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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[FRL-7649-9]

#### Indiana: Final Authorization of State Hazardous Waste Management Program Revision

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

**ACTION:** Proposed rule.

**SUMMARY:** Indiana has applied to EPA for Final authorization of the 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 proposing to authorize the State's changes through this proposed final action.

**DATES:** Written comments must be received on or before May 20, 2004.

**ADDRESSES:** Send written comments to Gary Westefer, Indiana Regulatory Specialist, DM-7J, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please refer to Docket Number IN ARA19. We must receive your comments by May 20, 2004. You can view and copy Indiana's application from 9 am to 4 pm at the following addresses: Indiana Department of Environmental Management, 100 North Senate, Indianapolis, Indiana, (mailing address P.O. Box 6015, Indianapolis, Indiana 46206) contact Lynn West (317) 232-3593, or Steve Mojonner (317) 233-1655; and EPA Region 5, contact Gary Westefer at the following address.

**FOR FURTHER INFORMATION CONTACT:** Gary Westefer, Indiana Regulatory Specialist, U.S. EPA Region 5, DM-7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-7450.

#### 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 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 Indiana's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Indiana Final authorization to operate its hazardous waste program with the changes described in the authorization application. Indiana has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) 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 Indiana, including issuing permits, until the State is granted authorization to do so.

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

This decision means that a facility in Indiana subject to RCRA will now have to comply with the authorized State requirements (listed in section F of this action) instead of the equivalent Federal requirements in order to comply with RCRA. Indiana has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports
- enforce RCRA requirements and suspend or revoke permits

- take enforcement actions regardless of whether the State has taken its own actions

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

##### D. What Happens If EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will address all public comments in a later **Federal Register**. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

##### E. What Has Indiana Previously Been Authorized for?

Indiana initially received Final authorization on January 31, 1986, effective January 31, 1986 (51 FR 3955) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on October 31, 1986, effective December 31, 1986 (51 FR 39752); January 5, 1988, effective January 19, 1988 (53 FR 128); July 13, 1989, effective September 11, 1989 (54 FR 29557); July 23, 1991, effective September 23, 1991 (56 FR 33717); July 24, 1991, effective September 23, 1991 (56 FR 33866); July 29, 1991, effective September 27, 1991 (56 FR 35831); July 30, 1991, effective September 30, 1991 (56 FR 36010); August 20, 1996, effective October 21, 1996 (61 FR 43018); September 1, 1999, effective November 30, 1999 (64 FR 47692), January 4, 2001 effective January 4, 2001 (66 FR 733), and December 6, 2001 effective December 6, 2001 (66 FR 63331).

##### F. What Changes Are We Authorizing With Today's Action?

On March 26, 2003, Indiana submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a final decision, subject to receipt of written comments that oppose this action, that Indiana's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we propose to grant Indiana Final authorization for the following program changes:

Description of Federal Requirement (include checklist #, if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous State Authority
Mineral Processing Secondary Materials Exclusion Checklist 167D .....	May 26, 1998, 63 FR 28556.	329 IAC 3.1-6-1; 3.1-6-2(2). Effective May 4, 2001.
Land Disposal Restrictions Phase IV: Treatment Standards For Wood Preserving Wastes, Treatment Standards for Metal Wastes, Zinc Micronutrient Fertilizers, Carbamate treatment Standards, and K088 Treatment Standards Checklist 179.	May 11, 1999, 64 FR 25408.	329 IAC 3.1-6-1; 3.1-6-2(2); 3.1-7-1; 3.1-12-1; 3.1-12-2(5), (7). Effective May 4, 2001.
Guidelines Establishing Test Procedures for the Analysis of Oil and Grease and Non-Polar Material Under the Clean Water Act and the Resource Conservation and Recovery Act Checklist 180.	May 14, 1999, 64 FR 26315.	329 IAC 3.1-1-7; Effective May 4, 2001.
Hazardous Waste Management System; Modification of the Hazardous Waste Program; Hazardous Waste Lamps Checklist 181.	July 6, 1999, 64 FR 36466.	329 IAC 3.1-4-1; 3.1-4-1(b); 3.1-6-1; 3.1-9-1; 3.1-9-2(1); 3.1-10-1; 3.1-10-2(1),(2)(3); 3.1-12-1; 3.1-12-2(4); 3.1-13-1; 3.1-13-2(1),(2)(3); 3.1-13-3 through 3.1-13-17; 3.1-16-1; 3.1-16-2(a)(1); 3.1-16-2(a)(4); 3.1-16-2(a)(5); 3.1-16-2(a)(8); 3.1-16-2(b). Effective May 4, 2001.
NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors Checklist 182 as amended Checklist 182.1.	September 30, 1999, 64 FR 52827; November 19, 1999 64 FR 63209.	329 IAC 3.1-4-1; 3.1-4-1(b); 3.1-6-1; 3.1-9-1; 3.1-10-1; 3.1-11-1; 3.1-13-1. Effective May 4, 2001.
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; Technical Correction Checklist 183.	October 20, 1999, 64 FR 56469.	329 IAC 3.1-6-1; 3.1-6-2(17); 3.1-7-1; 3.1-12-1. Effective May 4, 2001.
180 Day Accumulation Time Under RCRA for Waste Water Treatment Sludges from the Metal Finishing Industry Checklist 184.	March 8, 2000, 65 FR 12378.	329 IAC 3.1-7-1. Effective May 4, 2001.
Organobromine Production Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Listing of CERCLA Hazardous Substances, Reportable Quantities Checklist 185.	March 17, 2000, 65 FR 14472.	329 IAC 3.1-6-1; 3.1-6-2(17),(18),(19); 3.1-12-1; 3.1-12-2(10). Effective May 4, 2001.
Organobromine Production Wastes; Petroleum Refining Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Final Rule and Correcting Amendments Checklist 187.	June 8, 2000, 65 FR 36365.	329 IAC 3.1-6-1; 3.1-12-1. Effective May 4, 2001.
NESHAPS: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors; Final Rule, Technical Correction Checklist 188 as amended Checklist 188.1.	July 10, 2000, 65 FR 42292; May 14, 2001, 66 FR 24270.	329 IAC 3.1-6-1; 3.1-9-1; 3.1-13-1. Effective July 3, 2002.
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Chlorinated Aliphatics Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; CERCLA Hazardous Substance Designation and Reportable Quantities Checklist 189.	November 8, 2000, 65 FR 67068.	329 IAC 3.1-6-1; 3.1-6-2(17); 3.1-6-219),(20); 3.1-12-1. Effective July 3, 2002.
Deferral of Phase IV Standards for PCBs as a Constituent Subject to Treatment in Soil Checklist 190.	December 26, 2000, 65 FR 81373.	329 IAC 3.1-12-1. Effective July 3, 2002.
Storage, Treatment, Transportation, and Disposal of Mixed Waste Checklist 191	May 16, 2001, 66 FR 27218.	329 IAC 3.1-11-1. Effective July 3, 2002.
Hazardous Waste Identification Rule (HWIR) Revisions to the Mixture and Derived-From Rules Checklist 192A.	May 16, 2001, 66 FR 27266.	329 IAC 3.1-6-1. Effective July 3, 2002.
Land Disposal Restrictions Correction Checklist 192B .....	May 16, 2001, 66 FR 27266.	329 IAC 3.1-12-1. Effective July 3, 2002.
Change of Official EPA Mailing Address; Additional Technical Amendments and Corrections Checklist 193.	June 28, 2001, 66 FR 34374.	329 IAC 3.1-1-7. Effective July 3, 2002.

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

Indiana has excluded the non-delegable Federal requirements at 40 CFR 268.5, 268.6, 268.42(b), 268.44, and 270.3 in their Incorporation by Reference at 3.1-12-2 and 3.1-13-2(4). EPA will continue to implement those requirements.

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

Indiana will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We 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 Indiana is not yet authorized.

### I. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Indiana?

Indiana 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 Indiana;
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 the authority to implement and administer the RCRA program in Indian Country. However, at this time, there is no Indian Country within the State of Indiana.

### J. What Is Codification and Is EPA Codifying Indiana'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. Indiana's rules, up to and including those revised January 4, 2001, have previously been codified through the incorporation-by-reference effective December 24, 2001 (66 FR 53728, October 24, 2001). We reserve the amendment of 40 CFR part 272, subpart P for the codification of Indiana's program changes until a later date.

### K. 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). 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 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. 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. This rule does not include environmental justice issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994). As required by section 3 of Executive Order 12988 (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.*).

### 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: March 30, 2004.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

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