

Dated: August 14, 2001.

**Michael H. Shapiro,**

*Acting Assistant Administrator, Solid Waste and Emergency Response.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[FRL-7035-3]

### Indiana: Final Authorization of State Hazardous Waste Management Program Revision

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

**ACTION:** Proposed rule.

**SUMMARY:** Indiana has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is proposing to authorize the State's changes through this proposed final action.

**DATES:** Written comments must be received on or before September 17, 2001.

**ADDRESSES:** Send written comments to Gary Westefer, Indiana Regulatory Specialist, DM-7J, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please refer to Docket Number IN ARA18. We must receive your comments by September 17, 2001. You can view and copy Indiana's application from 9:00 am to 4:00 pm at the following addresses: Indiana Department of Environmental Management, 100 North Senate, Indianapolis, Indiana (mailing address P.O. Box 6015, Indianapolis, Indiana 46206) contact Lynn West (317) 232-3593, and EPA Region 5, contact Gary Westefer at the following address.

**FOR FURTHER INFORMATION CONTACT:** Gary Westefer, Indiana Regulatory Specialist, U.S. EPA Region 5, DM-7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-7450.

#### 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 conclude that Indiana's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Indiana Final authorization to operate its hazardous waste program with the changes described in the authorization application. Indiana 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 Indiana, 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 Indiana 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. Indiana 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:

- Do inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits; and

- Take enforcement actions regardless of whether the State has taken its own actions.

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

#### D. What Happens if EPA Receives Comments that Oppose this Action?

If EPA receives comments that oppose this authorization, we will address all public comments in a later **Federal Register**. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

#### E. What has Indiana Previously been Authorized for?

Indiana initially received Final authorization on January 31, 1986, effective January 31, 1986 (51 FR 3955) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on October 31, 1986, effective December 31, 1986 (51 FR 39752); January 5, 1988, effective January 19, 1988 (53 FR 128); July 13, 1989, effective September 11, 1989 (54 FR 29557); July 23, 1991, effective September 23, 1991 (56 FR 33717); July 24, 1991, effective September 23, 1991 (56 FR 33866); July 29, 1991, effective September 27, 1991 (56 FR 35831); July 30, 1991, effective September 30, 1991 (56 FR 36010); August 20, 1996, effective October 21, 1996 (61 FR 43018); September 1, 1999, effective November 30, 1999 (64 FR 47692), and January 4, 2001 effective January 4, 2001 (66 FR 733).

#### F. What Changes are We Authorizing with Today's Action?

On March 16, 2001, Indiana submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a final decision, subject to receipt of written comments that oppose this action, that Indiana's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we propose to grant Indiana Final authorization for the following program changes:

Description of Federal requirement (include checklist #, if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous State authority
Hazardous and Used Oil Fuel Criminal Penalties Checklist CP.	November 8, 1984, SWDA 3006(h), 3008(d), 3014.	IC 13-30-6, Effective 1996, previously codified at IC 13-17-13-4, Effective 1985, IC 13-17-13-3, Effective 1986.
Hazardous Waste, Management System; Testing and Monitoring Activities Checklist 158.	June 13, 1997, 62 FR 32452 .....	329 IAC 3.1-1-7; 3.1-9-1; 3.1-10-1; 3.1-11-1, Effective April 5, 2000.
Hazardous Waste Management System; Carbamate Production, Identification and Listing of Hazardous Waste; Land Disposal Restrictions Checklist 159.	June 17, 1997, 62 FR 32974 .....	329 IAC 3.1-6-1; 3.1-6-2(17); 3.1-6-2(18); 3.1-6-2(19); 3.1-6-2(20); 3.1-12-1; 3.1-12-2(10); 3.1-12-2(12), Effective April 5, 2000.
Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance Checklist 160.	July 14, 1997 62 FR 37694 .....	329 IAC 3.1-12-1; 3.1-12-2(10), Effective April 5, 2000.
Organic Air Emission, Standards for Tanks, Surface Impoundments, and Containers; Clarification and Technical Amendment Checklist 163.	December 8, 1997, 62 FR 64636 .....	329 IAC 3.1-9-1; 3.1-10-1; 3.1-13-1; 3.1-13-2(8),(9), Effective April 5, 2000.
Kraft Mill Steam Stripper Condensate Exclusion Checklist 164.	April 15, 1998, 63 FR 18504 .....	329 IAC 3.1-6-1, Effective April 5, 2000.
Recycled Used Oil, Management Standards; Technical Correction and Clarification Checklist 166 as amended Checklist 166.1.	May 6, 1998, 63 FR 24963; July 14, 1998, 63 FR 37780.	329 IAC 3.1-6-1; 3.1-6-2(4); 13-1-1; 13-1-2; 13-3-1; 13-3-1(b)(2); 13-4-3; 13-6-6; 13-7-5; 13-8-5; 13-9-5, Effective April 5, 2000.
Land Disposal Restrictions Phase IV—Treatment Standards for Metal Wastes and Mineral Processing Wastes Checklist 167A.	May 26, 1998, 63 FR 28556 .....	329 IAC 3.1-12-1; 3.1-12-2(6); 3.1-12-2(10); 3.1-12-2(12); 3.1-12-2(13), Effective April 5, 2000.
Land Disposal Restrictions Phase IV—Hazardous Soils Treatment Standards and Exclusions Checklist 167B.	May 26, 1998, 63 FR 28556 .....	329 IAC 3.1-12-1; 3.1-12-2(1)(D); 3.1-12-2(2)(D); 3.1-12-2(3); 3.1-12-2(6), Effective April 5, 2000.
Land Disposal Restrictions Phase IV—Corrections Checklist 167C as amended Checklist 167C.1.	May 26, 1998, 63 FR 28556, June 8, 1998, 63 FR 31266.	329 IAC 3.1-12-1; 3.1-12-2(1)(C); 3.1-12-2(2)(C); 3.1-12-2(3); 3.1-12-2(12), 3.1-12-2(13), Effective April 5, 2000.
Bevill Exclusion Revisions and Clarification Checklist 167E.	May 26, 1998, 63 FR 28556 .....	329 IAC 3.1-6-1, Effective April 5, 2000.
Exclusion of Recycled Wood Preserving Wastewaters Checklist 167F.	May 26, 1998, 63 FR 28556 .....	329 IAC 3.1-6-1, Effective April 5, 2000.
Hazardous Waste Combusters Revised Standards Checklist 168.	June 19, 1998, 63 FR 33782 .....	329 IAC 3.1-6-1; 3.1-13-1, Effective April 5, 2000.
Petroleum Refining Process Checklist 169 as amended Checklist 169.1.	August 6, 1998, 63 FR 42110, October 9, 1998, 63 FR 54356.	329 IAC 3.1-6-1; 3.1-6-2(4); 3.1-6-2(17); 3.1-6-2(19); 3.1-11-1; 3.1-12-1; 3.1-12-2(12), Effective April 5, 2000.
Land Disposal Restrictions, Phase IV Checklist 170	August 31, 1998, 63 FR 46332 .....	329 IAC 3.1-12-1; 3.1-12-2(12), Effective April 5, 2000.
Emergency Revisions of LDR Treatment Standards (Carbanate Production) Checklist 171.	September 4, 1998, 63 FR 47409 .....	329 IAC 3.1-12-1; 3.1-12-2(12); 3.1-12-2(13), Effective April 5, 2000.
Emergency Revisions of LDR Treatment Standards (Characteristic Slags) Checklist 172.	September 9, 1998, 63 FR 48124 .....	329 IAC 3.1-12-1; 3.1-12-2(10), Effective April 5, 2000.
Land Disposal Restrictions Treatment Standards (Spent Potliners) Checklist 173.	September 24, 1998, 63 FR 51254 ....	329 IAC 3.1-12-1; 3.1-12-2(10); 3.1-12-2(12), Effective April 5, 2000.
Standards Applicable to Owners and Operators of Closed/Closing Facilities Checklist 174.	October 22, 1998, 63 FR 56710 .....	329 IAC 3.1-9-1; 3.1-9-2(9); 3.1-10-1; 3.1-10-2(11); 3.1-10-2(12); 3.1-10-2(13); 3.1-10-2(14); 3.1-13-1; 3.1-13-2(1),(2),(3),(4); 3.1-13-2(8),(9); 3.1-13-3; 3.1-13-4; 3.1-13-5; 3.1-13-6; 3.1-13-7; 3.1-13-8; 3.1-13-9; 3.1-13-10; 3.1-13-11; 3.1-13-12; 3.1-13-13; 3.1-13-14; 3.1-13-15; 3.1-13-16; 3.1-13-17; 3.1-14; 3.1-15, Effective April 5, 2000.
Hazardous Remediation Waste Management Requirements (HWIR Media) Checklist 175.	November 30, 1998, 63 FR 65874 .....	329 IAC 3.1-4-1; 3.1-4-1(b); 3.1-6-1; 3.1-9-1; 3.1-9-2(1),(2); 3.1-10-1; 3.1-10-2(1),(2),(3),(4); 3.1-12-1; 3.1-12-2(6); 3.1-13-1; 3.1-13-2(15), Effective April 5, 2000.
Universal Waste Rule; Technical Amendment Checklist 176.	December 24, 1998, 63 FR 71225 .....	329 IAC 3.1-11-1; 3.1-11-2(3); 3.1-16-1; 3.1-16-2(3), Effective April 5, 2000.
Organic Air Emission Standards Checklist 177 .....	January 21, 1999, 64 FR 3381 .....	329 IAC 3.1-7-1; 3.1-9-1, Effective April 5, 2000.
Petroleum Refining Process Wastes Checklist 178	February 11, 1999, 64 FR 6806 .....	329 IAC 3.1-6-1, Effective April 5, 2000.

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

Indiana has excluded the non-delegable Federal requirements at 40 CFR 268.5, 268.6, 268.42(b), 268.44, and 270.3 in their Incorporation by Reference at 3.1-12-2 and 3.1-13-2(4).

EPA will continue to implement those requirements.

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

Indiana will issue permits for all the provisions for which it is authorized

and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more

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

#### **I. What Is Codification and Is EPA Codifying Indiana'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 P for this authorization of Indiana's program changes until a later date.

#### **J. Administrative Requirements**

The Office of Management and Budget 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 (Public Law 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 13084 (63 FR 27655, May 10, 1998). 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.

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.).

#### **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: August 2, 2001.

**David A. Ullrich,**

*Acting Regional Administrator, Region 5.*  
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## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

**RIN 1018-AH73**

#### **Endangered and Threatened Wildlife and Plants; Re-opening of Comment Period on the Sacramento Splittail Final Rule**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule; re-opening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the re-opening of the comment period for the final rule on the Sacramento splittail (*Pogonichthys macrolepidotus*). Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this re-opened comment period, and will be fully considered in the final rule. We are re-opening the comment period to invite comments and to obtain peer-review on the statistical analysis completed by the Service to re-analyze the available splittail abundance data. We are also inviting additional comments on the status of the species, as first solicited in the January 12, 2001 to February 12, 2001 (66 FR 2828) comment period and in the May 7, 2001 to June 7, 2001 reopening of same.

**DATES:** We will accept public comments until October 1, 2001.

**ADDRESSES:** *Comment Submission:* If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information by mail to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W-2605, Sacramento, California 95825.

2. You may send comments by electronic mail (e-mail) to: fw1splittail@fws.gov. See the Public Comments Solicited section below for file format and other information about electronic filing.

3. You may hand-deliver comments to our Sacramento Fish and Wildlife Office, during normal business hours, at the address given above.

Comments and materials received will be available for inspection, by appointment, during normal business hours at the address under (1) above.

**FOR FURTHER INFORMATION CONTACT:** For general information, Stephanie Brady, at the above address (telephone 916/414-6600; facsimile 916/414-6713).