A. Why are revisions to state programs necessary?

States which have received final authorization from EPA under RCRA Section 3006(b) of RCRA, 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 request 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 268, 270, 273 and 279.

B. What decisions have we made in this rule?

We conclude that Ohio’s application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we are granting Ohio final authorization to operate its hazardous waste program with the changes described in the authorization application. Ohio will have responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by federal regulations that EPA promulgates under the authority of HSWA take effect in authorized states before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Ohio, including issuing permits, until the state is granted authorization to do so.

C. What is the effect of this final rule?

This final rule requires all facilities in Ohio that are subject to RCRA to comply with the newly-authorized state requirements instead of the equivalent Federal requirements. Ohio has enforcement responsibilities under its state hazardous waste program for RCRA violations, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include among others, authority for EPA to:
1. Conduct inspections which may include but are not limited to requiring monitoring, tests, analyses and/or reports;
2. Enforce RCRA requirements which may include but are not limited to suspending, terminating, modifying and/or revoking permits; and
3. Take enforcement actions regardless of whether the state has taken its own actions.

The action to approve these revisions will not impose additional requirements on the regulated community because the regulations for which Ohio is requesting authorization are already effective under state law, and will not be changed by the act of authorization.

D. Proposed Rule

On September 15, 2017 (82 FR 43316), EPA proposed to authorize these changes to Ohio’s hazardous waste program and opened the decision to public comment. The Agency received no comments on this proposal. EPA has determined that Ohio’s application satisfies the requirements for authorization set forth in RCRA Section 3006(b) and 40 CFR part 271.

E. What RCRA authorization has EPA previously granted Ohio to implement?


F. What changes are we proposing with today’s action?

On June 13, 2017, Ohio submitted a final program revision application, seeking authorization of changes in accordance with 40 CFR 271.21. We have determined that Ohio’s hazardous waste program revisions satisfy all of the requirements necessary to qualify for Final Authorization. Therefore, we are granting Ohio Final Authorization for the following program changes (a table with the complete state analogues is provided in the September 15, 2017 proposed rule):

Deferral of LDR Phase IV Standards for PCB’s as a Constituent Subject to Treatment
in Soil, Checklist 190, December 26, 2000, 65 FR 81373.
Standards Applicable to Generators of Hazardous Waste: Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material at Laboratories Owned by Colleges and Universities and Other Eligible Academic Entities Formally Affiliated with Colleges and Universities, Checklist 220, December 1, 2008, 73 FR 72991.
Equivalent State Initiated Changes:
State Initiated Change: Performance Track, Ohio rules amended per an EPA memorandum dated March 16, 2009, that ended the Performance Track Program.
G. Which revised State rules are different from the Federal rules?
Ohio has excluded the non-delegable federal requirements at 40 CFR 268.5, 268.6, 268.42(b), 268.44, and 270.3. EPA will continue to implement those requirements.
Only recently receiving the statutory authority, Ohio has not adopted the rules for Subparts AA, BB and CC of 40 CFR part 264. Until Ohio is authorized for such rules, the federal rules at 40 CFR part 264 subpart AA, BB and CC and Part 265 subpart AA, BB and CC, which are promulgated under HSWA, still apply in Ohio. On July 14, 2006, U.S. EPA issued a rule making several hundred corrections to errors that had appeared in the Code of Federal Regulations (checklist 214). Ohio broke these corrections into several rule makings. Ohio was authorized for several of these rule corrections on March 19, 2012. In addition, a number of the corrections had already been made in the state rules. This action authorizes several more of the corrections that appear in the EPA rulemaking of July 14, 2006.
Broader in Scope Rules:
Ohio recently promulgated regulations adding Antifreeze, Aerosol Cans and Paint Wastes to its list of Universal Wastes and now regulates such wastes under state law. Ohio EPA’s application did not include these additions, however, and EPA does not address them in this action.
H. Who handles permits after the final authorization takes effect?
Ohio will issue permits for 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 EPA issues prior to the effective date of the proposed 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 the authorization. EPA will continue to implement and issue permits for HSWA requirements for which Ohio is not yet authorized.
I. How does today’s action affect Indian Country (18 U.S.C. 1151) in Ohio?
Ohio is not authorized to carry out its hazardous waste program in “Indian Country,” as defined in 18 U.S.C. 1151. Indian Country includes:
1. All lands within the exterior boundaries of Indian Reservations within or abutting the State of Ohio;
2. Any land held in trust by the U.S. for an Indian tribe; and
3. Any other land, whether on or off the Indian reservation that qualifies as Indian Country.
Therefore, this action has no effect on Indian Country. EPA retains the authority to implement and administer the RCRA program on those lands.
J. What is codification and is EPA codifying Ohio’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. Ohio’s authorized rules, up to and including those revised June 7, 1991, have previously been codified through the incorporation-by-reference effective February 4, 1992 (57 FR 4162). We reserve the amendment of 40 CFR part 272, subpart KK for the codification of Ohio’s program changes until a later date.
L. Statutory and Executive Order Reviews
This final rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no requirements other than those imposed by state law (see SUPPLEMENTARY INFORMATION, Section A. Why are Revisions to State Programs Necessary?). Therefore, this rule complies with applicable executive orders and statutory provisions as follows:
1. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review
The Office of Management and Budget has exempted this rule from its review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821 January 21, 2011).
2. Paperwork Reduction Act
This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).
3. Regulatory Flexibility Act
This rule authorizes state requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those required by state law. Accordingly, I certify that this rule 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.).
4. Unfunded Mandates Reform Act
Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as

5. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) does not apply to this proposed rule because it will not have federalism implications (i.e., substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government).

6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to this rule because it will not have tribal implications (i.e., substantial direct effects on one or more Indian tribes, or on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes).

7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule is not subject to Executive Order 13045 (62 FR 19855, April 23, 1997), because it is not economically significant as defined in Executive Order 12866 and because the EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 (66 FR 23355, May 22, 2001), because it is not a significant regulatory action as defined in Executive Order 12866.

9. National Technology Transfer Advancement Act

EPA approves state programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a state program, to require the use of any particular voluntary consensus standard in place of another standard that meets 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 to this proposed rule.