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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. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective December 26, 2000.

#### 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, 6974(b).

Dated: August 29, 2000.

#### A. Stanley Meiburg,

*Acting Regional Administrator, Region 4.*

[FR Doc. 00-27140 Filed 10-25-00; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[FRL-6892-8]

#### Vermont: Final Authorization of State Hazardous Waste Management Program Revisions

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

**ACTION:** Immediate final rule; technical correction.

**SUMMARY:** Vermont has applied to EPA for Final authorization of certain changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Vermont's changes to their hazardous waste program will take effect as provided below. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and the separate document in the proposed rules section of this **Federal Register** will serve as the proposal to authorize the changes.

**DATES:** This Final authorization will become effective on December 26, 2000, unless EPA receives adverse written comment by November 27, 2000. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take immediate effect.

**ADDRESSES:** Send written comments to Geri Mannion, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114-2023; Phone number: (617) 918-1648. We must receive your comments by November 27, 2000. You can view and copy materials submitted by Vermont during normal business hours at the following locations: EPA New England Library, One Congress Street, Suite 1100 (LIB), Boston, MA 02114-2023; Phone number: (617) 918-1990; Business hours: 9 AM to 4 PM; or the Agency of Natural Resources, 103 South Main Street—West Office Building, Waterbury, VT 05671-0404; Phone

number: (802) 241-3888; Business hours: 7:45 AM to 4:30 PM.

**FOR FURTHER INFORMATION CONTACT:** Geri Mannion, EPA New England, One Congress Street, suite 1100 (CHW), Boston, MA 02114-2023; Phone number: (617) 918-1648.

#### SUPPLEMENTARY INFORMATION:

##### Technical Corrections

In addition to authorizing the changes to Vermont's hazardous waste program, EPA is making a technical correction to a provision referenced in its immediate final rule published in the **Federal Register** on May 3, 1993 (58 FR 26242) and effective August 6, 1993 (58 FR 31911) which authorized the State for other earlier revisions to its hazardous waste program.

##### A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

##### B. What Decisions Have We Made in This Rule?

We conclude that Vermont's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Vermont Final authorization to operate its hazardous waste program with the changes described in the authorization application. Vermont has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Vermont, including

issuing permits, until the State is granted authorization to do so.

*C. What Is the Effect of Today's Authorization Decision?*

The effect of this decision is that a facility in Vermont subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Vermont has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its full authority under RCRA sections 3007, 3008, 3013, and 7003.

This action does not impose additional requirements on the regulated community because the regulations for which Vermont is being authorized by today's action are already effective, and are not changed by today's action.

*D. Why Wasn't There a Proposed Rule Before Today's Rule?*

EPA did not publish a proposal before today's rule because we view this as a non-controversial program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document

that proposes to authorize the state program changes.

*E. What Happens if EPA Receives Comments That Oppose This Action?*

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the state program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

*F. What Has Vermont Previously Been Authorized for?*

Vermont initially received Final authorization on January 7, 1985,

effective January 21, 1985 (50 FR 775) to implement the RCRA hazardous waste management program. The Region published an immediate final rule for certain revisions to Vermont's program on May 3, 1993 (58 FR 26242) and reopened the comment period for these revisions on June 7, 1993 (58 FR 31911). The authorization became effective August 6, 1993 (58 FR 31911). The Region granted authorization for further revisions to Vermont's program on September 24, 1999 (64 FR 51702), effective November 23, 1999. On October 18, 1999 (64 FR 56174) the Region published a correction to the immediate final rule published on September 24, 1999, with the effective date of November 23, 1999.

*G. What Changes Are We Authorizing With Today's Action?*

On August 11, 2000, in accordance with 40 CFR 271.2, Vermont submitted a final complete program revision application seeking authorization for its revisions adopted March 28, 2000. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Vermont's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Vermont Final authorization for the following program changes:

Description of Federal requirement	Analogous State authority <sup>1</sup>
<b>Non-HSWA Requirements Prior to Non-HSWA I Cluster Checklists</b>	
Correction for Checklist 8: Lime Stabilized Pickle Liquor Sludge; 49 FR 23284-23287; June 5, 1984.	No State analog for this revision; the State is more stringent
<b>RCRA VIII Cluster Checklist</b>	
(160) Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance, Amendment; 62 FR 37694-37699; July 14, 1997.	7-106(a), 7-109(a).
(161) Emergency Revision of the Carbamate Land Disposal Restrictions; 62 FR 45568; August 28, 1997.	7-106(a), 7-109(a).
(162) Clarification of Standards for Hazardous Waste LDR Treatment Variances; 62 FR 64504-64509; December 5, 1997.	7-106(a), 7-109(a).
(166) Recycled Used Oil Management Standards; Technical Correction and Clarification; 63 FR 24963-24969; May 6, 1998; as amended July 14, 1998, at 63 FR 37780-37782.	7-803(a), 7-805(d), 7-806(e)(1)(A)-(D), 7-109(a), 7-811(b)(3), 7-813, 7-812(f)
(167A) Land Disposal Restrictions Phase IV—Treatment Standards for Metal Wastes and Mineral Processing Wastes; 63 FR 28556-28753; May 26, 1998.	7-106(a), 7-109(a).
(167B) Land Disposal Restrictions Phase IV—Hazardous Soils Treatment Standards and Exclusions; 63 FR 28556-28753; May 26, 1998.	7-106(a), 7-109(a).
(167C) Land Disposal Restrictions Phase IV—Corrections; 63 FR 28556-28753; May 26, 1998; as amended at 63 FR 31266, June 8, 1998.	7-106(a), 7-109(a).
(167D) Mineral Processing Secondary Materials Exclusion; 63 FR 28556-28753; May 26, 1998	No State analogs for this exclusion; the State rule is more stringent.
(167E) Bevill Exclusion Revisions and Clarifications; 63 FR 28556-28753; May 26, 1998 .....	7-109(a), 7-202(a)(1) & (3), 7-203(e) & (k).
<b>RCRA IX Cluster Checklists</b>	
(170) Land Disposal Restrictions Phase IV—Zinc Micronutrient Fertilizers, Amendment; 63 FR 46332-46334; August 31, 1998.	7-106(a), 7-109(a).
(171) Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from Carbamate Production; 63 FR 47410-47418; September 4, 1998.	7-106(a), 7-109(a).
(172) Land Disposal Restrictions Phase IV—Extension of Compliance Date for Characteristic Slags; 63 FR 48124-48127; September 9, 1998.	7-106(a), 7-109(a).
(173) Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088); Final Rule; 63 FR 51254-51267; September 24, 1998.	7-106(a), 7-109(a).

Description of Federal requirement	Analogous State authority <sup>1</sup>
(174) Post-Closure Permit Requirement and Closure Process; 63 FR 56710–56735; October 22, 1998.	7–109(a), 7–504(e)(1), 7–510(c)(1), 7–504(f), 7–505(b).
(175) HWIR-Media; 63 FR 65874–65947; November 30, 1998 .....	7–103, 7–109(a), 7–504(e)(1), 7–510(c), 7–106; the State rule is more stringent because it is not adopting the optional rules for Remedial Actions Plans.
(176) Universal Waste Rule—Technical Amendments; 63 FR 71225–71230; December 24, 1998.	7–109(a), 7–204(f)(3), 7–911.
(177) Organic Air Emission Standards: Clarification and Technical Amendments; 64 FR 3382; January 21, 1999.	7–311(f)(5), 7–311(g)(2)(B), 7–109(a), 57–504(e)(1), 7–510(c).
(179) Land Disposal Restrictions Phase IV—Technical Corrections and Clarifications to Treatment Standards; 64 FR 25408–25417; May 11, 1999.	7–103, 7–602, 7–204(a)(3), 7–307(c)(4), 7–106(a), 7–109(a).
(180) Test Procedures for the Analysis of Oil and Grease and Non-Polar Material; 64 FR 26315–26327; May 14, 1999.	7–106(a), 7–109(d).
64 FR 56469, October 20, 1999: Land Disposal Restrictions Phase IV: Final Rule Promulgating Treatment Standards for Metal Wastes and Mineral Processing Wastes; Mineral Processing Secondary Materials and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils and Exclusion of Recycled Wood Preserving Wastewaters.	7–106(a), 7–109(a).
64 FR 52379, September 28, 1999: Project XL Site-specific Rulemaking for University Laboratories at the University of Vermont, Burlington, VT.	7–109(c).

<sup>1</sup> Hazardous Waste Management Regulations, effective March 28, 2000.

*H. Where Are the Revised State Rules Different From the Federal Rules?*

We consider the following State requirements to be more stringent than the Federal requirements and they are part of Vermont’s authorized program and are federally enforceable.

- Vermont did not adopt analogs for the Mineral Processing Secondary Minerals Exclusion promulgated at 63 FR 28556—28753 (May 26, 1998).
- Vermont did not adopt the optional remedial action plan provisions for the HWIR-Media rule promulgated at 63 FR 65874—65947 (November 30, 1998).

There are no Broader-in-scope requirements in this application. Broader-in-scope requirements are not part of the authorized program and EPA does not enforce them. Although sources must comply with such requirements in accordance with state law, they are not Federal RCRA requirements.

*I. Who Handles Permits After the Authorization Takes Effect?*

Vermont will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will not issue any more 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 HSWA requirements for which Vermont is not yet authorized.

*J. What Technical Correction Is EPA Making Today?*

In listing Checklist 8 on the crosswalk for the rule promulgated at 58 FR 26243 (May 3, 1993) relating to Lime Stabilized Pickle Liquor Sludge, EPA

inadvertently asserted that Vermont was seeking authorization for 40 CFR 261.3(c)(2). This rule exempts waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC Codes 331 and 332) from the definition of hazardous waste unless it exhibits one or more hazardous waste characteristics. Today we are correcting the error in the May 3, 1993 **Federal Register** document and noting that Vermont’s regulation is more stringent because it did not adopt a state analog for the exclusion at Section 261.3(c)(2).

*K. What Is Codification and Is EPA Codifying Vermont’s Hazardous Waste Program as Authorized in This Rule?*

Codification is the process of placing the State’s statutes and regulations that comprise the State’s authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. EPA is authorizing but not codifying Vermont’s updated program at this time. We reserve the amendment of 40 CFR part 272, Subpart UU for this State program until a later date.

*L. Administrative Requirements*

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB.

This action authorizes state requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by state law. Accordingly, I certify that this action will not have a significant

economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes 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 (Public Law 104–4). This rule is not subject to Executive Order 13084 relating to the affects on communities of tribal governments because there are no Federally recognized Indian tribes in Vermont. This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes 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.

Under RCRA 3006(b), EPA grants a State’s application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary

consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12898 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order. This rule does not impose an information collection

burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This

action, nevertheless, will be effective sixty (60) days after publication pursuant to the procedures governing immediate final rules.

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

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, 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: October 18, 2000.

**Mindy S. Lubber,**

*Regional Administrator, EPA New England.*

[FR Doc. 00-27576 Filed 10-25-00; 8:45 am]

**BILLING CODE 6560-50-M**