

The amendments to part 686 are effective on July 1, 2017, except for amendatory instructions 4.A., 4.B., 4.C.iv., 4.C.x. and 4.C.xi., amending 34 CFR 686.2(d) and (e), which are effective on July 1, 2021.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[EPA-R07-RCRA-2016-0637; FRL-9955-25-Region 7]

### State of Nebraska; Authorization of State Hazardous Waste Management Program

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

**ACTION:** Direct final rule.

**SUMMARY:** Nebraska has applied to the Environmental Protection Agency (EPA) for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these revisions satisfy all requirements needed to qualify for final authorization and is authorizing Nebraska's revisions through this direct final rule.

**DATES:** This final authorization will become effective on January 17, 2017, unless EPA receives adverse written comments by December 19, 2016. If EPA receives such comments, we will publish a timely withdrawal of this direct final rule in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R07-RCRA-2016-0637, to <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full

EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Lisa Haugen, EPA Region 7, Enforcement Coordination Office, 11201 Renner Boulevard, Lenexa, Kansas 66219, phone number: (913) 551-7877, and email address: [haugen.lisa@epa.gov](mailto:haugen.lisa@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the "Proposed Rules" section of this **Federal Register**, we are publishing a separate document that will serve as the proposal to authorize the revisions. EPA believes this action is not controversial and does not expect comments that oppose it. Unless EPA receives written comments that oppose this authorization during the comment period, the decision to authorize Nebraska's revisions to its hazardous waste program will take effect. If EPA receives comments that oppose this action, EPA will publish a document in the **Federal Register** withdrawing today's direct final rule before it takes effect.

### Authorization of State-Initiated Changes

#### 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 hazardous waste program. As the Federal program is revised, the states must change their programs and ask the EPA to authorize the changes. Changes to state hazardous waste 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 268, 270, 273 and 279. States can also initiate their own changes to their hazardous waste program and these changes must then be authorized.

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

EPA concludes that Nebraska's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, EPA is granting Nebraska final authorization to operate its hazardous waste program with the

revisions described in the authorization application. Nebraska has 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 Nebraska, including issuing permits, until Nebraska 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 Nebraska 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. Nebraska has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to: (1) Perform inspections, and require monitoring, tests, analyses, or reports; and (2) Enforce RCRA requirements and suspend or revoke permits. This action does not impose additional requirements on the regulated community because the regulations for which Nebraska is being authorized by this direct final action are already effective and are not changed by this action.

#### D. Why wasn't there a proposed rule before this rule?

Along with this direct final rule, EPA is publishing a separate document in the "Proposed Rules" section of this **Federal Register** that serves as the proposal to authorize these state program revisions. EPA did not publish a proposal before this direct final action because EPA views this action as a routine program change and does not expect comments that oppose its approval. EPA is providing an opportunity for public comment now, as described in Section E of this document.

#### 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 Nebraska's program revisions on the proposal mentioned in the previous section, after considering all comments received during the comment period. EPA will then address all such 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 EPA receives comments that oppose only the authorization of a particular revision to the State hazardous waste program, we will withdraw only that part of this action, and the authorization of the program revisions 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. For what has Nebraska previously been authorized?*

Nebraska initially received final authorization on January 24, 1985, effective February 7, 1985 (50 FR 3345), to implement the RCRA hazardous waste management program. Nebraska received authorization for revisions to its program on October 4, 1985, effective December 3, 1988 (53 FR 38950); June 25, 1996, effective August 26, 1996 (61 FR 32699); April 10, 2003, effective June 9, 2003 (68 FR 17553); October 4, 2004, effective December 3, 2004 (69 FR 59139); and December 30, 2008, effective September 24, 2010 (75 FR 58328).

*G. What changes are we authorizing with this action?*

On September 21, 2016, Nebraska submitted its final application seeking authorization of hazardous waste program revisions in accordance with 40 CFR 271.21. The State's

authorization package includes an updated Program Description, a General Memorandum of Agreement (MOA), a Corrective Action MOA between the EPA and the Nebraska Department of Environmental Quality (NDEQ), a copy of title 128 of the Nebraska Administrative Code, as amended on July 6, 2016, and an Attorney General's Statement. The State has made amendments to the provisions listed in the table which follows. The State's laws and regulations, amended by these provisions, provide authority which remains equivalent to, no less stringent than, and not broader in scope than the Federal laws and regulations. Nebraska's regulatory references are to title 128 or title 129, as noted, of the Nebraska Administrative Code, as amended on July 6, 2016. We are granting Nebraska final authorization to carry out the following provisions of the State's program in lieu of the Federal program.

Federal requirement 40 CFR	Analogous Nebraska authority Title 128
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**Changes Analogous to Part 124**

124.31(a) .....	13-001.03 & 13-001.05
124.31(b) 31(c) .....	13-016.01-.02
124.31(d) (all) .....	13-016.03, .03(A) (all) and .03(B) (all)
124.32(a) .....	13-001.04 & .05
124.32(b)-(c) .....	13-017.01-.02
124.33(a) .....	13-001.06
124.33(b)-(f) .....	13-018.01-.05

**Changes Analogous to Part 260**

260.10 "contained" .....	1-023 (all)
260.10 "corrective action management unit (CAMU)" .....	1-027
260.10 "designated facility" .....	1-037 (all)
260.10 "disposal facility" .....	1-043
260.10 "facility" (2) and (3) .....	1-052.02-.03
260.10 "Hazardous secondary material" .....	1-063
260.10 "Hazardous secondary material generator" .....	1-064
260.10 "Intermediate facility" .....	1-079
260.10 "lamp" .....	25-008.06
260.10 "Land-based unit" .....	1-081
260.10 "landfill" .....	1-082
260.10 "manifest" .....	1-089
260.10 "manifest tracking number" .....	1-090
260.10 "miscellaneous unit" .....	1-092
260.10 "no free liquids" .....	1-096
260.10 "Remanufacturing" .....	1-110
260.10 "remediation waste" .....	1-111
260.10 "remediation waste management site" .....	1-112
260.10 "staging pile" .....	1-123
260.10 "Transfer facility" .....	1-133
260.10 "universal waste" .....	25-008.13 (all)
260.10 "wipe" .....	1-153
260-11 References .....	1-003
260.30 .....	5-001 and 001.01
260.30(b)-(f) .....	5-001.01B-.01F
260.31(c); 260.31(c)(1)-(5) .....	5-001.04 (all)
260.31(d)(all) .....	5-001.05 (all)
260.33 (Section heading and introductory text) .....	5-003
260.33(a) .....	5-003.01
260.33(c)-(e) .....	5-003.03-.05
260.34(all) .....	5-004 (all)
260.42 section heading .....	5-008
260.42(a) (all) .....	5-008.01 (all)

Federal requirement 40 CFR	Analogous Nebraska authority Title 128
260.42(b) .....	5-008.02
260.43 (all) .....	5-009 (all)

**Changes Analogous to Part 261**

261.1(c)(4) .....	2-002.03
261.1(c)(8) .....	2-002.07
261.2(b)(3)-(4) .....	2-003.02A3-A4
261.2(c)(3) except references to 261.4(a)(17) .....	2-003.03C
261.2(c)(4) table 1 except references to 261.4(a)(17) .....	2-003.03/Table 1
261.2(g) .....	2-003.07
261.4(a)(23) (all) .....	2-008.25
261.4(a)(24) (all) .....	2-008.26
261.4(a)(26) (all) .....	2-008.24
261.4(a)(27) (all) .....	2-008.27
261.4(b)(15) (all) .....	2-009.13 (all)
261.4(b)(18) (all) .....	2-009.14
261.4(g) (all) .....	2-014.01 (all)
261.6(c)(1) .....	7-005
261.7(b)(1)(iii)(A)-(B) .....	2-015.03C-.03D
261.9(b),(c)-(d) .....	25-001.01B,.01C-D
261.32(a) adding K181 .....	3-014, Table 5
261.32(b)-(d) .....	3-014.01
Subpart H—Financial Requirements for Management of Excluded Hazardous Secondary Materials 261.140–261.151.	3-022
Subpart I—Use and Management of Containers 261.170–261.179 .....	3-023
Subpart J—Tank Systems 261.190–261.200 .....	3-024
Subpart M—Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials 261.400–261.420.	3-025
Subpart AA—Air Emission Standards for Process Vents 261.1030–261.1035.	3-026
Subpart BB—Air Emission Standards for Equipment Leaks 261.1050–261.1064.	3-027
Subpart CC—Air Emission Standards for Tanks and Containers 261.1080–261.1089.	3-028
261 Appendix VII Adding K181 .....	Appendix II
261 Appendix VIII Adding o-Anisidine (2-methoxyaniline); p-Cresidine; 2-4-Dimethylaniline (2,4-xylidine); 1,2-Phenylenediamine; and 1-3-Phenylenediamine.	Appendix I

**Changes Analogous to Part 262**

262.20(a)(1) .....	10-002.01A
262.21 (all) .....	10-002.01A1
262.27 (all) .....	10-002.14 (all)
262.32(b) .....	10-003.01D
262.33 .....	10-003.01E
262.34(m) (all) .....	10-004.06 (all)
262.54(c) and (e) .....	10-006
262.60(c)-(e) .....	10-006
262/Appendix .....	10-002.01A
262.34(a)(1)(i) .....	10-004.01A6
262.34(a)(1)(ii) .....	10-004.01B
262.34(a)(4) .....	10-004.01H
262.34(d)(2) .....	9-007.03C

**Changes Analogous to Part 263**

263.20(a)(1)-(2) .....	11-006.01 and 006.01A
263.20(g) (all) .....	11-006.07 (all)
263.21(b)(1) .....	11-006.10
263.21(b) (all) .....	11-006.10A (all)

**Changes Analogous to Part 264**

264.1(g)(11)(ii)-(iv) .....	21-001
264.1(j) (all) .....	21-001.04 (all)
264.3 .....	21-001.05
Subpart B—GENERAL FACILITY STANDARDS 264.10 and 264.12–264.19.	21-002
Subpart E—MANIFEST SYSTEM, RECORDKEEPING, AND REPORTING 264.70–264.77.	21-005
Subpart F—RELEASES FROM SOLID WASTE MANAGEMENT UNITS 264.90–264.101.	21-006 (For discussion of 21-006.01 see section H of this notice.)

Federal requirement 40 CFR	Analogous Nebraska authority Title 128
Subpart G—CLOSURE AND POST-CLOSURE 264.110–264.120 .....	21–007
Subpart H—FINANCIAL REQUIREMENTS 264.140–264.151 .....	21–008
Subpart I—USE AND MANAGEMENT OF CONTAINERS 264.170–264.179.	21–009
Subpart J—TANK SYSTEMS 264.190–264.200 .....	21–010
Subpart K—SURFACE IMPOUNDMENTS 264.220–264.232 .....	21–011
Subpart S—SPECIAL PROVISIONS FOR CLEANUP 264.550–264.555	21–016 (For discussion of 21–016.01 see section H of this notice.)
Subpart X—MISCELLANEOUS UNITS 264.600–264.603 .....	21–018
Subpart AA—AIR EMISSION STANDARDS FOR PROCESS VENTS 264.1030–264.1036.	21–019
Subpart BB—AIR EMISSION STANDARDS FOR EQUIPMENT LEAKS 264.1050–264.1065.	21–020
Subpart CC—AIR EMISSION STANDARDS FOR TANKS, SURFACE IMPOUNDMENTS, AND CONTAINERS 264.1080–264.1091.	21–021

**Changes Analogous to Part 265**

265.1(b) .....	22–001
265.1(c)(14)(ii)–(iv) .....	22–001.01K
Subpart B—GENERAL FACILITY STANDARDS 40 CFR 265.10 and 265.12–265.19.	22–002
Subpart E—MANIFEST SYSTEM, RECORDKEEPING, AND REPORTING 265.70–265.77.	22–005
Subpart F—GROUND-WATER MONITORING 265.90–265.94 .....	22–006 (For discussion of 22–006.01–006.05 see section H of this notice)
Subpart G—CLOSURE AND POST-CLOSURE 265.110–265.121 .....	22–007
Subpart H—FINANCIAL REQUIREMENTS 265.140–265.150 .....	22–008
Subpart I—USE AND MANAGEMENT OF CONTAINERS 265.170–265.178.	22–009
Subpart J—TANK SYSTEMS 265.190–265.200, and 265.202 .....	22–010
Subpart K—SURFACE IMPOUNDMENTS 265.220–265.231 .....	22–011
Subpart AA—AIR EMISSION STANDARDS FOR PROCESS VENTS 265.1030–265.1035.	22–019
Subpart BB—AIR EMISSION STANDARDS FOR EQUIPMENT LEAKS 265.1050–265.1064.	22–020
Subpart CC—AIR EMISSION STANDARDS FOR TANKS, SURFACE IMPOUNDMENTS, AND CONTAINERS 265.1080–265.1091.	22–021
Appendix VI .....	22–027

**Changes Analogous to Part 266**

266.80(a) .....	7–012.01 and .02, including Table
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**Changes Analogous to Part 268**

268.1 (all) .....	20–001.01–001.06
268.2 .....	20–002
268.2(c) .....	20–002.03
268.3(a)–(d) .....	20–003.01
268.4 .....	20–004
268.7(a) intro .....	20–005.01
268.7(a)(3)–(8) .....	20–005.01C–.01H
268.7(a)(9) .....	20–005.01I, 20–005.01I1–005.01I4
268.7(a)(10) .....	20–005.01J
268.7(b)–(d) .....	20–005.02–005.04
268.9 (all) .....	20–006 (all)
268.14 (all) .....	20–007
268.20 .....	20–008.01
Subpart C—PROHIBITIONS ON LAND DISPOSAL 268.30–268.39 .....	20–008.01
268.40 (all) .....	20–009
268.40/Treatment Standard Table revising F039 and by adding K181 ...	20–Table 9
268.42(a) .....	20–010.01
268.42(a)/Table 1 .....	20–010.01, Table 10
268.42(c) (all) .....	20–010.02 (all)
268.42(d) .....	20–010.03
268.44(h) (all) .....	5–006 (all)
268.45 (all) .....	20–011.01–011.04
268.45/Table 1 .....	20–Table 11
268.46 .....	20–Table 9
268.48(a) .....	20–012.01
268.48(a)/Universal Treatment Standards Table adding o-Anisidine (2-methoxyaniline); p-Cresidine; 2,4-Dimethylaniline (2,4-xylidine); and 1,3-Phenylenediamine.	20–Table 12
268.49 (all) .....	20–013 (all)

Federal requirement 40 CFR	Analogous Nebraska authority Title 128
268.50 (all) .....	20-014 (all)
Appendix III List of Halogenated Organic Compounds Regulated Under § 268.32.	20-015
Appendix IV Wastes Excluded From Lab Packs Under the Alternative Treatment Standards of § 268.42(c).	20-16
Appendix VI Recommended Technologies To Achieve Deactivation of Characteristics in Section 268.42.	20-17
Appendix VII LDR Effective Dates of Surface Disposed Prohibited Hazardous Wastes.	20-018
Appendix VIII LDR Effective Dates of Injected Prohibited Hazardous Wastes.	20-019
Appendix IX Extraction Procedure (EP) Toxicity Test Method and Structural Integrity Test (Method 1310B).	20-020
Appendix XI Metal Bearing Wastes Prohibited From Dilution in a Combustion Unit According to 40 CFR 268.3(c).	20-021

**Changes Analogous to Part 270**

270.1(c) intro .....	12-001.02
270.1(c)(2)(viii)(B)-(D) .....	12-001.03H
270.1(c)(7) .....	12-001.09
270.2 "corrective action management unit" .....	1-027
270.2 "disposal facility" .....	1-043
270.2 "Facility mailing list" .....	15-006.01A
270.2 "Remedial Action Plan (RAP)" .....	12-001.0314
270.4(a)(2)-(a)(4) .....	12-002.01B-.01D
270.11(d)(1)-(d)(2) .....	13-011.03-011.04
270.14 Contents of part B: General requirements .....	13-012.02
270.15-270.27 Specific part B information requirements .....	13-012.04
270.28 .....	13-012.02A
270.30(m) .....	14-002.18
270.42 Appendix I adding number 3 to section D; adding number 10 to Section L; and adding Section N Corrective Action.	Appendix V
270.60(c)(3)(vii) .....	12-001.04A1(b)
270.61(b)(5) .....	12-001.04B5
270.62 Hazardous waste incinerator permits .....	12-001.04C
270.66 Permits for boilers and industrial furnaces burning hazardous waste.	12-001.04F
270.68 .....	12-001.04G
270.73(a) .....	12-003.04A
Subpart H—Remedial Action Plans (RAPs) 270.79-270.230 .....	12-004

**Changes Analogous to Part 273**

273.1(a)(2)-(4) .....	25-001.01B
273.2(a)(1) .....	25-002.01A
273.2(b)(2) .....	25-002.01B
273.2(b)(3) .....	25-002.02C
273.3(a) .....	25-003.01
273.4(a) .....	25-004.01
273.5(a) .....	25-005.01
273.5(b) (all) and (c) all .....	25-005.02 (all) and .03 (all)
273.8(a)-(b) .....	25-007.01-.02
273.9 "Lamp" .....	25-008.06
273.9 "Large quantity handler of universal waste" .....	25-008.07 excluding "electronic items" (For discussion of the state's additional waste stream "electronic items" see section H of this notice.)
273.9 "small quantity handler of universal waste" .....	25-008.11 excluding "electronic items" (For discussion of the state's additional waste stream "electronic items" see section H of this notice.)
273.9 "universal waste" .....	25-008.13 excluding "electronic items" (For discussion of the state's additional waste stream "electronic items" see section H of this notice.)
273.10 .....	25-009
273.13-(d) (all) .....	25-012.04 (all)
273.14(e) .....	25-013.05
273.30 .....	25-020
273.32(b)(4) .....	25-022.02D excluding "electronic items" (For discussion of the state's additional waste stream "electronic items" see section H of this notice.)
273.33(d) (all) .....	25-023.04 (all)
273.34(e) .....	25-024.05
273.50 .....	25-031
273.60(a) .....	25-038

Federal requirement 40 CFR	Analogous Nebraska authority Title 128
273.81(a) .....	25-043.01

**Changes Analogous to Part 60**

Federal Requirement 40 CFR .....	Analogous Nebraska authority Title 129
60 Appendix A .....	34-002.02

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

1. State clarification of Federal rules. These clarifications do not affect the enforcement status of the rule, but simply improves clarity for the regulated community.

(a) Nebraska chose not to publish the note in 40 CFR 268.42 because all the information formerly contained in 40 CFR 268.42/tables 2 and 3 are now contained in title 128, chapter 20, section 009/table 9 and section 010/table 10. By omitting the note, the State eliminated a source of possible confusion.

(b) Nebraska chose not to publish the note in 40 CFR 268.43 because all the information formerly contained in 40 CFR 268.43/table CCW is now contained in title 128, chapter 20, section 009/table 9. By omitting the note, the State eliminated a source of possible confusion.

(c) Nebraska chose not to publish the note in 40 CFR 268.46 because all the information formerly contained in 40 CFR 268.46 is now contained in title 128, chapter 20, section 009/table 9. By omitting the note, the State eliminated a source of possible confusion.

2. More Stringent Nebraska Rules. The Nebraska hazardous waste program contains some provisions that are more stringent than is required by the RCRA program as codified in the July 1, 2015, edition of the title 40 of the Code of Federal Regulations. These more stringent provisions are being recognized as a part of the Federally-authorized program.

The specific more stringent provisions are also noted in Nebraska's authorization application. They include, but are not limited to, the following:

(a) 40 CFR 268.7(a)(1) and (a)(2) include parenthetical provisions, beginning with "Alternatively," which allow a generator of hazardous waste to send the waste to a RCRA-permitted hazardous waste treatment facility *without* determining whether the hazardous waste has to be treated before it can be land disposed. This allowance shifts the determination requirement to the treatment facility. Nebraska omits these parenthetical provisions and is therefore more stringent than the Federal regulations by keeping the

responsibility for determining if the hazardous waste meets LDR treatment standards with the generator.

(b) At 20-005.01B1, Nebraska requires specific language for a contaminated soil certification statement. The Federal rules do not specify required language, therefore the State is more stringent.

(c) In title 128, chapter 20, the table—Treatment Standards for Hazardous Waste—Nebraska includes the chemical 1,3-Phenylenediamine under the F039 listing. This chemical is not included in the table located at 40 CFR 268.40. Therefore the State is more stringent.

(d) At 21-006, Nebraska adopts and incorporates by reference 40 CFR part 264, subpart F, pertaining to releases from solid waste management units. Nebraska adds a provision at 21-006.01, which requires groundwater monitoring wells to be designed according to ASTM Standard D5092-90. In addition, any groundwater monitoring well to be placed in a stratigraphic unit composed of loessal sediment must be designed and sampled in a manner approved by NDEQ intended to minimize turbidity in samples taken from the well. The Federal regulations do not have these specific requirements, therefore Nebraska is more stringent.

(e) At 40 CFR 270.60(b)(3), the Federal rules the owner/operator of an injection well disposing of hazardous waste is considered to have RCRA permit if they have a UIC permit issued after November 8, 1984 and meet the conditions listed at 270.60(b)(3)(i) and (ii). Hazardous waste injection wells are expressly prohibited under title 122, Nebraska Administrative Code, Rules and Regulations for Underground Injection and Mineral Production Wells, chapter 3, section 003. Through this prohibition, the State rule is more stringent than the Federal rule.

(f) At 22-006, Nebraska adopts and incorporates by reference 40 CFR part 265, subpart F, pertaining to groundwater monitoring. Nebraska adds a provision at 22-006.01, which requires groundwater monitoring wells to be designed according to ASTM Standard D5092-90. In addition, any groundwater monitoring well to be placed in a stratigraphic unit composed of loessal sediment must be designed and sampled in a manner approved by

NDEQ intended to minimize turbidity in samples taken from the well. The Federal regulations do not have these specific requirements, therefore Nebraska is more stringent.

(g) At 22-006, Nebraska adopts and incorporates by reference 40 CFR part 265, subpart F, pertaining to groundwater monitoring. At 22-006.03, Nebraska adds a provision which requires sampling during the initial four consecutive quarters for all analytes listed in 40 CFR 265.92(b), as incorporated by reference at 22-006. This requirement is more stringent than the Federal rules.

The 40 CFR 265.92(b)(1)–(3) outlines criteria required, Nebraska adds a provision at 22-006.03, which requires groundwater monitoring wells to be designed according to ASTM Standard D5092-90. In addition, any groundwater monitoring well to be placed in a stratigraphic unit composed of loessal sediment must be designed and sampled in a manner approved by NDEQ intended to minimize turbidity in samples taken from the well. The Federal regulations do not have these specific requirements, therefore Nebraska is more stringent.

(h) At 22-006, Nebraska adopts and incorporates by reference 40 CFR part 265, subpart F, pertaining to groundwater monitoring. At 40 CFR 265.93(d)(7)(ii), the Federal regulations state that determinations may cease if the groundwater quality assessment plan was implemented during the post-closure care period. At 22-006.04, the State regulations allow these determinations to cease only if the facility is operating under an approved Post Closure Plan. Therefore the State regulations are more stringent than the Federal rules.

(i) At 22-006, Nebraska adopts and incorporates by reference 40 CFR part 265, subpart F, pertaining to groundwater monitoring. Under 265.93(f), the owner or operator must report the results of analyses annually. At 22-006.05, Nebraska requires the analyses to be submitted within 45 days following the end of the quarter in which the sample was taken. Therefore, the State is more stringent.

(j) The Federal regulations at 273.32(b)(4) require a large quantity

handler of universal waste to send written notification of universal waste management to the regulating authority. Nebraska requires the generator to list the type of waste being generated. Therefore, the state rule is more stringent than the Federal rule.

(k) At 261.2(c)(3), and in column 3 of 261.2(c)(4) table 1, the Federal regulations list the exclusion cited at 261.4(a)(17). Nebraska did not adopt this exclusion. Therefore, the state is more stringent than the Federal regulations.

3. Broader in scope. EPA considers the following state requirements to be beyond the scope of the Federal program, and therefore EPA is not authorizing these requirements and cannot enforce them. Entities must comply with these requirements in accordance with state law, but they are not RCRA requirements. The specific broader in scope provisions include, but are not limited to, the following:

(a) At 22-006, Nebraska adopts and incorporates by reference 40 CFR part 265, subpart F, pertaining to groundwater monitoring. At 40 CFR 265.92(b), the owner or operator must determine the concentration or value of the listed parameters in ground-water samples. At 22-006.02, Nebraska includes sampling for volatile organic compounds (VOCs) at the discretion of the Director on a case-by-case basis. The VOCs shall be analyzed in accordance with a method approved by the Director. This requirement is broader in scope than the Federal rules.

(b) Title 128 chapter 25 contains Nebraska's "Standards for Universal Waste Management." The state adds an additional waste stream "electronic items" to the list of types of universal waste subject to these regulations. 40 CFR part 273, the Federal "Standards for Universal Waste Management" do not include "electronic items" as an identified waste stream. Therefore, any references or requirements for managing the "electronic items" waste stream universal waste are broader in scope and not enforceable by EPA.

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

Nebraska will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer and enforce any RCRA hazardous waste permits or portions of permits which EPA issued prior to the effective date of this authorization until they expire or are terminated. EPA will not issue any more permits, or new portions of permits, for the provisions listed in the table above after the effective date of

this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Nebraska is not yet authorized.

#### *J. How does this action affect Indian Country (18 U.S.C. 1151) in Nebraska?*

Nebraska is not authorized to carry out its Hazardous Waste Program in Indian Country within the State. This authority remains with EPA. Therefore, this action has no effect in Indian Country.

#### *K. What is codification and is EPA codifying Nebraska'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. EPA is not codifying the authorization of Nebraska's changes at this time. However, we reserve the amendment of 40 CFR part 272, subpart CC for the authorization of Nebraska's program changes at a later date.

#### *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. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 action 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 incorporation by reference 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, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard 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, 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 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 January 17, 2017, unless objections to this authorization are received.

**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: November 3, 2016.

**Mark Hague,**

*Regional Administrator, Region 7.*

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