

■ b. Removing the authority citation that appears immediately at the end of paragraph (c).

■ c. Revising the authority citation at the end of the section.

The revision reads as follows:

**§ 38.630 Headstones and markers.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) A veteran's spouse or surviving spouse, including a surviving spouse who had a subsequent remarriage terminated by death or divorce, who died after November 11, 1998, or a surviving spouse who had a subsequent remarriage and died on or after October 10, 2008; or

(iii) A veteran's eligible dependent child who died after December 22, 2006.

\* \* \* \* \*

(3) \* \* \*

(ii) *Other eligible individuals.* A Government memorial headstone or marker to commemorate a veteran's eligible spouse, surviving spouse, or dependent child may be placed only in a national cemetery or in a State veterans cemetery.

(Authority: 38 U.S.C. 501, 2306)

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 239 and 258**

[EPA-R07-RCRA-2008-0849; FRL-8899-7]

**Adequacy of Iowa Municipal Solid Waste Landfill Permit Program**

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

**ACTION:** Final rule.

**SUMMARY:** This action approves modifications to Iowa's approved municipal solid waste landfill (MSWLF) program. The approved modification allows the State to issue research, development and demonstration (RD&D) permits to owners and operators of MSWLF units in accordance with its State law. On March 22, 2004, the EPA issued final regulations allowing RD&D permits to be issued to certain municipal solid waste landfills by approved states. This action also approves modifications to Iowa's approved MSWLF program for adding financial assurance mechanisms for local governments, adding the financial test and corporate guarantee to financial assurance mechanisms, adding a technical amendment to solid waste

location restrictions for airport safety, and adopting language from the Federal MSWLF criteria. On March 17, 2008, Iowa applied for approval of its RD&D permit provisions and its updated rules for its MSWLF program. On December 15, 2008, EPA issued a proposed rule for approving the above modifications, and public comment on the proposed rule closed on January 14, 2009.

**DATES:** This rule is effective on May 1, 2009.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number: EPA-R07-RCRA-2008-0849. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, *i.e.*, 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 in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Air and Waste Management Division, 901 North 5th Street, Kansas City, Kansas 66101. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Nicole Cruise, EPA Region 7, Air and Waste Management Division, 901 North 5th Street, Kansas City, Kansas 66101, at (913) 551-7641, or by e-mail at [cruise.nicole@epa.gov](mailto:cruise.nicole@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On March 22, 2004, the EPA issued a final rule amending the municipal solid waste landfill criteria in 40 CFR part 258 to allow for research, development and demonstration (RD&D) permits (69 FR 13242). This rule allows for variances from specified criteria for a limited period of time, to be implemented through State-issued RD&D permits. RD&D permits are only available in States with approved MSWLF permit programs which have been modified to incorporate RD&D permit authority. While States are not required to seek approval for this provision, those States that are interested in providing RD&D permits to owners and operators of MSWLFs must seek approval from EPA before issuing such permits. Also, EPA issued a final

rule on November 27, 1996, for financial assurance mechanisms for local governments (61 FR 60328 at 60337); a final rule on April 10, 1998, adding the financial test and corporate guarantee to financial assurance mechanisms (63 FR 17706 at 17729); and a final rule on October 15, 2003, providing a technical amendment to solid waste location restrictions for airport safety (68 FR 59335). The Federal MSWLF criteria are codified at 40 CFR part 258. Approval procedures for provisions of 40 CFR part 258 are outlined in 40 CFR 239.12.

Iowa's MSWLF permit program was approved on August 19, 1997 (62 FR 44127). On March 17, 2008, Iowa applied for approval of its RD&D permit provisions and its updated rules for its MSWLF program. On December 15, 2008, EPA issued a proposed rule to approve the above modifications, and public comment on the proposed rule closed on January 14, 2009.

**II. Comments**

EPA received one comment in support of the proposed rulemaking and four adverse comments. The adverse comments challenged EPA's certification that the action would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, and requested that EPA provide a factual basis for the certification.

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any

requirements or create impacts on small entities. This action will not in-and-of itself create any new requirements but simply approves modifications to Iowa's municipal solid waste landfill (MSWLF) program and its RD&D permit program. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

Additionally, on January 29, 2009, the State of Iowa notified EPA pursuant to 40 CFR 239.12(c) that Iowa would modify the state's MSWLF permitting program pursuant to rule modifications of Iowa Administrative Code 567, Chapter 113. These modifications to the Iowa rules became effective February 9, 2009.

On April 22, 2009, EPA Region 7 notified the State of Iowa pursuant to 40 CFR 239.12(e) that EPA Region 7 had determined the February 9, 2009, Iowa rule modifications did not require Iowa to submit a revised application for state permit program approval. As stated in EPA's letter to Iowa on April 22, 2009, compared to the requirements for MSWLF units that were in effect and approved at the time of the August 19, 1997, EPA initial approval of the Iowa MSWLF permit program (62 FR 44127), the 2009 Iowa modifications result only in augmenting the Iowa permitting program implementation requirements for MSWLF units.

As such, EPA Region 7 in this final rulemaking is approving for program adequacy the previously identified RD&D permit authority, financial assurance mechanisms for local governments, financial test and corporate guarantee as financial assurance mechanisms, location restrictions for airport safety, and adoption of language from the Federal MSWLF criteria at 40 CFR part 258; with the exception of rules that were rescinded under the February 9, 2009, Iowa rule modifications. Because EPA Region 7 has determined that Iowa is not required to submit a revised program application for state permit program approval for the 2009 rule modifications, no further action by EPA for the Iowa permit program approval is necessary. The Iowa permitting program and MSWLF rules in effect as of February 9, 2009, are considered adequate for EPA approval of the Iowa MSWLF permitting program.

### III. Decision

After a thorough review, EPA Region 7 has determined that Iowa's RD&D

permit provisions and its updated rules for its Municipal Solid Waste Landfill Permit Program, as defined under Iowa Administrative Code (IAC) 567, Chapter 113, "Sanitary Landfills for Municipal Solid Waste: Groundwater Protection Systems for the Disposal of Non-Hazardous Wastes," effective December 10, 2007, are adequate to ensure compliance with the Federal criteria as defined at 40 CFR 258.4.

### IV. Statutory and Executive Order Reviews

This action approves state solid waste requirements pursuant to Resource Conservation and Recovery Act (RCRA) Section 4005 and imposes no Federal requirements. Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

1. *Executive Order 12866: Regulatory Planning Review*—The Office of Management and Budget has exempted this action from its review under Executive Order (EO) 12866;

2. *Paperwork Reduction Act: This action does not impose an information collection burden under the Paperwork Reduction Act;*

3. *Regulatory Flexibility Act: After considering the economic impacts of today's action on small entities under the Regulatory Flexibility Act, I certify that this action will not have a significant economic impact on a substantial number of small entities;*

4. *Unfunded Mandates Reform Act: Because this action approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, this action does not contain any unfunded mandate, or significantly or uniquely affect small governments, as described in the Unfunded Mandates Act;*

5. *Executive Order 13132: Federalism*—EO13132 does not apply to this action because this action will not have federalism implications (*i.e.*, there are not substantial direct effects on states, on the relationship between the national government and states, or on the distribution of power and responsibilities between Federal and State governments);

6. *Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*—EO13175 does not apply to this action because it will not have tribal implications (*i.e.*, there are no substantial direct effects on one or more Indian tribes, 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 proposed action is not subject to EO 13045 because it is not economically significant and is not based on health or safety risks;

8. *Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*—This action is not subject to EO 13211 because it is not a significant regulatory action as defined in EO 12866;

9. *National Technology Transfer Advancement Act: This provision directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards and bodies. EPA approves state programs so long as the State programs meet the criteria delineated in 40 CFR part 258. 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 40 CFR part 258 requirements. Thus, the National Technology Transfer and Advancement Act does not apply to this action;*

10. *Congressional Review Act: EPA will submit a report containing this action and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) 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.*

### List of Subjects

#### 40 CFR Part 239

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Waste treatment and disposal.

#### 40 CFR Part 258

Reporting and recordkeeping requirements, Waste treatment disposal, Water pollution control.

**Authority:** This action is issued under the authority of sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

Dated: April 24, 2009.

**William Rice,**

*Acting Regional Administrator, Region 7.*

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