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

[FRL-7101-9]

**New York: Final Authorization of State Hazardous Waste Management Program Revision****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Immediate final rule.

**SUMMARY:** New York has applied to EPA for Final authorization of changes to its hazardous waste program under the Solid Waste Disposal Act, as amended, commonly referred to as 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 New York's changes to its 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 a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

**DATES:** This Final authorization will become effective on January 15, 2002 unless EPA receives adverse written comment by December 17, 2001. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule or those paragraphs or sections of this rule which are the subject of the comments opposing this authorization in the **Federal Register**, and inform the public that this authorization will not take effect (See Section E of this rule for further details).

**ADDRESSES:** Send written comments to Michael Infurna, Division of Environmental Planning and Protection, EPA, Region II, 290 Broadway, 22nd Floor, New York, NY 10007, Phone number: (212) 637-4177. You can view and copy New York's application during business hours at the following

addresses: EPA Region 2 Library, 290 Broadway, 16th Floor, New York, NY 10007, Phone number: (212) 637-3185; or New York State Department of Environmental Conservation, Division of Solid and Hazardous Materials, 625 Broadway, Albany, NY 12233-7250, Phone number: (518) 402-8730. The public is advised to call in advance to verify the business hours of the above locations.

**FOR FURTHER INFORMATION CONTACT:**

Michael Infurna, Division of Environmental Planning and Protection, EPA, Region II, 290 Broadway, 22nd Floor, New York, NY 10007, Phone number: (212) 637-4177.

**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 New York's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant New York Final authorization to operate its hazardous waste program with the changes described in the authorization application. New York 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 New York, including

issuing permits if necessary, 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 New York 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. New York has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013, and 7003. These sections include, but may not be limited to, the 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 New York 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 routine 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 New York Previously Been Authorized For?**

New York initially received Final authorization effective on May 29, 1986 (51 FR 17737) to implement its base hazardous waste management program. We granted authorization for changes to its program effective July 3, 1989 (54 FR 19184), May 7, 1990 (55 FR 7896), October 29, 1991 (56 FR 42944), May 22, 1992 (57 FR 9978), August 28, 1995 (60 FR 33753), and October 14, 1997 (62 FR 43111).

While EPA is not authorizing any New York State, civil or criminal statute in this program revision authorization, be advised that New York State has revised some of the statutory provisions

which provide the legal basis for the State's implementation of the hazardous waste management program in New York State. As of January 1, 1999, those updated New York State Statutes include the following: Environmental Conservation Laws (ECL) sections 27-0917(8), 70-0109(2)(a), 71-2707, 71-2709 through 71-2717, 71-2720, 71-2727 and Public Offices Law (POL) sections 87(2)(d), 87(2)(j), 89(2)(b)(iv) and 89(8). These provisions are related to criminal enforcement, public access to information and other aspects of the State program.

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

On July 30, 2001, New York submitted a signed Memorandum of Agreement, which was the final component for a complete program revision application, seeking authorization of its changes in accordance with 40 CFR 271.21. New York's revision application includes

changes to the Federal Hazardous Waste program, as well as State-initiated changes. New York made these changes to provisions that we had previously authorized, as listed in Section F. All the State-initiated changes correct typographical errors and printing errors, clarify and make the State's regulations more internally consistent, or bring the State regulations closer to the Federal language.

We now make an immediate final decision, subject to receipt of written comments that oppose this action, that New York's hazardous waste program revision and State-initiated changes satisfy all of the requirements necessary to qualify for Final authorization. Therefore, we grant New York Final authorization for the following program revisions (Note: We are only authorizing the revised regulations set forth below. The statutory citations are included for information purposes only.):

*1. Program Revisions*

Description of Federal Requirement	Federal Register date and page	Analogous State regulatory authority <sup>1</sup>
<b>RCRA CLUSTER III</b>		
Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated (Revision Checklist 124, as revised by Checklists 126, 137, 151 and 157).	5/24/93, 58 FR 29860 .....	Environmental Conservation Laws (ECL) 27-0912; Title 6 New York Code, Rules and Regulations (6 NYCRR) 373-1.1(d)(1)(xii)(e), 373-1.7(c)(2)&(c)(15), 376.1(a)(8)&(a)(9), 376.1(b)(1)(xii), 376.1(g)(1)(i), 376.1(g)(2)(iii)(b), 376.1(h)(1), 376.3(e)(1)&(e)(2), 376.4(a)(2) and 376.4(b). (More stringent provisions: 376.3(e)(1), 373-1.1(d)(1)(xii)(e) and 373-1.7(c)(2)&(c)(15)).
<b>RCRA CLUSTER IV</b>		
Boilers and Industrial Furnaces; Changes for Consistency with New Air Regulations (Revision Checklist 125).	7/20/93, 58 FR 38816 .....	ECL 27-0703, 27-0900, 27-0903 through 27-0918, 70-0107 and 71-2727; 6 NYCRR 370.1(e)(8)(vi), 374-1.8(e)(5)(iii), 374-1.8(g)(8), and Appendix 50.
Testing and Monitoring Activities (Revision Checklist 126 as revised by Checklists 128, 132, 139, 141, 137, 151 and 157)).	8/31/93, 58 FR 46040; 9/19/94, 59 FR 47980.	ECL 23-2301 through 23-2309, 27-0703, 27-0900, 27-0903, 27-0907, 27-0909, 27-0911, 27-0913, and 71-2727; 6 NYCRR 370.1(e), 370.1(e)(1)(xvii), 370.1(e)(8)(i), 370.3(c)(4)(i)(a), 371.3(c)(1)(i)&(ii), 371.3(e)(1), 373-1.5(f)(3)(i)(c)&(d), 373-1.9(a)(2)(ii)(a)(3)&(4), 373-1.9(d)(3)(ii)(a)&(b), 373-2.10(a)(1), 373-2.14(j)(3), 373-3.10(a)(1), 373-3.14(g)(3), 376.1(g)(1)(i), 376.4(a)(1), 376.4(b) and Appendices 20 & 21 and 32.
Boilers and Industrial Furnaces; Administrative Stay and Interim Standards for Bevill Residues (Revision Checklist 127).	11/9/93, 58 FR 59598 .....	ECL 27-0703, 27-0900, 27-0911, 27-0912 and 23-2301 et seq.; 6 NYCRR 374-1.8(m)(2)(ii)(a) and Appendix 47.
Wastes From the Use of Chlorophenolic Formulations in Wood Surface Protection (Revision Checklist 128, as revised by Checklists 132, 139 and 141).	1/4/94, 59 FR 458 .....	ECL 27-0703 and 27-0903; 6 NYCRR 370.1(e)(8)(i) and Appendix 23.
Revision of Conditional Exemption for Small Scale Treatability Studies (Revision Checklist 129).	2/18/94, 59 FR 8362 .....	ECL 27-0903; 6 NYCRR 371.1(e)(4)(iv)(b)(1)&(2), 371.1(e)(4)(iv)(c) and 371.1(e)(4)(v)(c)-(e).
Recordkeeping Instructions; Technical Amendment (Revision Checklist 131).	3/24/94, 59 FR 13891 .....	ECL 27-0911 and 27-0913; 6 NYCRR Appendix 25/Tables 1 and 2.
Wood Surface Protection; Correction (Revision Checklist 132, as revised by Checklists 139 and 141).	59 FR 28484, 6/2/94 .....	ECL 27-0703 and 27-0903; 6 NYCRR 370.1(e)(8)(i).

Description of Federal Requirement	Federal Register date and page	Analogous State regulatory authority <sup>1</sup>
Letter of Credit Revision (Revision Checklist 133).	6/10/94, 59 FR 29958 .....	ECL 27-0703, 27-0911, 27-0913 and 27-0917; 6 NYCRR 373-2.8(j)(3) and 373-2.8(j)(10).
Correction of Beryllium Powder (P015) Listing (Revision Checklist 134, as revised by Checklists 137, 140 and 159).	6/20/94, 59 FR 31551 .....	ECL 27-0903 and 27-0912; 6 NYCRR 371.4(d)(5), 376.4(a), and Appendix 23.

## RCRA CLUSTER V

Recovered Oil Exclusion ((Revision Checklist 135), as revised by Revision Checklists 142B and 150).	7/28/94, 59 FR 38536 .....	ECL 27-0703, 27-0900, 27-0903 and 71-2727; 6 NYCRR 371.1(d)(3)(ii)(b)(2), 371.1(e)(1)(xii), 371.1(g)(1)(iii)(c)-(e), and 374-1.8(a)(2)(iii).
Removal of the Conditional Exemption for Certain Slag Residues (Revision Checklist 136, as revised by Checklist 137).	8/24/94, 59 FR 43496 .....	ECL 27-0911 and 27-0912; 6 NYCRR 374-1.3(a)(3) and 376.4(a).
Universal Treatment Standards and Treatment Standards for Organic Characteristic Wastes and Newly Listed Waste (Revision Checklist 137, as amended by Revision Checklists 151, 157, 159 and 161).	9/19/94, 59 FR 47982; 1/3/95, 60 FR 242.	ECL 27-0703, 27-0900, 27-0903, 27-0911, 27-0912 and 71-2727; 6 NYCRR 370.3(a), 370.3(d)(1)&(d)(1)(ii), 370.3(e)(1)&(2), 370.3(f)(1), 371.1(c)(6)(i)(c), 373-1.1(d)(1)(xii)(e), 374-1.3(d)(1), 374-1.8(a)(3)(i)&(iii), 374-1.8(a)(3)(iii)(a)&(a)(1), 374-1.8(a)(3)(iii)(b), 376.1(a)(3)(iii)(b), 376.1(a)(8)&(a)(9), 376.1(b)(1)(vii), 376.1(b)(1)(xii), 376.1(g)(1)(i)-(iii), 376.1(g)(1)(v)-(x), 376.1(g)(2)(iii)(b), 376.1(g)(2)(iv)(d), 376.1(g)(4)&(4)(i), 376.1(h)(1), 376.1(h)(4)(i)(a)&(b), 376.1(h)(4)(ii)(a), 376.3(f)(1)-(5), 376.4(a)(1)-(6), 376.4(a)/Table, 376.4(b), 376.4(c)&(c)(1), 376.4(c)(1)/Table, 376.4(c)(3)(ii), 376.4(c)(4), 376.4(d), 376.4(g)(2)(ii), 376.4(h), 376.4(j), 376.4(j)/Table, Appendices 38 and 53. (More stringent provision: 373-1.1(d)(1)(xii)(e)).
Testing and Monitoring Activities Amendment I (Revision Checklist 139, as revised by Checklist 141).	1/13/95, 60 FR 3089 .....	ECL 27-0703 and 27-0903; 6 NYCRR 370.1(e)(8)(i).
Carbamate Production Identification and Listing of Hazardous Waste (Revision Checklist 140, as amended by Checklist 159).	2/9/95, 60 FR 7824; 4/17/95, 60 FR 19165; 5/12/95, 60 FR 25619.	ECL 27-0703 and 27-0903; 6 NYCRR 371.1(d)(1)(ii)(d)(5)-(7), 371.1(d)(3)(ii)(b)(4), 371.4(c), 371.4(d)(5), 371.4(d)(6), Appendices 22 and 23.
Testing and Monitoring Activities Amendment II (Revision Checklist 141).	4/4/95, 60 FR 17001 .....	ECL 27-0703 and 27-0903; 6 NYCRR 370.1(e)(8)(i).
Universal Waste Rule (Revision Checklist 142A).	5/11/95, 60 FR 25492 .....	ECL 27-0703, 27-0900, 27-0903, 27-0905, 27-0907, 27-0909, 27-0911, 27-0913, 70-0107, 71-0301 and 71-2727; 6 NYCRR 370.1(a), 370.2(b)(44), 370.2(b)(202)-(204), 371.1(f)(3), 371.1(f)(6)(iii) introductory paragraph, 371.1(f)(6)(iii)(a)-(f), 371.1(f)(6)(iii)(h), 371.1(f)(7)(iii) introductory paragraph, 371.1(f)(7)(iii)(a)-(f), 371.1(f)(7)(iii)(h), 371.1(j)(1) introductory paragraph, 372.1(b)(2), 372.2(a)(2)(iv), 373-1.1(b)(4) introductory paragraph, 373-2.1(a)(7) introductory paragraph, 373-3.1(a)(9) introductory paragraph, 374-3.1(a)(1) introductory paragraph, 374-3.1(a)(2), 374-3.1(e), 374-3.1(f)(2), 374-3.1(f)(4)-(f)(6), 374-3.1(f)(8), 374-3.1(f)(10) introductory paragraph, 374-3.1(f)(11)-(f)(13), 374-3.2(a)-(c), 374-3.2(e) introductory paragraph, 374-3.2(f)-(k), 374-3.3(a)&(b), 374-3.3(c)(1)(i)&(ii), 374-3.3(c)(2), 374-3.3(e) introductory paragraph, 374-3.3(f)-(k), 374-3.4(a)(1), 374-3.4(b)-(g), 374-3.5, 374-3.6(a) introductory paragraph, 374-3.6(a)(1)-(3), and 376.1(a)(10) introductory paragraph. (More stringent provisions: 371.1(f)(6)(iii)(a)-(e) and 371.1(f)(7)(iii)(a)-(e)).
Universal Waste Rule (Revision Checklist 142B).	5/11/95, 60 FR 25492 .....	ECL 27-0703, 27-0900, 27-0903, 27-0905, 27-0907, 27-0909, 27-0911, 27-0913, 70-0107, 71-0301 and 71-2727; 6 NYCRR 370.2(b)(15), 370.2(b)(202)(i), 371.1(g)(1)(iii)(b)-(e), 371.1(j)(1)(i), 373-1.1(b)(4)(i), 373-2.1(a)(7)(i), 373-3.1(a)(9)(i), 374-1.7(a)(1)&(2) introductory paragraph, 374-3.1(a)(1)(i), 374-3.1(b), 374-3.1(f)(1), 374-3.1(f)(10)(i), 374-3.2(d)(1), 374-3.2(e)(1), 374-3.3(d)(1), 374-3.3(e)(1) and 376.1(a)(10)(i).
Universal Waste Rule (Revision Checklist 142C).	5/11/95, 60 FR 25492 .....	ECL 27-0703, 27-0900, 27-0903, 27-0905, 27-0907, 27-0909, 27-0911, 27-0913, 70-0107, 71-0301 and 71-2727; 6 NYCRR 370.2(b)(141), 370.2(b)(202)(ii), 371.1(j)(1)(ii), 373-1.1(b)(4)(ii), 373-2.1(a)(7)(ii), 373-3.1(a)(9)(ii), 374-3.1(a)(1)(ii), 374-3.1(c), 374-3.1(f)(3)&(f)(7), 374-3.1(f)(10)(ii), 374-3.2(d)(2), 374-3.2(e)(2)&(e)(3), 374.33(c)(1)(i)&(iii), 374-3.3(d)(2), 374-3.3(e)(2)&(e)(3) and 376.1(a)(10)(ii). (More stringent provisions: 374-3.1(c)(1)(ii) and 374-3.1(c)(2)(i)).

Description of Federal Requirement	Federal Register date and page	Analogous State regulatory authority <sup>1</sup>
Universal Waste Rule (Revision Checklist 142D).	5/11/95, 60 FR 25492 .....	ECL 27-0703, 27-0900, 27-0903, 27-0905, 27-0907, 27-0909, 27-0911, 27-0913, 70-0107, 71-0301 and 71-2727; 6 NYCRR 370.2(b)(185), 370.2(b)(202)(iii), 371.1(j)(1)(iii), 373-1.1(b)(4)(iii), 373-2.1(a)(7)(iii), 373-3.1(a)(9)(iii), 374-3.1(a)(1)(iii), 374-3.1(d), 374-3.1(f)(9), 374-3.1(f)(10)(iii), 374-3.2(d)(3), 374-3.2(e)(4), 374-3.3(d)(3), 374-3.3(e)(4) and 376.1(a)(10)(iii).
Universal Waste Rule (Revision Checklist 142E).	5/11/95, 60 FR 25492 .....	ECL 27-0703, 27-0900, 27-0903, 27-0905, 27-0907, 27-0909, 27-0911, 27-0913, 70-0107, 71-0301 and 71-2727; 6 NYCRR 370.3(a)(1), 370.5(a)(1), 370.5(c) and 374-3.7.
Removal of Legally Obsolete Rules (Revision Checklist 144).	6/29/95, 60 FR 33912 .....	ECL 27-0703, 27-0900, 27-0903, 27-0907, 27-0911, 27-0913, 27-0915, 70-0107, 71-0301 and 71-2727; 6 NYCRR 370.2(b), 370.2(b)(106), 371.4(b)(1), 373-1.3(b)(5), 373-1.3(i)(1), 373-1.3(i)(1)(i)&(ii), 373-1.4(a)(4), 374-1.8(d)(3)(v), and 374-1.8(e)(6)-(9). (More stringent provisions: 373-1.3(i)(1)(i)&(ii) and 373-1.4(a)(4)).

## RCRA CLUSTER VI

Liquids in Landfills III (Revision Checklist 145).	7/11/95, 60 FR 35703 .....	ECL 27-0911; 6 NYCRR 373-2.14(j)(4)(ii)(b)&(c) and 373-3.14(g)(4)(ii)(b)&(c).
RCRA Expanded Public Participation (Revision Checklist 148).	12/11/95, 60 FR 63417 ....	ECL 27-0703, 27-0900, 27-0911, 27-0913, 70-0107 and 71-2727; 6 NYCRR 373-1.5(a)(2)(xxi), 373-1.6(a)(13), 373-1.9(a)(2)(vi)-(xi), 373-1.9(a)(4), 373-1.9(d)(4)(iii)&(vi), 373-1.9(d)(7), 373-1.10(a)-(c).
Recovered Oil Exclusion, Correction (Revision Checklist 150).	3/26/96, 61 FR 13103 .....	ECL 27-0703, 27-0900, 27-0903 and 71-2727; 6 NYCRR 371.1(e)(1)(xii).
Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners (Revision Checklist 151, as revised by Checklists 155, 157, 159 and 161).	4/8/96, 61 FR 15566; 4/8/96, 61 FR 15660; 4/30/96, 61 FR 19117; 6/28/96, 61 FR 33680; 7/10/96, 61 FR 36419; 8/26/96, 61 FR 43924; 2/19/97, 62 FR 7502.	ECL 27-0912; 6 NYCRR 376.1(a)(3)(iii)&(iv), 376.1(a)(4)(iii), 376.1(a)(8)&(9), 376.1(b)(1)(vi), 376.1(b)(1)(xii)-(xv), 376.1(c), 376.1(g)(1)(i)-(iii), 376.1(g)(2)(iii)(b), 376.1(g)(2)(iv)(d)&(e), 376.1(h)(1), 376.1(h)(4)-(7), 376.3(g)(1)-(7), 376.4(a)(1), 376.4(a)(5)&(7), 376.4(b) Table, 376.4(c) Table, 376.4(e)(1), 376.4(j), and Appendix 54. (More stringent provisions: 376.1(a)(3)(iii)&(iii)(a), 376.1(a)(3)(iv)(a)&(c), 376.1(a)(9), 376.3(g)(2)).

## RCRA CLUSTER VII

Conditionally Exempt Small Quantity Generator Disposal Options Under Subtitle D (Revision Checklist 153).	7/1/96, 61 FR 34252 .....	ECL 27-0903; 6 NYCRR 371.1(f)(6)(iii) and 371.1(f)(7)(iii). (More stringent provisions: 371.1(f)(6)(iii)(e) and 371.1(f)(7)(iii)(e)).
Consolidated Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers (Revision Checklist 154).	12/6/94, 59 FR 62896; 5/19/95, 60 FR 26828; 9/29/95, 60 FR 50426; 11/13/95, 60 FR 56952; 2/9/96, 61 FR 4903; 6/5/96, 61 FR 28508; 11/25/96, 61 FR 59932.	ECL 27-0911; 6 NYCRR 370.1(e)(6)(i)&(x), 371.1(g)(3)(i), 372.2(a)(8)(ii)&(iii)(b), 373-1.5(a)(2)(v), 373-1.5(b)(5), 373-1.5(c)(11), 373-1.5(d)(12), 373-1.5(n)(1), 373-1.6(e)(2)-(4), 373-2.2(e)(2)(vi)&(viii), 373-2.2(g)(2)(iv), 373-2.5(c)(2)(iii)&(vi), 373-2.5(g)(3), 373-2.9(j), 373-2.10(k), 373-2.11(l), 373-2.24(b), 373-2.27(a)(2), 373-2.27(d)(1)(ii), 373-2.27(d)(6)(ii)(f)(2), 373-2.27(d)(11)-(15), 373-2.27(e)(2), 373-2.27(f)(3)(ix)&(x), 373-2.27(f)(4), 373-2.28(a)(2), 373-2.28(a)(6), 373-2.28(f), 373-2.28(i)(5), 373-2.28(o)(7)(vi), 373-2.29, 373-3.1(a)(2), 373-3.2(d)(2)(vi)&(viii), 373-3.2(f)(2)(iv), 373-3.5(c)(2)(iii)&(vi), 373-3.5(g)(4), 373-3.9(h), 373-3.10(m), 373-3.11(k), 373-3.27(a)(2), 373-3.27(d)(1)(ii), 373-3.27(d)(6)(ii)(f)(2), 373-3.27(d)(10)-(14), 373-3.27(e)(2), 373-3.27(f)(3)(iii), 373-3.27(f)(3)(ix)&(x), 373-3.27(f)(4), 373-3.28(a)(2), 373-3.28(a)(5), 373-3.28(f)(1)-(3), 373-3.28(i)(5), and 373-3.28(o)(7)(vi), 373-3.29 and Appendix 55. (More stringent provision: 373-3.29(d)(3)(iv)(b)).
Land Disposal Restrictions Phase III—Emergency Extension of the K088 Capacity Variance (Revision Checklist 155, as revised by Checklist 160).	1/14/97, 62 FR 1992 .....	ECL 27-0912; 6 NYCRR 376.3(g)(3).
Military Munitions Rule (Revision Checklist 156).	2/12/97, 62 FR 6622 .....	ECL 27-0301, 27-0303, 27-0305, 27-0307, 27-0703, 27-0900, 27-0903, 27-0905, 27-0907, 27-0909, 27-0911, 27-0912, 27-0913, 27-0915, 27-0917, 27-0918, 70-0107, 71-0301 and 71-2727; 6 NYCRR 370.2(b)(67)-(69), 370.2(b)(121), 371.1(c)(2)(iii)&(iv), 372.1(b)(3) introductory paragraph, 372.1(b)(3)(i)-(iii), 372.2(b)(8), 373-1.1(d)(1)(xiii)(d), 373-1.1(d)(1)(xiii)(d), 373-1.7(h)&(i), 373-2.1(a)(8), 373-2.5(a), 373-2.31, 373-3.1(a)(10), 373-3.5(a), 373-3.31, and 374-1.13. (More stringent provisions: 373-2.5(a), 373-3.5(a), 374-1.13(d), 374-1.13(f)(1)(i)(h) and 374-1.13(f)(5)).
Land Disposal Restrictions—Phase IV (Revision Checklist 157).	5/12/97, 62 FR 25998 .....	ECL 27-0903 and 27-0912; 6 NYCRR 371.1(a)(9)-(12), 371.1(c) Table 1, 371.1(e)(1)(xiii)&(xiv), 371.1(g)(1)(iii)(b), 376.1(a)(4), 376.1(a)(8), 376.1(d)(1)(ii)(d)&(d)(1)(iv), 376.1(g)(1)-(3), 376.1(h)(1), 376.1(h)(4)(i)(b), 376.3(a)-(c), 376.4(a) Table, 376.4(c) Table 1, and Appendix 40.

Description of Federal Requirement	Federal Register date and page	Analogous State regulatory authority <sup>1</sup>
Carbamate Production, Identification and Listing of Hazardous Waste; Land Disposal Restrictions (Conformance With the Carbamate Vacatur) (Revision Checklist 159).	6/17/97, 62 FR 32974 .....	ECL 27-0903, 27-0911 and 27-0912; 6 NYCRR 371.4(c) Table, 371.4(d)(6) Table, 376.3(g)(1)&(4), 376.4 Table, Appendices 22 and 23.
<b>RCRA CLUSTER VIII</b>		
Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance (Revision Checklist 160).	7/14/97, 62 FR 37694 .....	ECL 27-0912; 6 NYCRR 376.3(g)(3).
Second Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from Carbamate Production (Revision Checklist 161).	8/28/97, 62 FR 45568 .....	ECL 27-0912; 6 NYCRR 376.4(a)(7), and 376.4(j) Table.

<sup>1</sup> The New York provisions are from the New York Codes, Rules and Regulations (NYCRR), as amended through November 28, 1998.

## 2. State-Initiated Changes

EPA grants New York Final authorization to carry out the following provisions of the State's program in lieu of the Federal program. These provisions are analogous to RCRA regulations found at 40 CFR as of July 1, 1997. The New York provisions are from the Title 6, New York Codes, Rules and Regulations (6 NYCRR), Volume A-2A, Hazardous Waste Management System, as published on January 1, 1999, and amended through March 15, 1999, unless otherwise stated.

Part 370—Hazardous Waste Management System—General: Sections 370.1(b); 370.1(e)(1)(i)–(xiv); 370.1(e)(2), (e)(3), (e)(5), (e)(7) & (e)(8)(iii); 370.2(b)(2) (Supplement dated January 31, 2000), (b)(6), (b)(27), (b)(64) (Supplement dated November 15, 1999), (b)(70), (b)(91), (b)(109), (b)(111), (b)(132), (b)(135), (b)(164) (Supplement dated January 31, 2000), (b)(169), (b)(170), (b)(178), (b)(180) (Supplement dated January 31, 2000), and (b)(192); 370.3(d)(1)(i); and 370.5(a)(1)–(5).

Part 371—Identification and Listing of Hazardous Waste: Sections 371.1(a)(1), 371.1(e)(1)(vii), 371.1(e)(4)(iv)('a') (introductory paragraph), 371.1(f)(5) (introductory paragraph), 371.1(f)(6)(ii), 371.1(f)(7)(i), 371.1(g)(1)(i), 371.1(g)(1)(iii) (introductory paragraph), 371.1(g)(1)(iii)('a') (except the phrase "as defined in section 372.5 of this Title, and provide a copy of" in 371.1(g)(1)(iii)('a')('1')), 371.1(g)(2), 371.3(a)(3), 371.3(b)(1)(iii)&(iv) and 371.4(d)(3).

Part 372—Hazardous Waste Manifest System and Related Standards or Generators, Transporters and Facilities: Sections 372.1(e)(3)(iv); 372.1(e)(4); 372.1(g); 372.2(a)(8)(i); 372.2(a)(8)(iii)('a'), ('f'), (8)(v)&(vi); 372.2(b)(7); 372.2(c)(2)(iii); 372.2(c)(3);

372.3(a)(6); 372.3(a)(7) (introductory paragraph) & (a)(7)(iii); 372.3(b)(1)(i)&(ii); 372.3(b)(2); 372.3(b)(5)(ii); 372.3(c)(4); 372.3(d)(1)(iii)('c') and 372.7(d)(3).

Part 373, Subpart 373-1—Hazardous Waste Treatment, Storage and Disposal Facility Permitting Requirements: Sections 373-1.1(b), except (b)(4); 373-1.1(d) introductory paragraph; 373-1.1(d)(1), except (d)(1)(x) & (d)(1)(xviii); 373-1.2(b)&(d); 373-1.3(b) (introductory paragraph) & 373-1.3(b)(1) (introductory paragraph); 373-1.3(b)(3); 373-1.3(d)(4)(iv); 373-1.3(g)(2)(ii); 373-1.4(a)(1); 373-1.4(a)(2); 373-1.5(a)(1) (Supplement dated November 15, 1999); 373-1.5(b) (introductory paragraph); 373-1.5(c)(2); 373-1.5(c)(4); 373-1.5(d) (introductory paragraph); 373-1.5(e)(2); 373-1.5(f) (introductory paragraph); 373-1.5(f)(3)(ii); 373-1.5(f)(3)(iv)&(vi); 373-1.5(f)(4)(ii); 373-1.5(g) (introductory paragraph); 373-1.5(h) (introductory paragraph); 373-1.6(c)(4); 373-1.6(e) 373-1.7(c)(3)&(4); 373-1.7(d) (introductory paragraph), (d)(1)–(6) (8) and (10); 373-1.8(a)(1); 373-1.9(a)(1) (introductory paragraph); 373-1.9(a)(2) (except (a)(2)(iii), (iv) & (vi) (Supplement dated January 31, 2000) and 373-1.9(a)(3).

Part 373, Subpart 373-2—Final Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities: Sections 373-2.1(b)&(c); 373-2.5(b)&(f); 373-2.6(h)(2) & (i)(7) (introductory paragraph); 373-2.7(d); 373-2.8(d)(1)(ii), (d)(1)(iii) & (d)(1)(ix); 373-2.8(d)(2)(i); 373-2.8(d)(2)(iii) (introductory paragraph); 373-2.8(d)(2)(iv); 373-2.8(d)(3)(iii) (introductory paragraph); 373-2.8(d)(4)(ii); 373-2.8(d)(5)(i) (introductory paragraph); 373-2.8(d)(5)(x); 373-2.8(f)(1)(iii)

(introductory paragraph); 373-2.8(f)(1)(iii)(b) (6 NYCRR Supplement dated November 15, 1999); 373-2.8(f)(2); 373-2.8(f)(3)(ii) (introductory paragraph); 373-2.8(f)(5) (heading); 373-2.8(f)(5)(ii); 373-2.8(f)(5)(xi); 373-2.8(h)(1)(ii) & (h)(2)(ii); 373-2.8(j)(1); 373-2.8(j)(5); 373-2.8(j)(6)(i)&(ii); 373-2.9(d)(3)&(f)(3); 373-2.10(b)(1); 373-2.10(b)(3); 373-2.10(d)(1)(iii), (iv) & (vi); 373-2.10(d)(7) (introductory paragraph); 373-2.10(e)(4); 373-2.11(b)(5)(i), (d)(2) and (f); 373-2.12(e)(2); 373-2.14(e)(2); 373-2.14(h); 373-2.15(a)(4)–(5); 373-2.15(b)–(h); 373-2.23(a)(1)(i)&(ii); 373-2.23(d)(1)(iv)(a) and 373-2.23(d)(2) (introductory paragraph).

Part 373, Subpart 373-3—Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities: Sections 373-3.1(b); 373-3.5(b) (except the last sentence of (b)(1)(i)('b') and (b)(1)(vii)); 373-3.5(f); 373-3.6(a)(1); 373-3.6(a)(4)(i)–(ii); 373-3.6(b)(2) (introductory paragraph); 373-3.6(d)(1); 373-3.7(d)(3); 373-3.7(d)(5) (introductory paragraph); 373-3.8(c)(2) (introductory paragraph); 373-3.8(d)(2)(i); 373-3.8(d)(2)(iii); 373-3.8(d)(2)(iv)('a')&('b'); 373-3.8(d)(3)(iii); 373-3.8(d)(5)(ix); 373-3.8(f)(2); 373-3.8(f)(3)(iii) (introductory paragraph); 373-3.8(f)(5) (introductory paragraph); 373-3.8(f)(5)(x); 373-3.8(g); 373-3.8(h)(1)(ii), (h)(2)(ii) & (h)(7)(i); 373-3.9(d)(3); 373-3.10(b)(1); 373-3.10(b)(3); 373-3.10(d)(1)(iii)&(iv); 373-3.10(e)(4); 373-3.10(l); 373-3.11(e)(1); 373-3.14(e)(1) (introductory paragraph); 373-3.15(a)(3) (introductory paragraph); 373-3.15(b)–(e); 373-3.23(a)(1)(i)&(ii); 373-3.23(d)(1)(iv)('a') and 373-3.23(d)(2) (introductory paragraph).

Part 374, Subpart 374-1—Standards for the Management of Specific Hazardous Wastes and Specific Types of

Hazardous Waste Management Facilities: Sections 374–1.1 and 374–1.7(a)(2)(iv).

Part 376—Land Disposal Restrictions: Sections 376.1(a)(3)(iii)&(iv); 376.1(d)(1)(ii)(‘a’); 376.4(e)(9)–(11) and 376.5(a)(1)(iii).

Part 621—Uniform Procedures: Sections 621.4(n); 621.5(b); 621.5(d) (introductory paragraph); 621.6(a)(4); 621.9(c) (introductory paragraph); 621.9(c)(1); 621.9(e) (introductory paragraph); 621.9(e)(1); 621.11(f) and 621.13(f).

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

New York hazardous waste management regulations are more stringent than the corresponding federal regulations in a number of different areas. The more stringent provisions are being recognized as a part of the Federally-authorized program and are Federally enforceable. The specific more stringent provisions are noted on the chart in Section G and in the State’s authorization application, and include, but are not limited to, the following:

1. The State has additional reporting requirements including notification to the Department in addition to notification to US EPA (*e.g.*, 6 NYCRR §§ 373–1.3(i)(1)(i)&(ii), 373–3.29(d)(3)(iv)(‘b’)), and the provisions at 6 NYCRR §§ 373–2.2(d)(1), 373–3.2(c)(1), 372.5(c)(2), 372.5(f)(2) and 372.5(h) which address import/export notifications).

2. With regard to manifest requirements, New York has not adopted the Department Of Defense shipping controls (*i.e.*, 6 NYCRR §§ 373–2.5(a), 373–3.5(a) and 374–1.13(d)).

3. New York requires the storage of waste military munitions at a government-owned facility (*i.e.*, 6 NYCRR § 374–1.13(f)(1)(i)(‘h’)).

4. Incorporated material in New York must be as of a specified date; automatic incorporation of future changes is not allowed. (*i.e.*, 6 NYCRR § 374–1.13(f)(5)).

5. The State does not issue emergency permits (the State analog to 40 CFR 270.61(b)(5) is 6 NYCRR § 621.12). The State has provisions for emergency authorization of 30 days, with one 30-day extension available. When a State emergency authorization expires, the facility must apply for full RCRA–C permitting.

6. 6 NYCRR §§ 376.1(a)(3)(iv)(‘c’), 376.1(a)(3)(iii), 376.1(a)(3)(iii)(‘a’), 376.1(a)(9), 376.3(e)(1) and 376.3(g)(2) contain cross references to Title 7 & 8 of Article 17 in addition to references to the federal CWA, pertaining to permits

and certificates for water pollution control and the State Pollutant Discharge Elimination System. Some of these State laws are more stringent than the federal CWA.

7. The New York pesticide requirements at 6 NYCRR § 374–3.1(c)(2)(i) require compliance with the triple rinse requirements at 6 NYCRR § 325.1(aa) rather than the Federal triple rinse requirement at 40 CFR 262.70.

8. According to 6 NYCRR § 374–3.1(c)(1)(ii), a waste pesticide collection program must be approved by the Department pursuant to 6 NYCRR § 373–4.

9. New York does not have a provision allowing a petition to modify or revoke any provision in 6 NYCRR Parts 370 through 374 and 376.

10. The State does not include the federal exemption for construction of PCB incineration facilities and has several other provisions that are more stringent regarding PCBs.

11. New York requires all modifications to a permit to be approved by the Department.

We consider the following State requirement to be beyond the scope of the Federal program:

- The State cross-references Part 364, which sets forth additional transporter requirements including permit and liability requirements (*i.e.*, 6 NYCRR §§ 372.2(b)(8), 373–1.7(h)(3), 374–3.3(i)(1)&(2), 374–3.4(a), 374–3.6(a)(1)).

Broader-in-scope requirements are not part of the authorized program and EPA can not enforce them. Although you must comply with these requirements in accordance with state law, they are not RCRA requirements.

Finally, like the export requirements at 40 CFR 262, subpart E, the 40 CFR 262, subpart H requirements will be administered by EPA and not the State because the exercise of foreign relations and international commerce powers is reserved to the Federal government under the Constitution. New York, however, requires that a copy of any notification submitted to EPA must also be submitted to the State (for example, see 6 NYCRR §§ 373–2.2(d)(1), 373–3.2(c)(1), 372.5(c)(2), 372.5(f)(2) and 372.5(h)).

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

New York 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, and also to process permit modification requests for

facilities with existing permits. 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. Pursuant to § 3006(g)(1) of RCRA, EPA may continue to issue or deny permits to facilities within the State to implement those regulations promulgated under the authority of HSWA for which New York is not authorized.

#### J. How Does Today’s Action Affect Indian Country (18 U.S.C. 115) in New York?

The State of New York’s Hazardous Waste Program is not authorized to operate in Indian country within the State. Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in these lands.

#### K. What Is Codification and Is EPA Codifying New York’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. If this rule takes effect, or we finalize the companion proposal to authorize the State’s changes to its hazardous waste program, we may, at a later date, amend 40 CFR part 272, subpart HH to codify New York’s authorized program.

#### 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 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 (Pub. L. 104–4). For the same reason, this action does not have tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000). It does

not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, as specified in Executive Order 13175. 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 rule 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 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 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 will be effective January 15, 2002.

#### 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: October 29, 2001.

**William J. Muszynski,**

*Acting Regional Administrator, Region 2.*

[FR Doc. 01-28627 Filed 11-15-01; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-7103-9]

#### National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List Update

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of deletion of the Aladdin Plating Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region III announces the deletion of the Aladdin Plating Superfund Site (Site), located in Scott and S. Abington Townships, Lackawanna County, Commonwealth of Pennsylvania, from the National Priorities List (NPL).

The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), is appendix B of 40 CFR part 300, which is the National Oil and Hazardous

Substances Pollution Contingency Plan (NCP). EPA and the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection, have determined that the site no longer poses a significant threat to public health or the environment and that all appropriate response actions under CERCLA have been completed. Semi-annual monitoring of nearby residential, annual monitoring of on-site wells, and five-year reviews to ensure that the site remains protective of public health and the environment will continue to be conducted.

**EFFECTIVE DATE:** November 16, 2001.

**ADDRESSES:** Comprehensive information on this site is available for viewing at the Site Information Repositories at the following locations: U.S. EPA, Region III, Regional Center for Environmental Information, 1650 Arch Street, Philadelphia, Pennsylvania, 19103, (215) 814-5254 or (800) 553-2509, Monday through Friday 8 a.m. to 4:30 p.m.; Scott Township Municipal Building, Route 437, Olyphant, PA 18447, (570) 254-6969; South Abington Township Building, 104 Shady Lane, Montdale, PA 18410, (570) 586-2111.

**FOR FURTHER INFORMATION CONTACT:** Patrick McManus (3HS21), Remedial Project Manager, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029; (215) 814-3198 or 1-800-553-2509; e-mail address: [mcm anus.pat@epa.gov](mailto:mcm anus.pat@epa.gov).

**SUPPLEMENTARY INFORMATION:** The site to be deleted from the NPL is:

Aladdin Plating Site, Scott Township, Lackawanna County, Commonwealth of Pennsylvania.

A Notice of Intent to Delete for this site was published in the **Federal Register** on September 17, 2001 (66 FR 48018). The closing date for comments on the Notice of Intent to Delete was October 17, 2001. EPA received one comment from three residents that live adjacent to the site. This comment is addressed in the Responsiveness Summary which has been placed in the Deletion Docket. In response to this comment, EPA has agreed to increase the frequency of sampling of residential wells adjacent to the Site from annual to semi-annual.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may