

Dated: January 18, 2008.

John B. Askew,

Regional Administrator, Region 7.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R01-RCRA-2007-1171; FRL-8521-8]

Massachusetts: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Commonwealth of Massachusetts has applied to EPA for final authorization of certain 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 the State's changes through this immediate final action.

DATES: This final authorization will become effective on March 31, 2008 unless EPA receives adverse written comment by March 3, 2008. 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 immediate effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-RCRA-2007-1171, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail:* biscaia.rob@epa.gov.
- *Fax:* (617) 918-0642, to the attention of Robin Biscaia.
- *Mail:* Robin Biscaia, Hazardous Waste Unit, EPA New England—Region 1, One Congress Street, Suite 1100 (CHW), Boston, MA 02114-2023.
- *Hand Delivery or Courier:* Deliver your comments to: Robin Biscaia, Hazardous Waste Unit, Office of Ecosystem Protection, EPA New England—Region 1, One Congress Street, 11th Floor, (CHW), Boston, MA 02114-2023. Such deliveries are only accepted during the Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Identify your comments as relating to Docket ID No. EPA-R01-RCRA-2007-1171. 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, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or claimed to be 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 or e-mail. The 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 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, 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.htm>.

Docket: EPA has established a docket for this action under Docket ID No. EPA-R01-RCRA-2007-1171. All documents in the docket are listed on the www.regulations.gov Web site. Although it may be listed in the index, some information might not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the following two locations: (i) Massachusetts Department of Environmental Protection, Business Compliance Division, One Winter Street—8th Floor, Boston, MA 02108, business hours Monday through Friday 9 a.m. to 5 p.m., tel: (617) 556-1096; and (ii) EPA Region I Library, One Congress Street—11th Floor, Boston, MA 02114-2023, by appointment only, (617) 918-1990.

FOR FURTHER INFORMATION CONTACT: Robin Biscaia, Hazardous Waste Unit, EPA New England—Region 1, One Congress Street, Suite 1100 (CHW), Boston, MA 02114-2023; telephone number: (617) 918-1642; fax number: (617) 918-0642, e-mail address: biscaia.rob@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 concluded that Massachusetts's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Massachusetts final authorization to operate its hazardous waste program with the changes described in the authorization application. The Massachusetts Department of Environmental Protection (MassDEP) has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program covered by 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 any such requirements and prohibitions in Massachusetts, 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 decision is that a facility in Massachusetts 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. Massachusetts has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA also retains its full authority under RCRA sections 3007, 3008, 3013, and 7003, which includes, among others, authority to:

- Perform inspections, and require monitoring, tests, analyses or reports.
- Enforce RCRA requirements and suspend or revoke permits.
- Take enforcement actions.

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

D. Why Wasn't There a Proposed Rule Before This Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect adverse 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 based upon this proposed rule that also appears in today's **Federal Register**. You may not have another opportunity to comment. If you want to comment on this authorization, you should do so at this time.

If we receive adverse 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 Massachusetts Previously Been Authorized for?

The Commonwealth of Massachusetts initially received Final Authorization on January 24, 1985, effective February 7, 1985 (50 FR 3344), to implement its base hazardous waste management program. This authorized base program generally tracked Federal hazardous waste requirements through July 1, 1984. In addition, the EPA previously has authorized particular Massachusetts regulations which address several of the EPA requirements adopted after July 1, 1984. Specifically, on September 30, 1998, the EPA authorized Massachusetts to administer the Satellite Accumulation rule, effective November 30, 1998 (63 FR 52180). Also, on October 12, 1999, the EPA authorized Massachusetts to administer the Toxicity Characteristics rule (except with respect to Cathode Ray Tubes), and the Universal Waste rule, effective immediately (64 FR 55153). On November 15, 2000, the EPA granted interim authorization for Massachusetts to regulate Cathode Ray Tubes under the Toxicity Characteristics rule through January 1, 2003, effective immediately (65 FR 68915). This interim authorization subsequently was extended to run through January 1, 2006 (67 FR 66338, October 31, 2002) which was then further extended until January 1, 2011 (70 FR 69900, November 18, 2005). On March 12, 2004, EPA authorized the State for updates to its hazardous waste program which generally track Federal requirements through the July 1, 1990 edition of Title 40 of the Code of Federal Regulations (and in some cases beyond), including definitions and miscellaneous provisions, provisions for the identification and listing of hazardous wastes and standards for hazardous waste generators; it also approved a State-specific modification to the Federal hazardous waste regulations regarding recyclable materials under an ECOS flexibility project; and finally it approved Massachusetts site-specific regulations developed under the Project XL, New England Universities Laboratories XL Project (69 FR 11801, March 12, 2004), effective immediately.

G. What Changes Are We Authorizing With This Action?

On November 30, 2007, Massachusetts submitted a final complete program revision application, seeking authorization for its changes in accordance with 40 CFR 271.21. In particular, Massachusetts is seeking authorization for updated State regulations addressing Federal

requirements for Corrective Action, Radioactive Mixed Waste, and the Hazardous Waste Manifest revisions. Massachusetts is also seeking authorization for various changes it recently has made to its base program regulations, including the hazardous waste exemption for dredged material regulated under the Federal Clean Water Act, requirements relating to elementary neutralization, an exemption for dental amalgam being recycled, and a State regulation which allows for the waiving of State requirements that are more stringent than the Federal RCRA counterparts. In addition, Massachusetts has revised its base program regulations regarding interim status facilities and is seeking authorization of the revised regulations. Finally, Massachusetts is seeking authorization for an extension of the special regulations governing the New England Universities' Laboratories XL project.

The State's authorization application includes such documents as a Corrective Action Program Description, a Corrective Action Memorandum of Agreement (MOA) between EPA and the MassDEP, a Final Project Agreement Modification for the New England Universities Laboratories XL Project between EPA and the MassDEP, a copy of MassDEP's Hazardous Waste Regulations effective July 13, 2007, and an Attorney General's Statement.

We are now making an immediate final decision, subject to reconsideration only if we receive written comments that oppose this action, that Massachusetts's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Therefore, we grant Massachusetts final authorization for the following program changes identified below. Note, the Federal requirements are identified either by their rule checklist (CL) number or by direct reference to a Federal regulation, followed by the corresponding State regulatory analogs from Massachusetts Hazardous Waste Regulations, 310 CMR 30.0000, as in effect on July 13, 2007.

First, we are authorizing revised state rules that are analogous to the following Federal rules which relate to EPA's Corrective Action program: CL 17L—HSWA Codification Rule, Corrective Action, 50 FR 28702–28755, July 15, 1985; CL 17 O—HSWA Codification Rule, Omnibus Provision, 50 FR 28702–28755, July 15, 1985; CL 44A—HSWA Codification Rule 2, Permit Application Requirements Regarding Corrective Action, 52 FR 45788–45799, December 1, 1987; CL 44B—HSWA Codification Rule 2, Corrective Action Beyond the Facility Boundary, 52 FR 45788–45799,

December 1, 1987; CL 44C—HSWA Codification Rule 2, Corrective Action for Injection Wells, 52 FR 45788–45799, December 1, 1987; CL 121—Corrective Action Management Units and Temporary Units; Corrective Action Provisions Under Subtitle C, 58 FR 8658–8685, February 16, 1993; CL 174—Post-Closure Permit Requirements and Closure Process, 63 FR 56710–56735, October 22, 1998; CL 196—Amendments to the Corrective Action Management Unit (CAMU) Rule, 67 FR 2962–3029, January 22, 2002; 40 CFR 270.73(a) (regarding termination of interim status at facilities where corrective action has been completed); and 40 CFR 270.1(c)(3), 270.72(a)(5) and 270.1(c) as limited by CERCLA 121(e) (exemptions from RCRA permitting for certain remedial activities). The analogous State citations are as follows: 310 CMR 30.010, definitions of “Facility” and “Solid Waste Management Unit,” 30.602(9), 30.602(10), 30.661(1), 30.604(1), 30.605(1), 30.829, 30.003(8), 30.804(23), 30.804(29), 30.672(5) and (6), 30.602(12), 30.099(13)(a)–(g), 30.602(13)–(15), 30.099(4)(b), 30.099(6), 30.801(11)(a) and (b), and 30.801(intro.) as limited by 30.801(11)(c).

Second, we are authorizing revised state rules that are analogous to the following Federal rules which relate to EPA’s Mixed Waste program: MW CL—Radioactive Mixed Waste, 51 FR 24504, July 3, 1986; and CL 191—Storage, Treatment, Transportation, and Disposal of Mixed Waste, 66 FR 27218–27266, May 16, 2001. The analogous State citations are as follows: 310 CMR 30.010, definitions of “Low-Level Mixed Waste,” “Low-Level Radioactive Waste,” “Mixed Waste,” “Naturally Occurring and/or Accelerator-produced Radioactive Material,” and “NRC,” 30.104(3)(g), and 30.099(6)(r).

Third, we are authorizing the following revised state rules that are analogous to the EPA’s Uniform Hazardous Waste Manifest revisions: CL 207—Hazardous Waste Management System, Modification of the Hazardous Waste Management System, 70 FR 10776–10825, March 4, 2005: 310 CMR 30.010, definition of “Designated Facility,” 30.106(2)(a)(3) and (4), 30.310, 30.311(1), 30.312, 30.313, 30.313(1)–(9), 30.314(1)–(5), 30.317, 30.323(2), 30.324, 30.331(1) and (2), 30.334(2), 30.340(9), 30.340(9)(a) and (b), 30.341(6)(b), 30.351(2)(a), 30.351(2)(c)(2)–(4), 351(5)(a)(2), 30.351(10)(e) (excluding reference to 30.316), 30.353(2)(a)(2), 30.353(2)(b)(6), 30.353(2)(c)(3)–(5), 30.353(6)(e) (excluding reference to 30.316), 30.361(1) and (2), 30.340(9), 30.361(1)(a), 30.361(2), 30.404(2) and

(3), 30.405(1), 30.405(8)(a)–(d), 30.531, 30.532(1)(a)–(d), 30.532(1)(f) and (g), 30.533(1)(a)–(c), 30.533(2), 30.533(3), 30.533(4)(a) and (b), 30.533(5)(a)–(g), 30.533(6)(a)–(g), 30.533(7), 534(2)(1)–(g), 30.099(6)(a).

In addition to the regulations listed above, there are various previously authorized State program regulations to which the State has made changes. The EPA is also authorizing these revised provisions as in effect in 310 CMR on July 13, 2007. Regarding 40 CFR 261.33(f), Commercial Chemical Products: State technical correction to the U28 listing at 310 CMR 30.133. Regarding 40 CFR 262.34(a)(1)(i), Generator accumulation time: 310 CMR 30.342(1)(c) including an update in container management requirements at 30.685. Regarding Elementary Neutralization Requirements at 40 CFR 260.10 “Elementary Neutralization Unit” definition, 40 CFR 264.1(g)(6), 40 CFR 265.1(c)(10), 40 CFR 270.1(c)(2): 310 CMR 30.010 “Elementary Neutralization” and “Elementary Neutralization Unit” definitions, 310 CMR 30.340(8), 310 CMR 30.351(11), 310 CMR 30.501(2)(h), 310 CMR 30.601(2)(h), 310 CMR 30.801(17), 310 CMR 30.1103. Regarding requirements related to Dredged Material Exemption at 40 CFR 261.4(g): 310 CMR 30.010 “Dredged Material” definition and 310 CMR 30.104(3)(f). Regarding Federal Minimum Requirements in 40 CFR Parts 260 to 279: 310 CMR 30.1100–1102—State Waiver Authority—allowing the State to waive requirements more stringent than the minimum Federal requirements. Regarding 40 CFR 261.2, Characteristic sludge exemption: 310 CMR 30.104(2)(u) (exemption for dental amalgam). Regarding 40 CFR part 265—Interim Status Standards for Owners and Operators of Hazardous Waste TSDFs, Subpart A—Purpose Scope and Applicability, 40 CFR Part 265.1: 310 CMR 30.010, “polyhalogenated aromatic hydrocarbons” (PAH) definition, 30.099(1)(a) and (b), and 30.099(11). Regarding Subpart B—General Facility Standards, 40 CFR 265.10–19: 310 CMR 30.099(6)(a). Regarding Subpart C—Preparedness and Prevention, 40 CFR 265.30–37: 310 CMR 30.099(6)(a). Regarding Subpart D—Contingency Plan and Emergency Procedures, 40 CFR 265.50–56: 310 CMR 30.099(6)(a). Regarding Subpart E—Manifest System, Record Keeping and Reporting, 40 CFR 265.70–77: 310 CMR 30.099(6)(a). Regarding Subpart F—Ground-water Monitoring, 40 CFR 265.90–94: 310 CMR 30.099(6)(d). Regarding Subpart G—Closure and Post-Closure, 40 CFR 265.110–121: 310 CMR 30.099(6)(b).

Regarding Subpart H—Financial Requirements, 40 CFR 265.140–150: 310 CMR 30.099(6)(c). Regarding Subpart I—Containers, 40 CFR 265.170–202: 310 CMR 30.099(6)(e). Regarding Subpart J—Tanks, 40 CFR 265.190–202: 310 CMR 30.099(6)(f). Regarding Subpart K—Surface Impoundments, 40 CFR 265.220–231: 310 CMR 30.099(6)(g). Regarding Subpart L—Waste Piles, 40 CFR 265.250–260: 310 CMR 30.099(6)(h). Regarding Subpart M—Land Treatment, 40 CFR 265.270–282: 310 CMR 30.099(6)(i). Regarding Subpart N—Landfills, 40 CFR 265.300–316: 310 CMR 30.099(6)(j). Regarding Subpart O—Incinerators, 40 CFR 265.340–352. Regarding Subpart P—Thermal Treatment, 40 CFR 265.370–383: 310 CMR 30.099(6)(l). Regarding Subpart Q—Chemical, Physical and Biological Treatment, 40 CFR 265.400–406. Regarding Subpart R—Underground Injection, 265.430: 310 CMR 30.604(1) (prohibition). Regarding Subpart W—Drip Pads, 40 CFR 265.440–445: 310 CMR 30.099(6)(n). Regarding Subpart AA—Air Emission Standards for Process Vents, 40 CFR 265.1030–1036: 310 CMR 30.099(6)(o). Regarding Subpart BB—Air Emission Standards for Equipment Leaks, 40 CFR 265.1050–1064: 310 CMR 30.099(6)(p). Regarding Subpart DD—Containment Buildings, 40 CFR 265.1100–1102: 310 CMR 30.099(6)(q). Regarding 40 CFR part 270—EPA Administered Permit Programs: The Hazardous Waste Permit Program, Subpart B—Permit Application, General Application Requirements, 40 CFR 270.10(e): 310 CMR 30.099(2)(a)(1) and (2), and 310 CMR 30.099(12)(d) and (e). Regarding Subpart G—Interim Status, Qualifying for Interim Status, 40 CFR 270.70(a)–270.70(c): 310 CMR 30.010 “Existing Facility” definition, 310 CMR 30.060, and 310 CMR 30.099(1)(a)–(d). Regarding Operation during Interim Status, 40 CFR 270.71(a) and (b): 310 CMR 30.099(4)(a) and (b). Regarding Changes During Interim Status, 40 CFR 270.72(a) and (b): 310 CMR 30.064(2)(a), and 310 CMR 30.099(5)(a) and (b). Regarding Termination of Interim Status, 40 CFR 270.73(a)–(g): 310 CMR 30.099(6), and 310 CMR 30.099(12)(a)–(c).

The State has also extended the expiration date of its special regulations governing the universities participating in the New England Universities’ Laboratories XL project. The Massachusetts Project XL regulations were originally authorized by the EPA and became part of the Federally enforceable Massachusetts RCRA program on March 12, 2004. See 69 FR

11801. We are now authorizing the extension of these regulations through April 15, 2009. EPA amended its Federal regulations to allow for extension of the expiration date of the XL Project from September 30, 2006 to this new date of April 15, 2009. See 71 FR 35547. The State has adopted a regulation allowing the extension of the XL Project through September 30, 2012. See 310 CMR 30.354(3). In line with its regulation as currently amended, the EPA is only able to authorize an extension through April 15, 2009 at this time, but could later consider another Federal extension should a longer one prove to be necessary. EPA believes the current extension is appropriate since it has recently proposed a national set of alternative regulations for academic laboratories (see 71 FR 29712, May 23, 2006). Pending promulgation of a national rule, the extension will allow the universities currently participating in the Labs XL Project to continue to build upon the successes of the project and not have to terminate their participation in the Project. This extension also includes an updated Final Project Agreement (FPA) for this XL Project to reflect the extended period of coverage through April 15, 2009. To allow this extension, we are authorizing the following revised state regulation: 310 CMR 30.354(3) (through only April 15, 2009). EPA also is authorizing the updated cross-references in the State regulations at 310 CMR 30.354(1)(a) and 310 CMR 30.354(2).

Today's final authorization of new State regulations and regulation changes is in addition to the previous authorizations of State regulations which remain part of the authorized program.

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

The most significant differences between the State rules being authorized and the 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 regulations to ensure that they understand all of the requirements with which they will need to comply.

1. More Stringent Provisions

There are aspects of the Massachusetts 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 include the following:

- Massachusetts has adopted an exemption from hazardous waste requirements for elementary neutralization at 310 CMR 30.1103. While generally tracking the Federal exemption at 40 CFR 264.1(g)(6), 264.17(b), 265.1(c)(10), 265.17(b), and 270.1(c)(v), the State regulations are more stringent than the Federal regulations in several respects. First, the State regulations contain general requirements that all elementary neutralization be conducted in a manner that does not present a danger to public health, safety, welfare or the environment, does not generate toxic vapors or fumes, does not generate extreme heat or pressure, and does not damage the structural integrity of the container or tank containing the waste. The Federal regulations at 40 CFR 264.17(b) and 265.17(b) similarly require the safe conducting of treatment, for certain wastes posing particular concerns, but the State provision applies more stringently to the treatment of all hazardous wastes. Second, the State regulations exempt from the permit requirement only elementary neutralization conducted at the site of generation. In contrast, the Federal regulations also exempt from the permit requirement elementary neutralization conducted at a treatment, storage or disposal facility. Thus the State regulates TSDFs more stringently.

2. Broader in Scope Provisions

There are parts of regulations in the Massachusetts program which are broader in scope than the Federal program. The portions of State requirements which are broader in scope are not considered to be part of the Federally enforceable RCRA program. However, they are fully enforceable under State law and must be complied with by sources within Massachusetts. These broader in scope portions of State requirements include the following:

- Massachusetts has adopted an exemption from hazardous waste requirements for dredged materials at 310 CMR 30.104(3)(f). While generally tracking the Federal exemption at 40 CFR 261.4(g), the Massachusetts exemption is narrower in some respects than the Federal exemption, which results in the State regulating more broadly than the Federal regulations. In particular, the Massachusetts exemption applies to dredged materials only when they are temporarily stored at an

intermediate facility pursuant to 314 CMR 9.07(4) or when they are placed in confined disposal pursuant to 314 CMR 9.07(8). Under the Federal regulations, the exemption also could apply to dredged material that was land applied, provided that such placement was instead regulated under Section 404 of the Clean Water Act. In addition, the Massachusetts regulations specify that the exemption applies only when a source complies with the alternative requirements established by a Clean Water Act section 404 permit. In contrast, under the Federal regulations, the exemption applies so long as the source is subject to a Clean Water Act section 404 permit. In addition, the Massachusetts regulations specify that the exemption applies only when requirements have been established by both the State requiring them pursuant to a Clean Water Act section 401 certification (of a section 404 permit), and the requirements then being included in the Clean Water Act section 404 permit. In contrast, under the Federal regulations, the exemption applies so long as there are alternative requirements in the 404 permit, whether or not they were set pursuant to a State section 401 certification. Finally, the State exemption only applies to activities regulated under Clean Water Act section 404, while the Federal exemption also applies to activities regulated under the Marine Protection, Research and Sanctuaries Act. Note that in addition to the provisions making the Massachusetts requirements partially broader in scope, the Massachusetts regulation also has clarifying language emphasizing that for this exemption to apply to a particular activity (i.e., temporary storage, or placement in confined disposal), specific alternative requirements must be established (under Clean Water Act section 404) with respect to that activity.

3. Different but Equivalent Provisions

There are some Massachusetts regulations which differ from, but have been determined to be equivalent to, the Federal regulations. These State regulations are or will become part of the Federally enforceable RCRA program when authorized by the EPA. These different but equivalent requirements include some requirements related to Corrective Action described in the next section, and also the following:

- Under the State's Environmental Results Program (ERP), the State has adopted regulations requiring dental offices to install wastewater treatment units to collect dental amalgam containing mercury and to ship such

amalgam for recycling (including mercury reclamation). The environmentally poor practices of putting such amalgam in the trash or flushing it down the drain both are banned, as a part of the State's efforts to reduce mercury in the environment. As a part of this set of regulations, the State has exempted from its hazardous waste regulations "amalgam waste" that is hazardous solely due to the mercury characteristic, when the "amalgam waste" is managed by dental facilities in accordance with the proposed ERP sector regulations. See 310 CMR 30.104(2)(u). The State regulates such "amalgam waste" under the ERP sector regulations rather than its hazardous waste regulations. As further explained in a March 9, 2005 memorandum by Jeffrey Fowley, EPA Region I Office of Regional Counsel, entitled "Proposed Massachusetts Regulations Regarding Dental Amalgam" (included in the administrative docket), the Massachusetts exemption is equivalent to Federal RCRA requirements. Under the Federal RCRA regulations, the dental amalgam would be classified as a characteristic sludge, which is not considered to be a solid or hazardous waste when being reclaimed, and thus is exempt from RCRA requirements. In general, the Massachusetts hazardous waste program does not exempt characteristic sludge from hazardous waste requirements—but rather regulates it under the State's Class A recycling program. But Massachusetts has chosen to regulate dental amalgam in a different way, outside of its hazardous waste program. Massachusetts may of course choose to exempt certain characteristic sludges from hazardous waste requirements—e.g., dental amalgam—in line with Federal requirements, while regulating more stringently and broadly in its hazardous waste program other characteristic sludges. Thus, the EPA is authoring the State's exemption in 310 CMR 30.104(2)(u) and the associated definitions of "amalgam" and "amalgam waste" in 310 CMR 30.010.

- Massachusetts has adopted regulations allowing the MassDEP to grant waivers from State RCRA regulatory requirements for wastes or activities that the MassDEP determines are insignificant as a potential hazard to public health, safety, welfare or the environment, or are adequately regulated by another government agency. 310 CMR 30.1100 (including 30.1101 and 30.1102). These regulations specify that waivers may be granted only from requirements that are, "more stringent than the minimum Federal

requirements promulgated under the Resource Conservation and Recovery Act." Moreover the person seeking the waiver must demonstrate that the waiver "will not result in the Department's requirements applicable to the person becoming less stringent than the minimum Federal requirements promulgated under the Resource Conservation and Recovery Act." The person receiving the waiver must comply with the terms of the waiver (which will be established in place of any waived requirements), in addition to all requirements that are not waived. As further explained in a March 8, 2005 letter to MassDEP from Ernest Waterman, Chief of the EPA Region I Hazardous Waste Unit, and Jeffrey Fowley of the Region I Office of Regional Counsel (included in the administrative docket), since the State regulations mandate that requirements equivalent to the minimum Federal RCRA requirements always will be maintained, the State regulations are equivalent to the Federal RCRA regulations. Thus the EPA is authorizing these State regulations. As a result of today's authorization, individual waiver determinations may be issued by the State without needing to separately and repeatedly go through the authorization process, provided of course that equivalency with the minimum Federal requirements is maintained. Any alternative requirements set by the State in any waiver determination, in order to maintain equivalency with the Federal requirements, will become part of the Federally enforceable (as well as State enforceable) RCRA program, as a result of being specified in the waiver determination by the State. EPA Region I has encouraged the MassDEP to consult with the Region with respect to each waiver, to ensure that the Department and EPA are in agreement that any waiver is only from more stringent State requirements.

I. What Is the Massachusetts Corrective Action Program That Is Being Authorized?

As part of this program update, the State will be assuming responsibility for operating the Federal Corrective Action program. The program being authorized covers all Treatment Storage and Disposal Facilities (TSDFs) subject to 40 CFR 264.101, which includes (i) active facilities which need permits to conduct ongoing treatment, storage or disposal, and (ii) interim status land disposal facilities which have been required to seek post closure permits under the EPA regulations.

Massachusetts is planning to carry out the Corrective Action program utilizing

three different approaches. First, the State will issue RCRA permits (called licenses in Massachusetts) to active TSDFs, in accordance with State regulations that track 40 CFR 264.101. Second, Massachusetts will issue enforceable Orders to some interim status land disposal facilities (LDFs) undergoing closure or in post closure, in accordance with State regulations which track the requirements of the EPA's closure/post-closure rule, 63 FR 56710 (October 22, 1998). The State regulations regarding such permits and Orders raise no significant authorization issues.

Use of the 21E Program

Third, Massachusetts also plans to allow some clean-ups at interim status LDFs to be conducted under the State's Superfund program promulgated under M.G.L. c. 21E (the 21E program). This should result in the acceleration of the cleanups. This deferral of corrective action to the 21E program will occur only at sites which have not yet been issued RCRA closure/post-closure permits, and will involve moving forward with the clean-ups without waiting for the issuance of the permits. The 21E program regulations contain enforceable deadlines and standards that facilities must follow. This deferral of corrective action also will avoid duplication of effort. Cleanups at most of the sites in question already are occurring under the 21E program, and it makes sense to take advantage of that fact, rather than starting the cleanups over again under another program.

However, the State's plan to utilize the 21E program at sites subject to Corrective Action under RCRA raised certain RCRA authorization issues. In particular, these issues arose because in the 21E program, Massachusetts utilizes State licensed but privately employed professionals (Licensed Site Professionals or LSPs) for day-to-day oversight of many of the clean-ups. In the 21E program generally, only some LSP clean-up determinations are subject to State audit. Also, in the 21E program generally, the public comment process does not include a comment period in connection with the audits. In contrast, the EPA corrective action regulations contemplate that there will be governmental oversight and the opportunity for public comment (to the government) in connection with clean-ups.

These authorization issues have been resolved as follows. First, Massachusetts has adopted a regulation requiring State audits at all corrective action sites at which clean-ups are conducted in the 21E program under the day-to-day

direction of LSPs. 310 CMR 30.099(13)(e)(3). If the audit finds that a site has not been remediated so as to meet the same State clean-up standards as would be applied under a RCRA permit or Order, then the facility must carry out additional corrective action as required. *Id.* The State regulations also clarify that the MassDEP may intervene at any time during the carrying out of a remediation to correct any violations of the corrective action requirements. 310 CMR 30.099(13)(e)(2). In addition, the State regulations require that a public comment period will be conducted by the State regarding each audit, prior to making the determination that corrective action is complete. 310 CMR 30.099(13)(e)(4). This is in addition to the public comment process that must occur at the time of remedy selection. 310 CMR 30.099(13)(e)(1).

The adoption of these additional State regulations along with commitments made by the State in the Memorandum of Agreement and Program Description, have resolved the EPA's concerns. There will be government oversight and a meaningful opportunity for public comment in connection with all clean-ups at corrective action sites subject to today's authorization. To the extent that the State's use of the 21E program will result in cleanups occurring with less immediate day-to-day government oversight than might occur under a permit or Order, this is compensated for by the acceleration of the cleanups and the fact that there will be a thorough governmental review at the end of the process.

If instead of authorizing Massachusetts to carry out the Corrective Action program, the EPA was to continue to operate the program in Massachusetts, it similarly could allow a clean-up to occur, prior to permitting, under another program such as the 21E program. In such a situation, the EPA would then review the adequacy of the clean-up prior to determining that corrective action was complete, and thus allowing the facility to be terminated from interim status, pursuant to 40 CFR 270.73(a).¹ Prior to terminating the facility's interim status, the EPA also would follow the public comment procedures specified in 40 CFR 124.6 and 124.10(a)(1)(i). The State

¹ An EPA decision terminating interim status after corrective action had been completed (with no waste left in place) would technically be a 'permit denial' based on there being no need for a closure/post closure permit since corrective action (and all other required closure activities) had been completed. The State program similarly contemplates that facilities fully cleaned up prior to getting a permit (with no waste left in place) never will need to be issued a closure/post closure permit.

has adopted similar regulations requiring governmental review and public comment prior to interim status being terminated. These State regulations are equivalent to—or more stringent than—40 CFR 270.73(a).²

The EPA is not authorizing as part of the Federal RCRA program the 21E program as such, or the 21E program regulations themselves, or the use of LSPs. As explained above, the 21E program standing alone is not equivalent to the Federal Corrective Action program in certain respects. Rather, the EPA is authorizing the regulations at 310 CMR 30.099(13) that the State will utilize to ensure that clean-ups that have occurred in the 21E program meet Federal Corrective Action requirements.

Today's authorization does not alter the previously authorized State requirements regarding regulated unit closure. Regulated unit closure will continue to be governed by the State's hazardous waste program regulations rather than being conducted under the 21E program under the supervision of LSPs. *See* 310 CMR 30.099(13)(f). Also, sites which are addressed in the 21E program, but which are unable to clean close, will be issued post closure permits or Orders rather than remaining under LSP supervision over the long term. In its discussion of the 21E program audits, at page 5, the Memorandum of Agreement specifies: "[f]or facilities requiring long-term operation and maintenance, and monitoring (e.g., closed landfills), these [audits] will be conducted in connection with the issuance of post-closure permits or orders requiring the long-term operation and maintenance, and monitoring."

Exemption From Permitting

Massachusetts also has adopted a hazardous waste program regulation which exempts some remediation activities from the RCRA permit (state license) requirement, if the activities are

² Pursuant to the EPA regulations on State authorization at 40 CFR 271.12(a) and 271.14, States with interim status facilities must track the requirements of 40 CFR 270.73, but generally need not track the public comment requirements of 40 CFR 124.6 and 124.10(a)(1)(i) when denying a permit under 40 CFR 270.73. This is because permit denials typically are employed to not allow facilities to operate, and a State may be more stringent in not allowing a facility to operate without needing to follow any federally prescribed comment process. However, since Massachusetts will be employing a procedure similar to the federal "permit denial" to recognize the completion of correction action and allow facilities to be terminated from interim status, Massachusetts appropriately agreed to adopt public comment procedures (as well as audit procedures) as a part of that process.

conducted within a "disposal site" in compliance with the 21E program requirements. 310 CMR 30.801(c).³ The EPA is authorizing this regulation in connection with today's authorization of the Corrective Action program.

The State regulation narrowly exempts from only the permit requirement only certain low risk treatment activities which may occur within previously contaminated areas in order to reduce or eliminate the contamination. A permit still will be required before higher risk treatment involving the combustion of hazardous waste is allowed. 310 CMR 30.801(c)(1). The exemption also does not apply to treatment which occurs outside of the boundary of a contaminated "disposal site." 310 CMR 30.801(c)(3) and (4). The exemption also is only from the permit requirement and does not exempt even on-site treatment activities from other applicable hazardous waste program requirements. 310 CMR 30.801(c)(5).

The EPA long has allowed States to waive the RCRA permit requirement in order to foster the on-site clean-up of remediation wastes. On November 16, 1987, the EPA Director of the Office of Solid Waste and Emergency Response, J. Winston Porter, issued guidance—OSWER Policy Directive 9522.00–2 (Porter Memorandum)—stating that "[i]n general, * * * a State authorized to conduct the RCRA base permit program will have the authority to waive RCRA permit requirements for State Superfund actions as long as: (1) The State has the authority under its own statutes and regulations to grant permit waivers, and (2) the State waiver authority is used in no less stringent a manner than allowed under Federal permit waiver authority, for example, sec. 7003 of RCRA or sec. 121(e) of CERCLA." The Porter Memorandum goes on to state that "* * * States should be encouraged to move ahead on cleanups under their own Superfund authorities and * * * it does not make sense to delay actions until a RCRA permit can be issued, as long as an appropriate waiver mechanism applies and adequate measures are taken to protect human health and the environment." That the Porter Memorandum would continue to be followed was reiterated by EPA in the Preamble to the HWIR-Media Rule. In its discussion of when RCRA permits

³ This new hazardous waste program regulation actually narrows the exemption from RCRA permitting earlier allowed by Massachusetts in its 21E program regulations, at 310 CMR 40.0031(3) and 40.0041(4). This new regulation specifies that its terms "govern" in the event of any inconsistency between its terms and the 21E program regulations. *See* 310 CMR 30.801(11) (intro.).

are required, the Preamble states, "There are also instances when treating, storing and disposing of remediation wastes do not require a RCRA permit.

* * * Another example would be when [a] State that is authorized to implement the RCRA program has a permit waiver authority that is analogous to EPA's authority under CERCLA 121(e) or RCRA 7003. This permit waiver authority is described in a memorandum from J. Winston Porter * * * available in the docket to today's rule. Today's rule does not change or affect this policy in any way." 63 FR 65874, 65887-65888 (November 30, 1998).

The Massachusetts permit exemption meets the tests set forth in the Porter Memorandum. Massachusetts has been authorized to conduct the RCRA base permit program. The State has the statutory authority to grant waivers from RCRA permit requirements pursuant to M.G.L. c. 21C, sec. 4, so long as there is "adequate regulation" under another program—such as exists under the State's 21E program. Finally, the State's waiver authority is being used in a manner that is no less stringent than allowed under sec. 121(e) of CERCLA. That Federal provision specifies that "No Federal, State or local permit shall be required for the portion of any removal or remedial action conducted entirely onsite, where such remedial action is carried out in compliance with this section." The Massachusetts exemption similarly applies only to remediation activities conducted within a "disposal site" and only when they are conducted in accordance with the State's 21E program requirements. The State's 21E program requirements which ensure that LSPs will safely carry out hazardous waste remediation activities within disposal sites are described in the Program Description at pages 29-30. At least for the lower risk treatment activities covered by the State's exemption, these requirements are equivalent in ensuring environmental protection to the requirements under CERCLA.

Under the Federal RCRA regulations—40 CFR 270.1(c)—a RCRA permit is required for the "treatment," "storage" and "disposal" of hazardous waste, but that requirement is limited by CERCLA 121(e). Under the Massachusetts hazardous waste program regulations, a RCRA "license" similarly is required for treatment, storage and disposal of hazardous waste by 310 CMR 30.801 (intro.), but that requirement is limited by 310 CMR 30.801(11)(c). The State requirement at 30.801 (intro.) as limited by 30.801(11)(c) is equivalent to the

Federal requirement at 40 CFR 270.1(c), as limited by CERCLA 121(e). Thus the EPA is authorizing 310 CMR 30.801(11)(c).

Additional Issues

In determining whether remediation is complete at corrective action sites, the State will utilize the clean-up standards set forth in its 21E program regulations. 310 CMR 40.0000. The EPA has reviewed those regulations. For the reasons explained in the Memorandum entitled "MA Contingency Plan Regulations" by Frank Battaglia, MA State Coordinator, RCRA Corrective Action Section, dated February 6, 2007 (included in the administrative docket), the EPA has determined that the State standards meet the Federal requirement (40 CFR 264.101) for protection of human health and the environment.

In connection with today's authorization, the EPA also did an analysis to determine if the State has the capability to administer the Corrective Action program. This analysis went beyond reviewing the State regulations to focus on such things as resources and technical capability. For the reasons explained in the Memorandum entitled "Capability Assessment" by Frank Battaglia, dated March 9, 2007 (included in the administrative docket), the EPA has determined that the State has the capability to administer this important program.

J. How Does This Action Affect Indian Country (18 U.S.C. 115) in Massachusetts?

Massachusetts is not authorized to carry out its hazardous waste program in Indian country within the State (land of the Wampanoag tribe). Therefore, EPA will continue to implement and administer the RCRA program in these lands.

K. Who Handles Permits After the Authorization Takes Effect?

Massachusetts will issue permits for provisions for which it is authorized and will administer the permits it issues. However, EPA will continue to administer and enforce any RCRA and HSWA (Hazardous and Solid Waste Act) permits or portions of permits which it has issued in Massachusetts prior to the effective date of this authorization. In particular, as further specified in the Memorandum of Agreement, the EPA will continue to administer the EPA corrective action permit reissued to General Electric—Pittsfield in 2007, including handling any permit modifications, and any administrative and court appeals from any permit modifications. EPA will not issue any

more new permits, or new portions of permits, for the provisions listed in this notice above after the effective date of this authorization. EPA will continue to implement and issue permits for any HSWA requirements for which Massachusetts is not yet authorized.

L. What Is Codification and Is EPA Codifying Massachusetts'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. We reserve the amendment of 40 CFR part 272, subpart UU for this authorization of Massachusetts's program until a later date.

M. Administrative Requirements

The Office of Management and Budget has exempted this action (RCRA State Authorization) 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 under 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 also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885,

April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This 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 nevertheless will be effective March 31, 2008, because it is an immediate final rule.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, 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: December 17, 2007.

Robert W. Varney,

Regional Administrator, EPA New England.
[FR Doc. E8-1316 Filed 1-30-08; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 070907502-7668-03]

RIN 0648-XB01

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the annual harvest guideline (HG) for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of July 1, 2007, through June 30, 2008. This HG has been calculated according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and establishes allowable harvest levels for Pacific mackerel off the Pacific coast. The HG for the 2007-2008 fishing season is 40,000 metric tons (mt). If this total is reached, Pacific mackerel fishing will be closed to directed harvest and only incidental harvest will be allowed at a 45 percent by weight incidental catch rate when landed with other CPS, except that up to one mt of Pacific mackerel can be landed without landing any other CPS.

DATES: Effective March 3, 2008 through June 30, 2008.

ADDRESSES: Copies of the report *Pacific Mackerel (Scomber japonicus) Stock Assessment for U.S. Management in the*

2007-2008 Fishing Year may be obtained from the Southwest Regional Office by contacting Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT:

Joshua Lindsay, Southwest Region, NMFS, (562) 980-4034.

SUPPLEMENTARY INFORMATION: The CPS FMP, which was implemented by publication of the final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into two categories: actively managed and monitored. Harvest guidelines for actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

During annual public meetings, the biomass for each actively managed species within the CPS FMP is presented to the Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (Team), the Council's Coastal Pelagic Species Advisory Subpanel (Subpanel) and the CPS Subcommittee of the Scientific and Statistical Committee (SSC). At that time, the biomass, the acceptable biological catch (ABC) and the status of the fisheries are reviewed and discussed. This information is then presented to the Council along with HG recommendations and comments from the Team and Subpanel. Following review by the Council and after hearing public comments, the Council makes its HG recommendation to NOAA's National Marine Fisheries Service (NMFS). The Pacific mackerel season begins on July 1 and ends on June 30 of each year.

A full assessment for Pacific mackerel was conducted this year and reviewed by a Stock Assessment Review (STAR) Panel in La Jolla, CA, May 1-4. Public meetings of the Team and Subpanel were then held May 8-10 in Long Beach, CA. During these meetings the STAR Panel report and current stock assessment for Pacific mackerel, which included a preliminary biomass estimate and ABC, were presented and reviewed in accordance with the procedures of the FMP. Based on a total stock biomass estimate of 359,290 metric tons (mt), the ABC for U.S. fisheries for the 2007/2008 management season is 71,629 mt.

In June, the Council held a public meeting in Foster City, CA, during which time they reviewed the current