

TABLE—WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER § 268.40

Facility name <sup>1</sup> and address	Waste code	See also	Regulated hazardous constituent	Wastewaters		Nonwastewaters	
				Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
* Owens Brockway Glass Container Company, Vernon, CA <sup>6,7</sup> .	* D010	* Standards under § 268.40.	* Selenium .....	* NA .....	* NA ....	* 59 mg/L TCLP.	* NA

<sup>1</sup> A facility may certify compliance with these treatment standards according to provisions in 40 CFR 268.7.

<sup>6</sup> Alternative D010 selenium standard only applies to electrostatic precipitator dust generated during glass manufacturing operations.

<sup>7</sup> D010 waste generated by this facility must be treated and disposed by U.S. Ecology Nevada at their RCRA permitted facility in Beatty, Nevada. The treatment variance is conditioned on the waste to reagent ratio not exceeding 1 to 0.45.

**Note:** NA means Not Applicable.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 271**

[EPA-R06-RCRA-2010-0307; FRL-9291-1]

**Oklahoma: Final Authorization of State Hazardous Waste Management Program Revision**

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

**ACTION:** Immediate final rule.

**SUMMARY:** Oklahoma has applied to the EPA for Final authorization of the 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. The EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize Oklahoma's changes to its hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

**DATES:** This final authorization will become effective on June 6, 2011 unless the EPA receives adverse written comment by May 6, 2011. If the EPA

receives such comment, it will publish a timely withdrawal of this immediate final rule in the Federal Register and inform the public that this authorization will not take effect.

**ADDRESSES:** Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. *E-mail:* [patterson.alima@epa.gov](mailto:patterson.alima@epa.gov).

3. *Mail:* Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

4. *Hand Delivery or Courier:* Deliver your comments to Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

**Instructions:** Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov), or e-mail. The Federal [regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means the 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 the EPA without going through [regulations.gov](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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

the 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.

You can view and copy Oklahoma's application and associated publicly available materials from 8:30 a.m. to 4 p.m. Monday through Friday at the following locations: Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101-1677, (405) 702-7180 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, phone number (214) 665-8533. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

**FOR FURTHER INFORMATION CONTACT:** Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, (214) 665-8533, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and E-mail address [patterson.alima@epa.gov](mailto:patterson.alima@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**A. Why are revisions to state programs necessary?**

States which have received final authorization from the 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 the 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 the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

#### **B. What decisions have we made in this rule?**

We conclude that Oklahoma's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Oklahoma Final authorization to operate its hazardous waste program with the changes described in the authorization application. Oklahoma has responsibility for permitting treatment, storage, and disposal facilities within its borders. Also section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 ("SAFETEA"), Public Law 109-59, 119 Statute 1144 (August 10, 2005) provides the State of Oklahoma opportunity to request approval from EPA to administer RCRA subtitle C 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 the EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Oklahoma including issuing permits, until the State is granted authorization to do so.

#### **C. What is the effect of today's authorization decision?**

The effect of this decision is that a facility in Oklahoma 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. Oklahoma has enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses, or reports;
- enforce RCRA requirements and suspend or revoke permits; and
- take enforcement actions after notice to and consultation with the State.

This action does not impose additional requirements on the regulated community because the regulations for which Oklahoma is being

authorized by today's action is already effective under State law, and are not changed by today's action.

#### **D. Why wasn't there a proposed rule before today's rule?**

The EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

#### **E. What happens if the EPA receives comments that oppose this action?**

If the 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. The EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time. If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw only 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 in this document. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

#### **F. For what has Oklahoma previously been authorized?**

Oklahoma initially received final Authorization on January 10, 1985 (49 FR 50362-50363) published December 27, 1984 to implement its base hazardous waste management program. We authorized the following revisions: Oklahoma received authorization for revisions to its program with publication dates: April 17, 1990 (55 FR 14280-14282), effective June 18, 1990; September 26, 1990 (55 FR 39274) effective November 27, 1990; April 2, 1991 (56 FR 13411-13413) effective June 3, 1991; September 20, 1991 (56 FR 47675-47677) effective November 19, 1991; September 29, 1993 (58 FR 50854-50856) effective November 29, 1993; October 12, 1993 (58 FR 52679-52682) effective December 13, 1993; October 7, 1994 (59 FR 51116-51122)

effective December 21, 1994; January 11, 1995 (60 FR 2699-2702) effective April 27, 1995; October 9, 1996 (61 FR 52884-52886) effective December 23, 1996; Technical Correction March 14, 1997 (62 FR 12100-12101) effective March 14, 1997; September 22, 1998 (63 FR 50528-50531) effective November 23, 1998; March 29, 2000 (65 FR 16528-16532) effective May 30, 2000; May 10, 2000 (65 FR 29981-29985) effective June 10, 2000; January 2, 2001 (66 FR 28-33) effective March 5, 2001; April 9, 2003 (68 FR 17308-17311) effective June 9, 2003 and February 4, 2009 (74 FR 5994-6001). The authorized Oklahoma RCRA program was incorporated by reference into the CFR published on December 9, 1998 (63 FR 67800-67834) effective February 8, 1999, August 26, 1999 (64 FR 46567-46571) effective October 25, 1999, August 27, 2003 (68 FR 51488-51492) effective October 27, 2003 and August 27, 2010 (75 FR 36546) June 28, 2010. On March 26, 2010, and January 18, 2011, Oklahoma submitted a final complete program revision application seeking authorization of its program revision in accordance with 40 CFR 271.21.

The Oklahoma Hazardous Waste Management Act ("OHWMMA") provides the ODEQ with the authority to administer the State Program, including the statutory and regulatory provisions necessary to administer the provisions of RCRA Cluster XVIII, and designates the ODEQ as the State agency to cooperate and share information with EPA for purpose of hazardous waste regulation. The Oklahoma Environmental Quality Code ("Code"), at 27A O.S. Sections establishes an EQB to be the rulemaking body for the DEQ, specifically charged with the responsibility of promulgating rules to implement the duties and responsibilities of the DEQ. The EQB consists of 13 members appointed by the Governor with the advice and consent of the State senate. The Code, 27A O.S. Section 2-2-201, also establishes a Hazardous Waste Management Advisory Council ("Council") with the authority to recommend rules to the Board on behalf of the ODEQ.

The Environmental Quality Act, at 27A O.S. Section 1-3-101(E), grants the Oklahoma Corporation Commission ("OCC") authority to regulate certain aspects of the oil and gas production and transportation industry in Oklahoma, including certain wastes generated by pipelines, bulk fuel sales terminals and certain tank farms, as well as underground storage tanks. To clarify areas of environmental jurisdiction, the

ODEQ and OCC developed an ODEQ/OCC Jurisdictional Guidance Document to identify respective areas of jurisdiction. The current ODEQ/OCC jurisdictional Guidance Document was amended and signed on January 27, 1999. The revisions to the State Program necessary to administer Cluster XVIII and Checklist 220 in RCRA Cluster XIX will not affect the jurisdictional authorities of the ODEQ or OCC.

The Board adopted RCRA Cluster XVIII amendments on November 18, 2008 and became effective on July 1, 2009 and also adopted RCRA Cluster XIX which is part of Checklist 220 on March 24, 2010 with an effective date July 11, 2010. The rules were also codified at OAC 252:205 et seq. Subchapter.

Pursuant to OAC 252:205-3-2, the State's incorporation of Federal regulations does not incorporate prospectively future changes to the incorporated sections of the 40 CFR, and no other Oklahoma law or regulation reduces the scope of coverage or otherwise affects the authority provided by these incorporated-by-reference provisions. Further, Oklahoma interprets these incorporated provisions to provide identical authority to the Federal provisions. Thus, OAC Title 252, Chapter 205 provides equivalent

and no less stringent authority than the Federal Subtitle C program in effect July 1, 2009 and July 11, 2010. The State of Oklahoma incorporate by reference the provisions of 40 Code of Federal Regulations (CFR) parts 124 of 40 CFR that are required by 40 CFR 271.14 (with the addition of 40 CFR 124.19(a) through (c), 124.19(e), 124.31, 124.32, 124.33 and Subpart G); 40 CFR parts 260-268 [with the exception of 260.21, 261.(b)(18), 262 subparts E and H, 264.1(f), 264.1(g)(12), 264.149, 264.150, 264.301(1), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f), 264.1080(g), 265.1(c)(4), 265.1(g)(12), 265.149, 265.150, 265.1030(c), 265.1050(f) 265.1080(e), 265.1080(f), 265.1080(g), 268.5, 268.6, 268.13, 268.42(b), and 268.44(a) through (g)]; 40 CFR part 270 [with the exception of 270.1(c)(2)(ix and 270.14(b)(18)]; 40 CFR part 273; and 40 CFR part 279.

The OHWMA provides the DEQ with the authority to administer the State Program, including the statutory and regulatory provisions necessary to administer the provisions of RCRA Cluster XVIII and Checklist 220 in RCRA Cluster XIX, designates the DEQ as the State agency to cooperate and share information with the EPA for the purpose of hazardous waste regulation.

Pursuant to 27A O.S. Section 2-7-104, the Executive Director has created the Land Protection Division ("LPD") to be responsible for implementing the State Program. The LPD is staffed with personnel that have the technical background and expertise to effectively implement the provisions of the State program subtitle C Hazardous Waste Management program.

**G. What changes are we approving with today's action?**

On March 26, 2010, and January 11, 2011, the State of Oklahoma submitted final complete program applications, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action that the State of Oklahoma's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. The State of Oklahoma revisions consist of regulations which specifically govern Federal Hazardous Waste revisions promulgated from July 1, 2007 through December 31, 2008 (RCRA Cluster XVIII and Checklist 220 in RCRA Cluster XIX). Oklahoma requirements are included in a chart with this document.

Description of Federal requirement (include checklist #, if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
1. Exclusion of Oil-Bearing Secondary Materials Processed in a Gasification System to Produce Synthesis. (Checklist 216).	73 FR 57-72 January 2, 2008. ....	Oklahoma Statutes Title 27A Section 2-7-101 et seq.; as amended through July 1, 2009. Oklahoma Administrative Code Rules 252:205-3-2, effective July 1, 2009. Oklahoma Hazardous Waste Management Act, as amended effective July 1, 2009.
2. NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) Amendments. (Checklist 217).	73 FR 18970-18984 April 8, 2008. ....	Oklahoma Statutes Title 27A Section 2-7-101 et seq.; as amended through July 1, 2009. Oklahoma Administrative Code Rules 252:205-3-2, effective July 1, 2009. Oklahoma Hazardous Waste Management Act, as amended effective July 1, 2009.
3. F019 Exemption for Wastewater Treatment Sludges from Auto Manufacturing Zinc Phosphating. (Checklist 218).	73 FR 31756-31769 June 4, 2008. ....	Oklahoma Statutes Title 27A Section 2-7-101 et seq.; as amended through July 1, 2009. Oklahoma Administrative Code Rules 252:2053-2, effective July 1, 2009. Oklahoma Hazardous Waste Management Act, as amended effective July 1, 2009.
4. Academic Laboratories Generator Standards. (Checklist 220).	73 FR 72912-72960 December 1, 2008. ....	Oklahoma Statutes Title 27A Section 2-7-101 et seq.; as amended through July 1, 2009. Oklahoma Administrative Code Rules 252:205-3-2, effective July 1, 2009. Oklahoma Hazardous Waste Management Act as amended effective July 11, 2010.

**H. Where are the revised state rules different from the Federal rules?**

The only clarification in this FR notice is at OAC 252:205-3-2(c)(3) states "in 261.31(a) the listing for F019, at the end: "Zinc phosphate sludges

meeting exemption conditions remain subject to regulations as hazardous waste characteristic" This statement is consistent with EPA's interpretation of its rule and was added by way of clarification.

**I. Who handles permits after the authorization takes effect?**

Oklahoma will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The 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. We will not issue any more new permits or new portions of permits for the provisions listed in the Table in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which Oklahoma is not yet authorized.

#### **J. How does today's action affect Indian country (8 U.S.C. 1151) in Oklahoma?**

The State of Oklahoma Hazardous Program is not being authorized to operate in Indian Country.

#### **K. What is codification and is the EPA codifying Oklahoma'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 CFR. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart LL for this authorization of Oklahoma's program changes until a later date. In this authorization application the EPA is not codifying the rules documented in this **Federal Register** notice.

#### **L. Administrative Requirements**

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. The reference to Executive Order 13563 (76 FR 3821, January 21, 2011) is also exempt from review under Executive orders 12866 (56 FR 51735, October 4, 1993). This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes preexisting 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), the 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 the 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, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The 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. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective June 6, 2011.

#### **List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: March 19, 2011.

**Al Armendariz,**

*Regional Administrator, Region 6.*

[FR Doc. 2011-8169 Filed 4-5-11; 8:45 am]

**BILLING CODE 6560-50-P**

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## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Centers for Medicare & Medicaid Services**

#### **42 CFR Part 413**

[CMS-1435-IFC]

**RIN 0938-AQ94**

#### **Medicare Programs: Changes to the End-Stage Renal Disease Prospective Payment System Transition Budget-Neutrality Adjustment**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Interim final rule with comment period.

**SUMMARY:** This interim final rule with comment will revise the end-stage renal disease (ESRD) transition budget-neutrality adjustment finalized in the CY 2011 ESRD Prospective Payment System (PPS) final rule for renal dialysis services provided on April 1, 2011 through December 31, 2011. We are revising the transition budget-neutrality adjustment to reflect the actual election decision to receive payment under the ESRD PPS for renal dialysis services furnished on or after January 1, 2011