

## V. Administrative Requirements

### A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule 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 rule approves 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 also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS),

EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. 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 impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### B. Submission to Congress and the Comptroller General

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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today’s action under section 801 because this is a rule of particular applicability establishing source-specific requirements for five named facilities.

### C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve the Consent Order for Constellation Power Source Generation, Inc. must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: February 7, 2002.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraphs (c)(168) to read as follows:

#### § 52.1070 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(168) SIP revision submitted on April 25, 2001 by the State of Maryland consisting of a Consent Order dated April 16, 2001 between the Maryland Department of the Environment and Constellation Power Source Generation Inc. The Consent Order establishes a system-wide inter-facility emissions averaging plan to comply with NO<sub>x</sub> RACT requirements at five facilities owned by Constellation Power Source Generation Inc. and located in the State of Maryland.

(i) Incorporation by reference.

(A) Letter of April 25, 2001 from the Maryland Department of the Environment (MDE) transmitting a Consent Order issued by MDE to Constellation Power Source Generation, Inc. establishing an averaging plan at five electric generating plants as a means of compliance with the NO<sub>x</sub> RACT requirements.

(B) Consent Order between the Maryland Department of the Environment and Constellation Power Source Generation, Inc. dated April 16, 2001.

(C) NO<sub>x</sub> RACT Averaging Plan Proposal submitted by Constellation Power Source Generation, Inc. dated November 6, 2000.

(ii) Additional Material.—Remainder of the state submittal pertaining to the revision listed in paragraph (c)(168) of this section.

[FR Doc. 02–4523 Filed 2–26–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[FRL-7149-9]

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

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

**ACTION:** Immediate final rule.

**SUMMARY:** Delaware has applied to EPA for Final authorization of 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 Delaware'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 receive written comments which oppose this authorization during the comment period, the decision to authorize Delaware's changes to its hazardous waste program will take effect. If we receive 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 April 29, 2002, unless EPA receives adverse written comment by March 29, 2002. 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 effect.

**ADDRESSES:** Send written comments to Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029, Phone number: (215) 814-5454. We must receive your comments by March 29, 2002. You can view and copy Delaware's application from 8 a.m. to 4:30 p.m. at the following addresses: Department of Natural Resources & Environmental Control, Division of Air & Waste Management, 89 Kings Highway, Dover, DE 19901, Phone number 302-739-3689, attn: Karen J'Anthony, and EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103-2029, Phone number: (215) 814-5254.

#### FOR FURTHER INFORMATION CONTACT:

Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029, Phone number: (215) 814-5454.

#### 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 Delaware's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Delaware Final authorization to operate its hazardous waste program with the changes described in its application for program revisions. Delaware 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 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 HSWA requirements and prohibitions in Delaware, including issuing HSWA 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 Delaware subject to RCRA will now have to comply with the authorized Delaware regulatory revisions instead of the equivalent revised Federal requirements in order to comply with RCRA. Delaware 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, and
- Take enforcement actions regardless of whether Delaware has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Delaware 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 Delaware's program changes. If EPA receives comments which oppose this authorization, or portion(s) thereof, that document will serve as a proposal to authorize such 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 Delaware's 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 Delaware's hazardous waste program, we may 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 Delaware Previously Been Authorized for?**

Delaware initially received Final authorization on June 8, 1984, effective June 22, 1984 (53 FR 23837), to implement the RCRA hazardous waste management program. We granted authorization for changes to its program on August 8, 1996, effective October 7, 1996 (61 FR 41345); August 18, 1998, effective October 19, 1998 (63 FR 44152); and July 12, 2000, effective September 11, 2000 (65 FR 42871).

Please note that in the aforementioned authorization action effective September 11, 2000, Checklist 152 was listed in the program revision summarization table. This checklist includes certain import/export provisions for which States cannot receive authorization. While Delaware adopted the provisions listed

in Checklist 152, the revisions listed in 40 CFR 262, subparts E and H will be administered by EPA.

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

On January 11, 2002, Delaware submitted a final complete program revision application, seeking authorization of its changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Delaware's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Delaware Final authorization for the program changes referenced in its program revision application, which include State regulatory changes that are

analogous to various amendments to 40 CFR parts 124, 260 through 266, 268, 270, 273 and 279 that were published in the **Federal Register** between November 30, 1998 and June 8, 2000.

Delaware is today seeking authority to administer the Federal requirements that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the corresponding Federal requirements. Unless otherwise indicated, the listed Delaware regulatory references are to the Delaware Regulations Governing Hazardous Waste (DRGHW), as amended and effective as of October 1, 2000 (Checklists 175, 176, 178, 179, 180 and 181) or DRGHW, as amended and effective as of June 11, 2001, (Checklists 183, 184, 185 and 187). The statutory references are to 7 Delaware Code Annotated (1991).

Federal requirement	Analogous Delaware Authority
<b>RCRA Cluster IX</b>	
HWIR—Media, 63 <i>FR</i> 65874–65947, 11/30/98; Revision Checklist 175	7 Delaware Code (7 Del. Code) Chapter 63, §§ 6305, 6307 and 6310; Delaware Regulations Governing Hazardous Waste (DRGHW) 260.10, 261.4(g), 264.1(j), 264.73(b)(17), 264.101(d), 264.552(a), 264.553(a), 264.554, 265.1(b), 268.2(c), 268.50(g), 122.2, 122.11(d), 122.42, Appendix I, 122.68, 122.73(a), 122.79–122.230.
Universal Waste Rule—Technical Amendments, 63 <i>FR</i> 71225–71230, 12/24/98; Revision Checklist 176.	7 Del. Code, §§ 6305, 6306, 6307, 6308, 6312 and 6313; DRGHW 266.80, 273.6.
Petroleum Refining Process Wastes—Leachate Exemption, 64 <i>FR</i> 6806, 2/11/99; Revision Checklist 178.	7 Del. Code, §§ 6304(b) and 6305; DRGHW 261.4(b)(15).
Land Disposal Restrictions Phase IV—Technical Corrections and Clarifications to Treatment Standards, 64 <i>FR</i> 25408–25417, 5/11/99; Revision Checklist 179.	7 Del. Code, §§ 6305, 6305(a) and 6307; DRGHW 261.2(c)(3)–(c)(4)/Table, 261.2(e)(1)(iii), 261.4(a)(16), 261.4(a)(17) intro, 261.4(a)(17)(v), 261.4(b)(7)(iii)–(iiiA), 262.34(d)(4), 268.2(h), 268.2(k), 268.7(a)(4)/Table, 268.7(b)(3)(ii)/Table, 268.7(b)(4)(iv), 268.9(d)(2) intro, 268.9(d)(2)(i), 268.40(i)–(j), 268.40/Table, 268.48(a)/Table, 268.49(c)(3)(A)–(B).
Test Procedures for the Analysis of Oil and Grease and Non-Polar Material, 64 <i>FR</i> 26315–26327, 5/14/99; Revision Checklist 180.	7 Del. Code, §§ 6305, 6306, 6307, 6308, 6310 and 6312; DRGHW 260.11(a)(11), 260.11(a)(16).
<b>RCRA Cluster X</b>	
Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps, 64 <i>FR</i> 36466–36490, 7/6/99; Revision Checklist 181.	7 Del. Code, §§ 6305, 6306, 6307, 6308, 6312 and 6313; DRGHW 260.10, 261.9(b)–(d), 264.1(g)(11)(ii)–(iv), 265.1(c)(14)(ii)–(iv), 268.1(f)(2)–(4), 122.1(c)(2)(viii)(B)–(D), 273.1(a)(2)–(4), 273.2(a)(1), 273.2(b)(2)–(3), 273.3(a), 273.4(a), 273.5–273.10, 273.13(d), 273.14(e), 273.30, 273.32(b)(4)–(5), 273.33(d), 273.34(e), 273.50, 273.60(a), 273.81(a).
Land Disposal Restrictions Phase IV—Technical Corrections, 64 <i>FR</i> 56469–56472, 10/20/99; Revision Checklist 183.	7 Del. Code, §§ 6305, 6305(a), 6306 and 6307; DRGHW 261.32, 262.34(a)(4), 268.7(a)(3)(iii), 268.40(j), 268.40/Table, 264.49(c)(1)(A)–(B).
Accumulation Time for Waste Water Treatment Sludges, 65 <i>FR</i> 12378–12398; 3/8/00; Revision Checklist 184.	7 Del. Code, §§ 6305 and 6306; DRGHW 262.34(a)(4), 262.34(g)–(i).
Organobromine Production Wastes Vacatur, 65 <i>FR</i> 14472–14475, 3/17/00; Revision Checklist 185.	7 Del. Code, §§ 6305 and 6305(a); DRGHW 261.32/Table, 261.33(f)/Table, 261 Appendices VII and VIII, 268.33, 268.40/Table, 268.48(a)/Table.
Petroleum Refining Process Wastes—Clarification, 64 <i>FR</i> 36365–36367, 6/8/00; Revision Checklist 187.	7 Del. Code, § 6305(a), DRGHW 261.31(a)/Table.

In addition, Delaware will be authorized to carry out, in lieu of the Federal program, State-initiated changes to provisions of the State's Program. The following State-initiated changes are equivalent and analogous to the numerically-identical RCRA provisions

found at Title 40 of the Code of Federal Regulations: DRGHW 260.10; 261.3(c)(2)(ii)(D)(2); 261.3(d)(2); 261.4(b)(10); 261.5; 264.1(g)(2); 264.13; 265.13; 265.56(j)(5); 265.194(b)(1); 268.4(a)(3)(ii)(B) and 273.32(a)(1). Two other state-initiated changes being

authorized by this notice are DRGHW 122.1(c)(2)(i) and 122.42, which are equivalent and analogous to 40 CFR 270.1(c)(2)(i) and 270.42. Delaware added a "Statement of Authority" prior to Part 260 which does not have an analogue in the Federal program.

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

Delaware's regulations now require that within 10 days of acceptance by a transporter, a copy of the manifest must be sent to the State in which the generator is located and to the State in which the facility is located. Only the 10-day deadline is a new requirement. The Federal program does not require routine transmission of manifests to States. Therefore, the State requirement remains broader in scope than the Federal program.

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

After authorization, Delaware 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 such time as formal transfer of EPA permit responsibility to Delaware occurs and EPA terminates its permits. EPA and Delaware agree to coordinate the administration of permits in order to maintain consistency. EPA will not issue any new permits or new portions of permits for the provisions listed in the chart in section G after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Delaware is not yet authorized.

## J. What is Codification and is EPA Codifying Delaware'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 272. We reserve the amendment of 40 CFR part 272, subpart I for this authorization of Delaware'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); 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 (Public Law 104-4). For the same reason, this action does not have tribal implications within meaning of Executive Order 13175 (65 FR 68249, November 6, 2000). This action does not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and 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 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, 1998) by examining the takings implications of the rule in accordance with the Attorney Generals' "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 continuing this document and other required information to the U.S. Senate, the U.S. House 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 April 29, 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: February 15, 2002.

**Donald S. Welsh,**

*Regional Administrator, EPA Region III.*

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 61

RIN 3067-AD27

### National Flood Insurance Program (NFIP); Increased Rates for Flood Coverage

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.