inspections conducted under the authorized program and penalties assessed totaling \$172,600. EPA found that Idaho continued to place a high priority on compliance monitoring and enforcement at permitted treatment, storage and disposal facilities.

As to the phosphate plants in Idaho about which the commenter expressed concerns, the State has conducted inspections on a near annual basis since the year 2000. On several occasions those inspections led to enforcement actions. The State has also been involved in EPA lead inspections at these facilities and has conducted compliance assistance visits as part of the state's effort to support the EPA national initiative. The implementation of the state's authorized program and the support of the EPA national initiative for mineral processing facilities indicate that Idaho has been compliant with the parameters of the authorized program for mineral processing facilities and has complied with the memorandum of agreement (MOA) between EPA and the state for the authorized program.

EPA appreciates the concerns expressed by the commenter on behalf of the Shoshone-Bannock Tribes concerning Idaho's implementation of its authorized program in regulating phosphate mining and process plants in the state. While EPA does not agree with

the conclusions drawn by the commenter, EPA takes the concerns raised seriously and construes those concerns as appropriate for addressing under the EPA national initiative for this sector. EPA does not think an assessment of Idaho's authorized program by the EPA Office of the Inspector General (OIG) is necessary at this time given the ongoing national initiative. EPA has an obligation to continue to evaluate the state authorized program for compliance with the regulations authorizing the state's program and will continue to carry out that obligation.

#### **C. What decisions has EPA made in this final rule concerning authorization?**

EPA has made a final determination that Idaho's revisions to its authorized hazardous waste management program meet all of the statutory and regulatory requirements established by RCRA for authorization. Therefore, EPA is authorizing the revised State of Idaho hazardous waste management program for all delegable Federal hazardous waste regulations codified by Idaho as of July 1, 2010, as described in the Attorney General's Statement in the October 2011 revision authorization application, and as discussed in section E of this rule. Idaho's authorized program will be responsible for carrying out the aspects of the RCRA program described in its revised program application subject to the limitations of RCRA, including the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA, and which are not less stringent than existing requirements, take effect in authorized States before the States are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Idaho, including issuing permits, until the State is granted authorization to do so.

#### **D. What will be the effect of this action?**

The effect of this action is that a facility in Idaho subject to RCRA will have to comply with the authorized State program requirements in lieu of the corresponding Federal requirements in order to comply with RCRA. Additionally, such persons will have to comply with any applicable Federal requirements, such as, for example, HSWA regulations issued by EPA for which the State has not received authorization, and RCRA requirements that are not supplanted by authorized State-issued requirements. Idaho continues to have enforcement

responsibilities under its State hazardous waste management program for violations of this program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, 42 U.S.C. 6927, 6928, 6934 and 6973, and any other applicable statutory and regulatory provisions, which includes, among others, the authority to:

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

This final action approving these revisions will not impose additional requirements on the regulated community because the regulations for which Idaho will be authorized are already effective under State law and are not changed by the act of authorization.

#### **E. What rules are we authorizing with this action?**

On October 25, 2011, Idaho submitted a program revision application requesting authorization for all delegable Federal hazardous waste regulations codified as of July 1, 2010, and these are the rules EPA authorizes through this final action. Idaho incorporated the delegable federal regulations by reference in the following provisions of the Idaho Administrative Procedures Act (IDAPA): 58.01.05.001 through 58.01.05.010; 58.01.05.011 with the exception of the 4th sentence; 58.01.05.012; 58.01.05.013; 58.01.05.015 through 58.01.05.018; 58.01.05.356.01; and 58.01.05.998. This authorization revision includes the following federal rules for which Idaho is being authorized for the first time: Exclusion of Oil-Bearing Secondary Materials Processed in a Gasification System to Produce Synthesis Gas (73 FR 57, January 2, 2008); NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) Amendments (73 FR 18970, April 8, 2008); F019 Exemption for Wastewater Treatment Sludges from Auto Manufacturing Zinc Phosphating Processes (73 FR 31756, June 4, 2008); Revisions to the Definition of Solid Waste (73 FR 64668, October 30, 2008); Academic Laboratories Generator Standards, Alternative Standards for Hazardous Waste Determination and Accumulation (73 FR 72912, December 1, 2008); Expansion of RCRA Comparable Fuel Exclusion (73 FR 77954, December 19, 2008); OECD Requirements; Hazardous Waste Technical Corrections and

Clarifications (75 FR 12989, March 18, 2010); and Withdrawal of the Emission Comparable Fuel Exclusion (75 FR 33712, June 15, 2010). The federal regulation for the Export of Shipments of Spent Lead-Acid Batteries (75 FR 1236, January 8, 2010), which the State adopted, is not being authorized as part of this action. EPA does not authorize states to administer the Federal government's export functions in any section of the RCRA hazardous waste regulations. See additional details about the Federal government's import and export functions in this final rule in section F labeled "Where Are the Revised State Rules Different From the Federal Rules?"

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

Under RCRA 3009, EPA may not authorize State rules that are less stringent than the Federal program. Any State rules that are less stringent do not supplant the Federal regulations. State rules that are broader in scope than the Federal program requirements are not authorized. State rules that are equivalent to, and State rules that are more stringent than, the Federal program may be authorized, in which case they are enforceable by EPA. This section discusses certain rules where EPA has made the finding that the State program is more stringent and will be authorized and discusses certain portions of the Federal program that are not delegable to the State because of the Federal government's special role in foreign policy matters.

EPA does not authorize States to administer Federal import and export functions in any section of the RCRA hazardous waste regulations. Even though States do not receive authorization to administer the Federal government's import and export functions, found in 40 CFR part 262, subparts E, F and H, State programs are still required to adopt the Federal import and export provisions to maintain their equivalency with the Federal program. The State amended its import and export rules to include the Federal rule on Organization for Economic Cooperation and Development (OECD) Requirements; Export Shipments of Spent Lead-Acid Batteries (75 FR 1236, January 8, 2010). The State's rule is found at IDAPA 58.01.05.006. EPA will continue to implement those requirements directly through the RCRA regulations.

EPA has found that the State's Emergency Notification Requirements, (IDAPA 58.01.05.006.02), are more stringent than the Federal program. This is because the State's regulations require

that the State Communications Center be contacted along with the Federal Center. EPA has found that the State's statutory requirement requiring hazardous waste generators and commercial hazardous waste disposal facilities to file annual hazardous waste generation reports, Idaho Code section 39-4411(4) and 39-4411(5), to be more stringent than the Federal program. EPA will authorize and enforce these more stringent provisions.

#### **G. Who handles permits after the authorization takes effect?**

Idaho will continue to issue permits for all the provisions for which it is authorized and administer the permits it issues. If EPA issued permits prior to authorizing Idaho for these revisions, these permits would continue in force until the effective date of the State's issuance or denial of a State hazardous waste permit, at which time EPA would modify the existing EPA permit to expire at an earlier date, terminate the existing EPA permit for cause, or allow the existing EPA permit to otherwise expire by its terms, except for those facilities located in Indian Country. EPA will not issue new permits or new portions of permits for provisions for which Idaho is authorized after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Idaho is not yet authorized.

#### **H. What is codification and is EPA codifying Idaho's hazardous waste program as authorized in this final rule?**

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste management program into the Code of Federal Regulations (CFR). This is done by referencing the authorized State rules in 40 CFR part 272. EPA is reserving the amendment of 40 CFR part 272, subpart N for codification of Idaho's program at a later date.

#### **I. How does this action affect Indian country (18 U.S.C. 1151) in Idaho?**

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

1. All lands within the exterior boundaries of Indian reservations within or abutting the State of Idaho;
2. Any land held in trust by the U.S. for an Indian tribe; and
3. Any other land, whether on or off an Indian reservation, that qualifies as Indian country.

Therefore, this action has no effect on Indian country. EPA retains jurisdiction over "Indian Country" as defined in 18 U.S.C. 1151 and will continue to implement and administer the RCRA program on these lands.

#### **J. Statutory and Executive Order Reviews**

This final rule revises the State of Idaho's authorized hazardous waste management program pursuant to section 3006 of RCRA and imposes no requirements other than those currently imposed by State law. This final rule complies with applicable executive orders and statutory provisions as follows:

##### *1. Executive Order 12866 and 13563*

This action authorizes revisions to the federally approved hazardous waste program in Idaho. This type of action is exempt from review under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), and Executive Order 13563 (76 FR 3821, January 21, 2011).

##### *2. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). This final rule does not establish or modify any information or recordkeeping requirements for the regulated community.

##### *3. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601 et seq., generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business, as codified in the Small Business Size Regulations at 13 CFR part 121; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has

determined that this action will not have a significant impact on small entities because the final rule will only have the effect of authorizing pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law. After considering the economic impacts of this action, I certify that this action will not have a significant economic impact on a substantial number of small entities.

#### 4. *Unfunded Mandates Reform Act*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. This action imposes no new enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small government entities.

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

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule authorizes pre-existing State rules. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed action from State and local officials but did not receive any comments from State or local officials.

#### 6. *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive order 13175, because EPA retains its authority over Indian Country and does not authorize the state to implement its authorized program in Indian Country within the state's boundaries. Thus, EPA has determined that Executive Order 13175 does not apply to this final rule. EPA specifically solicited comment on the proposed rule from tribal officials and received one

comment on behalf of the Shoshone-Bannock Tribes. That comment is discussed in section B of this preamble.

#### 7. *Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to EO 13045 because it approves a State program and is authorizing pre-existing State rules.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a “significant regulatory action” as defined under Executive Order 12866.

#### 9. *National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### 10. *Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs,

policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action authorizes pre-existing State rules which are equivalent to, and no less stringent than existing federal requirements.

#### 11. *Congressional Review Act*

Congressional Review Act (CRA), 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. EPA will submit a report containing this rule 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 rule 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 rule will be effective July 11, 2012.

#### List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

#### Authority

This 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, 6974(b).

Dated: May 31, 2012.

**Dennis J. McLerran,**

*Regional Administrator, EPA Region 10.*

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