

Dated: March 24, 2015.

**Rebecca M. Clark,**

*Acting Director, Office of Ground Water and Drinking Water.*

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 271**

**[EPA-R05-RCRA-2014-0689; FRL-9925-55-Region 5]**

### **Michigan: Final Authorization of State Hazardous Waste Management Program Revision**

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

**ACTION:** Proposed rule.

**SUMMARY:** Michigan has applied to EPA for final authorization of the revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Michigan's application with regards to federal requirements and is proposing to authorize the State's program revisions.

**DATES:** Comments on this proposed rule must be received on or before June 1, 2015.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-RCRA-2014-0689, by one of the following methods:

*Web site:* [www.regulations.gov](http://www.regulations.gov): Follow the online instructions for submitting comments.

*Email:* [greenberg.judith@epa.gov](mailto:greenberg.judith@epa.gov).

*Mail:* Judith Greenberg, Michigan Regulatory Specialist, RCRA/TSCA Programs Section, RCRA Branch, Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, LR-8J, Chicago, Illinois 60604.

*Instructions:* Direct your comments to Docket ID Number EPA-R05-RCRA-2014-0689. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless

you provide it in the body of your comment. If you send an email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any CD-ROM or other electronic media you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets/>.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some of the information is not publicly available; e.g., CBI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy. You may view and copy Michigan's application from 9:00 a.m. to 4:00 p.m. at the following addresses: U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, contact: Judith Greenberg, telephone (312) 886-4179; or Michigan Department of Environmental Quality, Constitution Hall, 525 West Allegan Street, Lansing, Michigan, contact: Ronda Blayer, telephone (517) 284-6555.

**FOR FURTHER INFORMATION CONTACT:** Judith Greenberg, Michigan Regulatory Specialist, RCRA/TSCA Programs Section, RCRA Branch, Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, LR-8J, Chicago, Illinois 60604. Judith Greenberg can be reached by telephone at (312) 886-4179 or via email at [greenberg.judith@epa.gov](mailto:greenberg.judith@epa.gov).

#### **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 request 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 have made a tentative decision that Michigan's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Michigan final authorization to operate its hazardous waste program with the revisions described in the authorization application. Michigan will have 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 program revision 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 Michigan, including issuing permits, until the State is granted authorization to do so.

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

The effect of this tentative decision, once finalized, is that a facility in Michigan subject to RCRA would have to comply with the authorized state requirements instead of the equivalent federal requirements in order to comply with RCRA. Michigan 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:

1. Perform inspections, and require monitoring, tests, analyses or reports;
2. Enforce RCRA requirements and suspend or revoke permits; and
3. Take enforcement actions regardless of whether the State has taken its own actions.

This action will not impose additional requirements on the regulated community because the regulations for which Michigan will be authorized are already effective, and will not be changed by EPA's final action.

**D. What happens if EPA receives adverse comments on this action?**

If EPA receives adverse comments on 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 Michigan previously been authorized for?**

Michigan initially received final authorization on October 16, 1986,

effective October 30, 1986 (51 FR 36804–36805), to implement the RCRA hazardous waste management program. We granted authorization for changes to Michigan's program on November 24, 1989, effective January 23, 1990 (54 FR 48608); on January 24, 1991, effective June 24, 1991 (56 FR 18517); on October 1, 1993, effective November 30, 1993 (58 FR 51244); on January 13, 1995, effective January 13, 1995 (60 FR 3095); on February 8, 1996, effective April 8, 1996 (61 FR 4742); on November 14, 1997, effective November 14, 1997 (62 FR 61775); on March 2, 1999, effective June 1, 1999 (64 FR 10111); on July 31, 2002, effective July 31, 2002 (67 FR 49617); on March 9, 2006, effective March 9, 2006 (71 FR 12141); on January 7, 2008 (73 FR 1077), effective

January 7, 2008; and on March 2, 2010, effective March 2, 2010 (75 FR 9345).

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

On June 9, 2014, Michigan submitted its final application seeking authorization of hazardous waste program revisions in accordance with 40 CFR 271.21. We have determined, subject to receipt of written comments that oppose this action, that Michigan's program revisions satisfy all of the requirements necessary to qualify for final authorization. Therefore, we propose to grant Michigan final authorization for the following program changes:

Description of federal requirement and revision checklist number <sup>1</sup>	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) Amendments, Checklist 217.	April 8, 2008, 73 FR 18970.	R 299.9623, effective November 5, 2013.
F019 Exemption for Wastewater Treatment Sludges from Auto Manufacturing Zinc Phosphating Processes, Checklist 218.	June 4, 2008, 73 FR 31756.	R 299.9220, R 299.9307(6) and (7), effective November 5, 2013.
Academic Laboratories Generator Standards, Checklist 220.	December 1, 2008, 73 FR 72912.	R 299.9205(5)(j), R 299.9301(9), R 299.9313 and R 299.11003(1)(k) and (2), effective November 5, 2013.
OECD Requirements: Export Shipments of Spent Lead-Acid Batteries, Checklist 222.	January 8, 2010, 75 FR 1236.	R 299.9601(2)(c), (3) and (9), effective December 16, 2004. R 299.9401(5), effective March 17, 2008. R 299.9301(7), R 299.9309(1), (3) and (4), R 299.9312(1) and (2), R 299.9605(1) and (4), R 299.9608(1), (4) and (8), R 299.9804(7) and (8), and R 299.11003(1)(k), (m), (n) and (p) and (2), effective November 5, 2013.
Hazardous Waste Technical Corrections and Clarifications Rule, as amended, Checklist 223.	March 16, 2010, 75 FR 12989; and June 4, 2010, 75 FR 31716.	R 299.9302(2), effective June 21, 1994. R 299.9209(7), R 299.9311, R 299.9413 and R 299.9803(4), effective September 11, 2000. R 299.9619(1) and (8), R 299.9627 and R 299.9635(5) and (12), effective December 16, 2004. R 299.9222, R 299.9310(2) and R 299.9404(1)(b), effective March 17, 2008. R 299.9105(l), R 299.9106(t), R 299.9202(2)(c), R 299.9204(1)(v)(vi), R 299.9205(1)(b), (1)(b)(ii), (2), (3)(a) and (b), R 299.9206(1)(b) and (d), (2), (2)(b) and (3), R 299.9207(1), (2), (3) and (5), R 299.9212(3)(h), R 299.9213(2) and (3), R 299.9220, R 299.9225, R 299.9304(1)(b), (2)(d) and (6), R 299.9306(1) and (1)(b) and (d), (2), (3), (3)(b), (4)(c), (6) and (7), R 299.9308(1), (3) and (6), R 299.9503(1)(c), R 299.9516(5), R 299.9607(1) and (4), R 299.9608(3), (6) and (8), R 299.9801(3) and (7), R 299.9804(3), R 299.9808(3)(c), (7) and (8), R 299.11003(1)(j), (k), (m), (n) and (u) and (2), effective November 5, 2013.
Removal of Saccharin and Its Salts, Checklist 225.	December 17, 2010, 75 FR 78918.	R 299.9311, R 299.9413, effective September 11, 2000. R 299.9627, effective December 16, 2004. R 299.11003(1)(n) and (2), effective November 5, 2013.
Corrections to the Academic Generator Standards, Checklist 226.	December 20, 2010, 75 FR 79304.	R 299.9313(2) and (3), R 299.11003(1)(k) and (2), effective November 5, 2013.
Revisions of the Treatment Standards for Carbamate Wastes, Checklist 227.	June 13, 2011, 75 FR 34147.	R 299.9311 and R 299.9413, effective September 11, 2000. R 299.9627, effective September 11, 2004. R 299.11003(1)(u) and (2), effective November 5, 2013.
Hazardous Waste Technical Corrections and Clarifications, Checklist 228.	April 13, 2012, 77 FR 22229.	R 299.9222, effective March 17, 2008. R 299.9801(3), effective November 5, 2013.

<sup>1</sup> Revision Checklists generally reflect changes to federal regulations pursuant to a particular **Federal Register** notice; EPA publishes these checklists as aids to states to use for development of their authorization revision application. See EPA's RCRA State Authorization Web site at <http://www.epa.gov/epawaste/laws-regs/state/index.htm>.

## EQUIVALENT STATE-INITIATED CHANGES

Michigan administrative rules	Effective date of amended State requirement
R 299.9102 (definition of "construction permit" removed), R 299.9106(e) (definition of "operating license" modified), R 299.9224, R 299.9225, R 299.9304(2)(b), R 299.9409(4), R 299.9501 (except second sentence only of paragraph (3)(d)), R 299.9505, R 299.9524, R 299.9603, R 299.9604(2), R 299.9605, R 299.9609, R 299.9610(3), R 299.9612, R 299.9615, R 299.9616, R 299.9623, R 299.9629, R 299.9640, R 299.9707, R 299.9708, R 299.9808, and R 299.9821.	November 5, 2013.

### G. Which revised state rules are different from the federal rules?

The most significant differences between the state rules we are proposing to authorize and federal rules are summarized below. It should be noted that this summary does not describe every difference or every detail regarding the differences that are described. Members of the regulated community are advised to read the complete rules to ensure that they understand the requirements with which they will need to comply.

There are aspects of the Michigan program which are more stringent than the federal program. All of these more stringent requirements are or will become part of the federally enforceable RCRA program when authorized by the EPA, and must be complied with in addition to the state requirements which track the minimum federal requirements. These more stringent requirements are found at (references are to the Michigan Administrative Code):

Michigan does not allow containment buildings, making the state requirements more stringent than the federal requirements at 40 CFR 262.10(f), (k)(1) and (k); 262.11(d); 262.41(b); 263.12; 40 CFR part 264 subpart DD; 40 CFR 265 subpart DD; and 40 CFR part 264 appendix I, Tables 1 and 2.

Michigan's rules at R 299.9220 are more stringent than the federal analog at 40 CFR 261.31 since the State's listing of F019 includes recordkeeping requirements as a condition of the exemption of wastewater treatment sludge generated from zinc phosphating, when zinc phosphating is used in the automobile assembly process, while the federal analog at 40 CFR 261.31 has separate recordkeeping requirements for generators claiming the exemption, rather than having the recordkeeping requirements as a condition of the exemption.

Michigan's rules at R 299.9601(1), (2), (2)(b), (c), (d), (e), (f), (g), (h) and (i); R 299.9608(1), (6) and (8); R 299.9615; and R 299.9702(1) are more stringent than the federal analogs at 40 CFR 265.56(b),

265.71, 265.72, 265.142(a), 265.174, 265.190(a), 265.193, 265.194, 265.197, 265.201, and 265.340(b)(1) since the State rules include provisions that require compliance with standards equivalent to 40 CFR part 264 rather than 40 CFR part 265.

Michigan's rules at R 299.9601(2)(a) and R 299.9602 are more stringent since the rules impose requirements regarding environmental and human health standards generally.

Michigan's rules at R 299.9615(4) are more stringent since the State rules require tank systems to comply with Michigan 1941 Act 207 standards (which govern above-ground storage tanks).

Michigan's rules at R 299.9623(9) are more stringent since the State rules require incinerators to comply with Michigan Part 55 standards (which address air pollution).

Michigan's rules at R 299.9629(7)–(7)(c) are more stringent since the State rules require timely notification of an exceedance of a groundwater surface water interface standard based on acute toxicity and established pursuant to part 201 and part 31 of act 451 and implementation of interim measures to prevent exceedance at the monitoring wells along with a proposal and schedule for completing corrective action to prevent a discharge that exceeds the standard.

Michigan's rules at R 299.11002(1) and (2) are more stringent than the federal analogs at 40 CFR 260.11(d) and (d)(1) since the State adopts updated versions of the "Flammable and Combustible Liquids Code."

There are also aspects of Michigan's revised program which are broader in scope than the federal program. State provisions that EPA determines are broader in scope are not part of the federally authorized program and are not federally enforceable. Michigan's program revisions include the following rules that are broader in scope than the federal program (references are to the Michigan Administrative Code):

R 299.9226, R 299.9501(3)(d) (second sentence only) and R 299.9507, as amended effective November 5, 2013.

The following Michigan administrative rules that were broader in scope than the federal program were rescinded effective November 5, 2013 (references are to the Michigan Administrative Code):

R 299.9221 (Table 203b), R 299.9223 (Table 204b), R 299.9904, R 299.9905, R 299.9906, and R 299.11101, R 299.11102, R 299.11103, R 299.11104, R 299.11105, R 299.11106, and R 299.11107.

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

Michigan 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 EPA issued prior to the effective date of the proposed 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 the authorization. EPA will continue to implement and issue permits for HSWA requirements for which Michigan is not yet authorized.

### I. How does today's action affect Indian Country (18 U.S.C. 1151) in Michigan?

Michigan is not authorized to carry out its hazardous waste program in Indian Country within the State, as defined in 18 U.S.C. 1151. This includes:

1. All lands within the exterior boundaries of Indian reservations within the State of Michigan;
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, authorizing Michigan for these revisions would not affect Indian Country in Michigan. EPA would continue to implement and administer the RCRA program in Indian Country. It is EPA's long-standing position that the term "Indian lands" used in past Michigan hazardous waste approvals is synonymous with the term "Indian Country." *Washington Dep't of Ecology*

v. *U.S. EPA*, 752 F.2d 1465, 1467, n.1 (9th Cir. 1985). See 40 CFR 144.3 and 258.2.

#### J. What is codification and is EPA codifying Michigan's hazardous waste program as authorized in this rule?

Codification is the process of placing a state's statutes and regulations that comprise a 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. Michigan's rules, up to and including those revised October 19, 1991, have previously been codified through incorporation-by-reference effective April 24, 1989 (54 FR 7421, February 21, 1989); as amended effective March 31, 1992 (57 FR 3724, January 31, 1992). We reserve the amendment of 40 CFR part 272, subpart X, for the codification of Michigan's program changes until a later date.

#### K. Statutory and Executive Order Reviews

This proposed rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no requirements other than those imposed by state law (see **SUPPLEMENTARY INFORMATION**, Section A. Why Are Revisions to State Programs Necessary?). Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

##### 1. Executive Order 18266: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

The Office of Management and Budget has exempted this rule from its review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821 January 21, 2011).

##### 2. Paperwork Reduction Act

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.*).

##### 3. Regulatory Flexibility Act

This rule authorizes state requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those required by state law. Accordingly, I certify 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.*).

##### 4. Unfunded Mandates Reform Act

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 (Pub. L. 104-4).

##### 5. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) does not apply to this rule because it will not have federalism implications (*i.e.*, 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).

##### 6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to this rule because it will not have tribal implications (*i.e.*, substantial direct effects on one or more Indian tribes, or 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).

##### 7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866 and because the EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

##### 8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action as defined in Executive Order 12866.

##### 9. National Technology Transfer Advancement Act

EPA approves state programs as long as they meet criteria required by RCRA, so it would be inconsistent with

applicable law for EPA, in its review of a state program, to require the use of any particular voluntary consensus standard in place of another standard that meets 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 to this rule.

##### 10. Executive Order 12988

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.

##### 11. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings

EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 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.

##### 12. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

Because this rule proposes authorization of pre-existing state rules and imposes no additional requirements beyond those imposed by state law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994).

#### 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: January 15, 2015.

**Susan Hedman,**

*Regional Administrator, Region 5.*

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