

Dated: September 26, 2007.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[EPA-R05-RCRA-2007-0722; FRL-8478-4]

#### 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 changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Michigan's application and has preliminarily determined that these changes satisfy all requirements needed to qualify for final authorization, and is proposing to authorize the State's changes.

**DATES:** Comments on this proposed rule must be received on or before November 8, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-RCRA-2007-0722 by one of the following methods:

*http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

*E-mail:* feigler.judith@epa.gov.

*Mail:* Ms. Judith Feigler, Michigan Regulatory Specialist, RCRA Programs Section, Land and Chemicals Division, U.S. Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois 60604.

*Instructions:* Direct your comments to Docket ID Number EPA-R05-RCRA-2007-0722. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 *http://www.regulations.gov* or e-mail. The *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 e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail 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 disk or CD-ROM 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 *www.epa.gov/epahome/dockets.htm*.

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some of the information is not publicly available, e.g., CBI or other information whose 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 *http://www.regulations.gov* or in hard copy. You may view and copy Michigan's application from 9 a.m. to 4 p.m. at the following addresses: U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, contact: Judith Feigler (312) 886-4179; or Michigan Department of Environmental Quality, Constitution Hall, 525 W. Allegan St., Lansing, Michigan (mailing address P.O. Box 30241, Lansing, Michigan 48909), contact Ronda Blayer (517) 353-9548.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judith Feigler, Michigan Regulatory Specialist, RCRA Programs Section, Land and Chemicals Division, U.S. Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois 60604, (312) 886-4179, e-mail *feigler.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 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 have preliminarily determined 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 changes 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 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 Michigan, including issuing permits, until the state is granted authorization to do so.

##### C. What Will Be the Effect if Michigan Is Authorized for These Changes?

If Michigan is authorized for these changes, a facility in Michigan subject to RCRA will have to comply with the authorized state requirements instead of the equivalent federal requirements in order to comply with RCRA. Additionally, such persons will have to comply with any applicable federal requirements, such as HSWA regulations issued by EPA for which the state has not received authorization, and RCRA requirements that are not supplanted by authorized state-issued requirements. 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. Do 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 proposed action would not impose additional requirements on the regulated community because the regulations for which Michigan would be authorized are already effective, and would not be changed by the act of authorization.

#### D. What Happens if EPA Receives Comments on This Action?

If EPA receives comments on this proposed action, we will address those 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.

#### 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); and on March 9, 2006, effective March 9, 2006 (71 FR 12141).

#### F. What Changes Are We Proposing?

On May 21, 2007, Michigan submitted a complete program revision application seeking authorization of its changes in accordance with 40 CFR 271.21. We have preliminarily determined that Michigan's hazardous waste management program revision satisfies all requirements necessary to qualify for final authorization. Therefore, we propose to grant Michigan final authorization for the following program changes:

Description of Federal requirement	Revision checklist <sup>1</sup>	Federal Register date and page	Analogous state authority
Mineral Processing Secondary Materials Exclusion.	167D	May 26, 1998, 63 FR 28556 ...	Michigan Administrative Code, R 299.9202(1)(b)(iii) and R 299.9204(1)(v), effective December 16, 2004
NESHAP: Surface Coating of Automobiles and Light-Duty Trucks.	205	April 26, 2004, 69 FR 22601 ...	Michigan Combined Laws, 324.11105a(1) and (2), effective December 29, 2006. <sup>2</sup>

<sup>1</sup> Revision Checklists generally reflect changes made to the federal regulations pursuant to a particular **Federal Register** notice and EPA publishes these checklists as aids to states to use for the development of their authorization application. See EPA's RCRA State Authorization Web Page at <http://www.epa.gov/epaoswer/hazwaste/state/>.

<sup>2</sup> The legislation we are proposing to authorize contains a "sunset provision" by which the substantive requirements of the state legislation will lapse after a period of three years unless the legislature explicitly reauthorizes it. It is EPA's position that once program revisions are authorized, the substantive requirements of the legislation will remain federally enforceable and our authorization of the revised program will persist, until the state requests and receives authorization of superseding program revisions, despite any lapse in the legal effect or enforceability of statutory authority on the state level.

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

There are no state requirements in this program revision considered to be more stringent or broader in scope than the analogous federal requirements.

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

Michigan will continue to issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Tables above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Michigan is not yet authorized.

#### I. How Would Authorizing Michigan for These Revisions 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 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. 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 Review

The Office of Management and Budget has exempted this rule from its review

under Executive Order 12866 (58 FR 51735, October 4, 1993).

#### 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

After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), I certify that this rule will not have a significant economic impact on a substantial number of small entities.

#### 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, 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 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, 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: September 26, 2007.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA-2007-28517]

RIN 2127-AK05

#### Federal Motor Vehicle Safety Standards; Electric-Powered Vehicles: Electrolyte Spillage and Electrical Shock Protection

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** Based on concern that the agency's standard on electric-powered vehicles, as currently written, may inadvertently hinder the development of fuel cell vehicles in the United States, NHTSA is proposing to amend the electrical safety requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 305, *Electric-powered vehicles: electrolyte spillage and electrical shock protection*. The amendment would ensure that state-of-the-art fuel cell vehicles (FCVs) are consistent with the interests of safety and encompassed by FMVSS No. 305 so that the market may continue to develop. This NPRM also proposes to harmonize FMVSS No. 305 with the revised FMVSS No. 301, as regards rear moving barrier impact test conditions. This rulemaking commenced in response to a petition from the Alliance of Automobile Manufacturers.

**DATES:** You should submit your comments early enough to ensure that Docket Management receives them not later than December 10, 2007. Proposed effective date of final rule: assuming that a final rule is issued, NHTSA proposes that the changes adopted by the rule would be mandatory for fuel cell vehicles manufactured on or after exactly one year from the date of publication of the final rule in the **Federal Register**, with optional early compliance.