

primary or secondary forms of identification.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[EPA-R01-RCRA-2018-0431; FRL-9990-16-Region 1]

### New Hampshire: Proposed Authorization of State Hazardous Waste Management Program Revisions

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

**ACTION:** Proposed rule.

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

**DATES:** Comments must be received on or before April 1, 2019.

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

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

- *Email:* Stephen Yee—[yeve.steve@epa.gov](mailto:yeve.steve@epa.gov).

- *Fax:* (617) 918-0197.

- *Mail:* Stephen Yee, RCRA Waste Management & UST Section, Office of Site Remediation & Restoration, EPA Region 1, 5 Post Office Square, Suite 100 (Mail Code: OSRR07-01), Boston, MA 02109-3912.

- *Hand Delivery or Courier:* Deliver your comments to: Stephen Yee, RCRA Waste Management & UST Section, Office of Site Remediation & Restoration, EPA Region 1, 5 Post Office Square, Suite 100 (Mail Code: OSRR07-01), Boston, MA 02109-3912. Such deliveries are only accepted during the Regional Office's normal hours of operation.

*Instructions:* Direct your comments to Docket ID Number EPA-R01-RCRA-

2018-0431. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](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 information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov), or email. The federal [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. (For additional information about EPA's public docket, visit the EPA Docket Center homepage at [www.epa.gov/epahome/dockets.htm](http://www.epa.gov/epahome/dockets.htm)).

*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.

You can view and copy New Hampshire's application and associated publicly available materials from 9:00 a.m. to Noon and 12:30 to 3:30 p.m., Monday through Thursday, at the EPA Region 1 Library, 5 Post Office Square, 1st floor, Boston, MA 02109-3912; by appointment; Tel: (617) 918-1990 or from 8:30 a.m. to 4:00 p.m. Monday through Friday at the New Hampshire Department of Environmental Services, Public Information Center, 29 Hazen Drive, Concord, NH 03301; Tel: (603) 271-2919 or 271-8876. Interested persons wanting to examine these

documents should make an appointment with either the EPA Library or the NHDES Public Information Center to facilitate access to the documents.

#### FOR FURTHER INFORMATION CONTACT:

Stephen Yee, RCRA Waste Management & UST Section, Office of Site Remediation & Restoration, EPA Region 1, 5 Post Office Square, Suite 100 (Mail Code: OSRR07-01), Boston, MA 02109-3912, Tel: (617) 918-1197; Fax: (617) 918-0197, email: [yeve.steve@epa.gov](mailto:yeve.steve@epa.gov).

#### SUPPLEMENTARY INFORMATION:

#### A. Why are revisions to state programs necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

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

#### B. What decisions has EPA made in this rule?

On September 10, 2018, New Hampshire submitted a complete program revision application seeking authorization of changes to its hazardous waste program that correspond to certain federal rules promulgated between July 1, 1986 and June 30, 2014 (also known as Non-HSWA, HSWA, and RCRA Clusters). EPA concludes that New Hampshire's application to revise its authorized program meets all of the statutory and regulatory requirements established under RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, EPA

proposes to grant New Hampshire final authorization to operate its hazardous waste program with the changes described in the authorization application, and as outlined below in Sections F and G of this document.

New Hampshire has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of HSWA, as discussed above.

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

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

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

This action will not impose additional requirements on the regulated community because the regulations which EPA is proposing to authorize in New Hampshire are already effective and are not changed by today's proposed action.

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

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

### E. What has New Hampshire previously been authorized for?

The State of New Hampshire initially received final authorization on December 18, 1984, effective January 3, 1985 (49 FR 49093) to implement the RCRA hazardous waste management program. EPA granted authorization for changes to New Hampshire's program on the following dates: November 14, 1994, effective January 13, 1995 (59 FR

56397); and February 27, 2006, effective March 29, 2006 (71 FR 9727).

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

On September 10, 2018, the State of New Hampshire submitted a final complete program revision application, seeking authorization of changes to its hazardous waste management program in accordance with 40 CFR 271.21. EPA proposes to determine, subject to receipt of written comments that oppose this action, that New Hampshire's hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. EPA is proposing to authorize New Hampshire for the following program changes:

New Hampshire is seeking authorization for updated state regulations addressing most federal requirements through June 30, 2014 and also for changes to New Hampshire's base program for which they had been previously authorized. Significant program revisions in this package include the Land Disposal Restrictions and hazardous waste listings. We are proposing to authorize the program changes as provided in each of the following Revision Checklists (RC):

- RC 13—Definition of Solid Waste for 40 CFR 260.30—260.33 only;
- RC 81—Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038);
- RC 89—Revision to the Petroleum Refining Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038); (RC 91)—Administrative Stay for F032, F034, and F035 Listing (HSWA/Non HSWA) (Superseded by 57 FR 5859 and 57 FR 61492, see RCs 101 and 120 in RCRA Clusters II and III, respectively);
- RC 101—Administrative Stay for the Requirement That Existing Drip Pads be Impermeable (HSWA/Non HSWA) (Superseded by 57 FR 61492, see RC 120 in RCRA Cluster III);
- RC 117A—Reissuance of the "Mixture" and "Derived-From" Rules;
- RC 135—Recovered Oil Exclusion;
- RC 140—Carbamate Production Identification and Listing of HW;
- RC 150—Amendments to the Definition of Solid Waste; Amendment II;
- RC 152—Imports and Exports of HW: Implementation of OECD Council Decision;
- RC 156—Military Munitions Rule: HW Identification and Management; Explosives Emergencies; Manifest Exemption for Transport of HW on

- Right-of-Ways on Contiguous Properties;
- RC 159—Conformance with the Carbamate Vacatur;
- RC 169—Petroleum Refining Process Wastes;
- RC 178—Petroleum Refining Process Wastes—Leachate Exemption;
- RC 183—Land Disposal Restrictions Phase IV—Technical Corrections;
- RC 187—Petroleum Refining Process Wastes—Clarification;
- RC 189—Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes;
- RC 192A—Mixture and Derived-From Rules Revisions;
- RC 194—Mixture and Derived-From Rules Revision II;
- RC 195—Inorganic Chemical Manufacturing Wastes Identification and Listing;
- RC 206—Nonwastewaters from Dyes and Pigments;
- RC 207—Uniform Hazardous Waste Manifest Rule;
- RC 218—F019 Exemption for Wastewater Treatment Sludges from Auto Manufacturing Zinc Phosphating Processes;
- RC 222—OECD Requirements; Export Shipments of Spend Lead-Acid Batteries;
- RC 225—Removal of Saccharin and Its Salts from the Lists of Hazardous Constituents—*There is no checklist for this rule because it removes provisions from the regulations.*;
- RC 227—Revision of the Land Disposal Treatment Standards for Carbamate Wastes;
- RC 229—Conditional Exclusions for Solvent Contaminated Wipes; Special Consolidated Checklist for the Land Disposal Restrictions (LDRs) as of 6/30/92 includes the following checklists:
  - RC 34—Land Disposal Restrictions;
  - RC 39—California List Waste Restrictions;
  - RC 50—Land Disposal Restrictions for First Third Scheduled Wastes;
  - RC 62—Land Disposal Restrictions Amendments to First Third Scheduled Wastes;
  - RC 63—Land Disposal Restrictions for Second Third Scheduled Wastes;
  - RC 66—Land Disposal Restrictions; Correction to the First Third Scheduled Wastes;
  - RC 78H—Land Disposal Restrictions for Third Third Scheduled Wastes;
  - RC 78N—Land Disposal Restrictions for Third Third Scheduled Wastes;
  - RC 83—Land Disposal Restrictions for Third Third Scheduled Wastes; Technical Amendments;
  - RC 95—Land Disposal Restrictions for Electric Arc Furnace Dust;

- RC 102—Second Correction to the Third Third Land Disposal Restrictions;
  - RC 103—Hazardous Debris Case-by-Case Capacity Variance;
  - RC 106—Lead-bearing Hazardous Materials Case-by-Case Capacity Variance;
- Special Consolidated Checklist for the Phases I–IV LDRs as of 12/31/02 includes the following checklists:
- RC 109—Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris;
  - RC 116—Hazardous Soil Case-By-Case Capacity Variance;
  - RC 117A—Reissuance of the “Mixture” and “Derived-From” Rules;
  - RC 123—Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case-by-Case Capacity Variance;
  - RC 124—Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated;
  - RC 136—Removal of the Conditional Exemption for Certain Slag Residues;
  - RC 137—Universal Treatment Standards and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes;
  - RC 151—Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners;
  - RC 155—Land Disposal Restrictions Phase III—Emergency Extension of the K088 Capacity Variance;
  - RC 157—Land Disposal Restrictions Phase IV—Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions From RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions;
  - RC 160—Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance, Amendment;
  - RC 161—Emergency Revision of the Carbamate Land Disposal Restrictions;
  - RC 167A—Land Disposal Restrictions Phase IV—Treatment Standards for Metal Wastes and Mineral Processing Wastes;
  - RC 167B—Land Disposal Restrictions Phase IV—Hazardous Soils Treatment Standards and Exclusions;
  - RC 167C—Land Disposal Restrictions Phase IV— Corrections;
  - RC 170—Land Disposal Restrictions Phase IV—Zinc Micronutrient Fertilizers, Amendment;
  - RC 171—Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed

- Hazardous Wastes from Carbamate Production;
- RC 172—Land Disposal Restrictions Phase IV—Extension of Compliance Date for Characteristic Slags;
  - RC 173—Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088); Final Rule;
  - RC 178—Petroleum Refining Process Wastes—Leachate Exemption;
  - RC 183—Land Disposal Restrictions Phase IV—Technical Corrections;
  - RC 189—Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes;
  - RC 190—Land Disposal Restrictions Phase IV—Deferral for PCBs in Soil;
  - RC 195—Inorganic Chemical Manufacturing Wastes Identification and Listing;
  - RC 201—Treatment Variance for Radioactively Contaminated Batteries;
- Checklist for the Wood Preserving Listings as of 12/31/02 includes the following checklists:
- RC 92—Wood Preserving Listings; Technical Corrections;
  - RC 120—Wood Preserving; Revisions to Listings and Technical Requirements;
  - RC 162—Clarification of Standards for Hazardous Waste LDR Treatment Variances;
  - RC 167F—Exclusion of Recycled Wood Preserving Wastewaters.
- A detailed cross walk for each of the checklists mentioned above can be found in the administrative record for this **Federal Register** authorization.

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

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

The most significant differences between the New Hampshire rules and the federal rules are highlighted and summarized in the Table 1 below. It should be noted that this summary does not describe every difference, nor every

detail regarding the differences that are described. Members of the regulated community are advised to read the complete regulations to ensure that they understand their compliance responsibilities.

#### **1. More Stringent Provisions**

There are aspects of the New Hampshire program which are more stringent than the federal program. These requirements would become part of New Hampshire’s authorized program and would be federal enforceable. All of these more stringent requirements are, or will become, part of the federally enforceable RCRA program when authorized by the EPA and must be complied with in addition to the State requirements which track the minimum Federal requirements. These more stringent requirements are identified as MS in the Table 1 below.

#### **2. Broader-In-Scope Provisions**

There are aspects of the New Hampshire program that are broader-in-scope than the federal program. These broader-in-scope requirements do not become part of the authorized program and EPA cannot enforce them. Regulated entities must comply with these requirements in accordance with State law. These broader-in-scope requirements are identified as BIS in the Table 1 below.

#### **3. Partially Broader-In-Scope**

There are aspects of the New Hampshire program that are partially broader-in-scope than the federal program. These partially broader-in-scope requirements are the result of New Hampshire not adopting certain portions of the regulations. These partially broader-in-scope requirements are not part of the authorized program and EPA cannot enforce them. However, the parts of the regulations which are not partially broader-in-scope are part of the federally enforceable RCRA program. Regulated entities must comply with these requirements in accordance with State law. These broader-in-scope requirements are identified as Partially BIS in the Table 1 below.

#### **4. Different but Equivalent Provisions**

New Hampshire also has some regulations that differ from, but have been determined to be equivalent to, the federal regulations. These state regulations will become part of the federally enforceable RCRA program when authorized by the EPA. These different but equivalent requirements are identified as EQ in the Table 1 below.

5. There are certain federal requirements that EPA cannot delegate to the States, although New Hampshire has adopted these requirements by

reference, EPA would continue to implement those requirements. These requirements are identified in the Table 1 below.

TABLE 1

Description of checklist number and the Federal requirement	Analogous state authority <sup>1</sup> —(Env–Hw)
<b>RC 117A—Reissuance of the “Mixture” and “Derived-From” Rules</b>	
261.3(a)(2)(i) .....	401.01(b)(3)—NH’s mixture rule regulates as characteristic wastes mixtures of hazardous wastes with materials that are not solid wastes (e.g., soils) if the mixture exhibits a characteristic. (Partially BIS).
261.3(a)(2)(iv) .....	401.01(b)(2); 401.01(c)(2)—NH’s mixture rule regulates as listed wastes mixtures of hazardous wastes with materials that are not solid wastes (e.g., soils). (Partially BIS).
261.3(a)(2)(iv)(A)–(E) .....	NH is not adopting an analog to these provisions. (BIS).
261.3(b)(2) .....	401.01(b)(2); 404.02—NH’s mixture rule regulates as listed wastes mixtures of hazardous wastes with materials that are not solid wastes (e.g., soils). (Partially BIS).
261.3(b)(3) .....	401.01(b)(3)—NH’s mixture rule regulates as characteristic wastes mixtures of hazardous wastes with materials that are not solid wastes (e.g., soils) if the mixture exhibits a characteristic. (Partially BIS).
261.3(c)(2)(i) .....	401.01(c)(2), 404.03(a), 404.03(b)—NH includes precipitation run-off that exhibits a characteristic. (Partially BIS).
261.3(c)(2)(ii)(B) .....	401.03(b)(30)—NH has adopted the exemption for fuels produced from the refining of oil-bearing HW (now at 40 CFR 261.6(a)(3)(iii)) but has not adopted the other exemptions. (Partially BIS).
<b>RC 135—Recovered Oil Exclusion</b>	
261.3(c)(2)(ii)(B) .....	401.03(b)(30)—NH has adopted the exemption for fuels produced from the refining of oil-bearing HW (now at 40 CFR 261.6(a)(3)(iii)) but has not adopted the other exemptions. (Partially BIS).
261.6(a)(3)(v), now at 261.6(a)(3)(iv).	NH is not adopting these provisions. (BIS).
261.6(a)(3)(vi) .....	An analog to this provision does not currently exist in NH rules, and this provision was subsequently deleted in RC169.
<b>RC 140—Carbamate Production Identification and Listing of HW</b>	
261.3(a)(2)(iv)(E)–(G) .....	NH is not adopting these exemptions. (BIS).
<b>RC 169—Petroleum Refining Process Wastes</b>	
261.3(a)(2)(iv)(C) .....	N/A—NH is not adopting the exemption. (BIS).
261.3(c)(2)(ii)(B) .....	401.03(b)(30)—NH has adopted the exemption for fuels produced from the refining of oil-bearing HW (40 CFR 261.6(a)(3)(iii)) but has not adopted the other exemptions. (Partially BIS).
261.6(a)(3)(iv)(C) .....	NH is not adopting this provision. (BIS).
<b>RC 192A—Mixture and Derived-From Rules Revisions</b>	
261.3(a)(2)(iv) .....	401.01(b)(2); 401.01(c)(2)—NH’s mixture rule regulates as listed wastes mixtures of hazardous wastes with materials that are not solid wastes (e.g., soils). NH has not yet adopted RC191. (Partially BIS).
261.3(c)(2)(i) .....	401.01(c)(2); 404.03(a); 404.03(b)—NH includes precipitation run-off that exhibits a characteristic. NH has not yet adopted RC191. (Partially BIS).
261.3(h)(1)–(3) .....	NH has not yet adopted RC191. (BIS).
<b>RC 194—Mixture and Derived-From Rules Revision II</b>	
261.3(a)(2)(iv) .....	401.01(b)(2), 401.01(c)(2)—NH’s mixture rule regulates as listed wastes mixtures of hazardous wastes with materials that are not solid wastes (e.g., soils). NH has not yet adopted CL191. (Partially BIS).
261.3(a)(2)(iv)(A)–(G) .....	NH is not adopting these exemptions. (BIS).
<b>RC 207—Uniform Hazardous Waste Manifest Rule</b>	
262.27(a) .....	510.01(e)—NH requires generators of ≥100 kgs./month to certify. (MS).
262.27(b) .....	510.01(f)—NH requires generators of <100 kgs./month to certify. (MS).
262.34(m) .....	511.02(b)(3); 507.03(a) and (b)—NH does not allow accumulation as provided in 40 CFR 262.34(d)–(f). (MS).
<b>RC 229—Conditional Exclusions for Solvent Contaminated Wipes</b>	
260.10 “Solvent-contaminated wipe”.	401.02(d) and (e)—Used oil is a listed waste in NH. NH’s definition allows wipes to contain used oil. (EQ) Wipes used to clean up solvent spills of 12 fluid ounces or more are not eligible for the exemption. (BIS).
261.4(a)(26)(i) .....	401.03(g)(3)–(7)—NH has added a clarifying requirement at (g)(1) that excess spent solvent can’t be added to wipes to avoid disposal. (EQ).
261.4(b)(18)(i) .....	401.03(g)(3)–(7)—NH has added a clarifying requirement at (g)(1) that excess spent solvent can’t be added to wipes to avoid disposal. (EQ).
261.4(b)(18)(vi)(A) .....	401.03(b)(28)c.3—NH prohibits disposal in NH MSW landfills. (BIS).

TABLE 1—Continued

Description of checklist number and the Federal requirement	Analogous state authority <sup>1</sup> —(Env–Hw)
<b>Special Consolidated Checklist for the Land Disposal Restrictions as of June 30, 1992</b>	
261.5(b)—(RC 34) .....	503.01, 508, 1201.03(b)—NH has not adopted the very small quantity generator (VSQG) exclusion but does exempt VSQGs from LDR requirements. (MS).
261.5(f)(2); 261.5(g)(2)—(RC 34).	503.01, 508—NH has not adopted the VSQG exclusion. (MS).
262.34(d)(4)—(RC 83) .....	507.03(a)—NH rules allow generators of between 100 and 1000 kgs./month to accumulate up to 90 days rather than 180. (MS).
263.12—(RC 34) .....	104.63; 304.11; 601.01(b)(2) and (3); 701.01(a)—NH requires a permit for transfer facilities. (MS).
268.1(c)(3)—(RCs 34, 39, 50, 66, 78); 268.1(c)(3)(i)—(ii)—(RC 78).	1202.02(b)(1)—NH prohibits underground injection of HW. (MS)
268.3(b)—(RCs 78, 102) .....	1202.02(f), NH has not adopted an analog to this provision. (MS).
268.5(a)—(i)—(RC 34) .....	N/A—These federal regulations are not being incorporated by reference, since the authority is being retained by EPA; 102.02(a); 102.02(b)(1); 1202.02(a)(1).
268.6(a)—(n)—(RC 34) .....	N/A—These federal regulations are not being incorporated by reference, since the authority is being retained by EPA; 102.02(a); 1202.02(a)(1).
268.7(a)(10)—(RCs 78, 83)	509.05; 1202.02(i)—NH has not adopted an analog to this provision. (MS).
268.42(b)—(RCs 34, 39, 78)	N/A—These federal regulations are not being incorporated by reference, since the authority is being retained by EPA; 102.02(a); 1202.02(a)(1).
268.44(a)—(g)—(RC 34) .....	N/A—These federal regulations are not being incorporated by reference, since the authority is being retained by EPA; 102.02(a); 102.02(b)(1); 1202.02(a)(1).
<b>Special Consolidated Checklist for the Phases I–IV Land Disposal Restrictions as of December 31, 2002</b>	
262.34(d)(4)—(RC 179) .....	507.03(a)—NH rules allow generators of between 100 and 1000 kgs./month to accumulate up to 90 days rather than 180 (MS).
264.1(g)(6)—(RCs 124, 137)	404.01; 701.02(a)(4)—NH rules do not include language specifically allowing dilution of D001 and D003 wastes in ENUs and WWTUs. (MS).
265.1(c)(10)—(RCs 124, 137).	404.01, 701.02(a)(4)—NH rules do not include language specifically allowing dilution of D001 and D003 wastes in ENUs and WWTUs. (MS).
268.1(c)(3)(i)—(ii)—(RC 151)	1202.02(b)(1)—NH prohibits underground injection of HW. (MS).
268.3(b)—(RC 151) .....	1202.02(f)—NH has not adopted an analog to this provision. (MS).
268.5(h)(2)(ii)—(vi)—(RC 109)	N/A—These federal regulations are not being incorporated by reference, since the authority is being retained by EPA; 102.02(a); 102.02(b)(1); 1202.02(a)(1).
268.7(a)(7)—(RCs 137, 157, 167C).	509.05; 1202.01 incorporates 40 CFR 268 by reference; 1202.02(b)(2)—NH prohibits underground injection of HW. (MS).
268.42(b)—(RC 109) .....	N/A—These federal regulations are not being incorporated by reference, since the authority is being retained by EPA; 102.02(a); 1202.02(a)(1).
268.44(a)(1)–(2)—(RC 162)	N/A—These federal regulations are not being incorporated by reference, since the authority is being retained by EPA; 102.02(a); 102.02(b)(1); 1202.02(a)(1).
<b>Special Consolidated Checklist for the Wood Preserving Listings as of December 31, 2002</b>	
262.34(a)(1)(i)—(RC 92) .....	507.01(a)—(EQ); 507.02(a)—(EQ); 509.02(a)(6)—(EQ); 507.02(b)—(f)—NH requires storage on impervious surfaces; secondary containment if wastes with free liquids are stored near floor drains, manholes, or sinks; and for containers stored outside, protection from precipitation, secondary containment, and setbacks from wells and storm drains (MS); 509.03(b), (e), (g) and (i)—For satellite storage NH requires: Training, appropriate management of incompatible wastes, and inspections. (MS).
262.34(a)(1)(ii)—(RC 92) .....	507.01(a); 507.02(a)—(EQ); 507.03(a)—(EQ); 509.02(a)(7)—(EQ); 508.03(d)—NH requires federal VSQGs that accumulate ≥100 kg of HW in tanks to comply with portions of Subpart J. (MS).

<sup>1</sup> State of New Hampshire's Hazardous Waste Rules, effective August 14, 2017.

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

When the final authorization takes effect, New Hampshire will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer and enforce any RCRA and HSWA (Hazardous and Solid Waste Act) permits or portions of permits that it has issued in New Hampshire prior to the effective date of this authorization until the State incorporates the terms and

conditions of the federal permits into the State RCRA permits. EPA will not issue any new permits, or new portions of permits, for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for any HSWA requirements for which New Hampshire is not yet authorized. EPA has the authority to enforce state-issued permits after the State is authorized.

#### I. What is codification and is EPA codifying New Hampshire's hazardous waste program as authorized in this rule?

Codification is the process of placing citations and references to the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by adding these citations and references to the authorized State rules in 40 CFR part 272. EPA is not proposing to codify the

authorization of New Hampshire's changes at this time. However, EPA reserves the ability to amend 40 CFR part 272, subpart EE for this authorization of New Hampshire's program changes at a later date.

#### J. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action proposes to authorize State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as today's proposed authorization of New Hampshire's revised hazardous waste program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action proposes to authorize pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various

levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to authorize State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in proposing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive

order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). "Burden" is defined at 5 CFR 1320.3(b). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this action proposes authorization of pre-existing State rules which are at least equivalent to, and no less stringent than existing federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, this proposed rule is not subject to Executive Order 12898.

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

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

**Authority:** This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: January 29, 2019.

**Deborah A. Szaro,**

*Acting Regional Administrator, EPA Region 1.*

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