

Revision Checklist 148 Summary

Rule Title: RCRA Expanded Public Participation
Checklist Title: RCRA Expanded Public Participation
Reference: 60 FR 63417-63434
Promulgation Date: December 11, 1995
Effective Date: June 11, 1996
Cluster: RCRA Cluster VI
Provision Type: Non-HSWA
Linkage: None
Optional: No

Summary: This rule promulgates new regulations under RCRA that will improve the process for permitting facilities that store, treat, or dispose of hazardous wastes by providing opportunities for public involvement earlier in the process and by expanding public access to information throughout the permitting process and the operational lives of facilities. This rule will require a prospective applicant to hold an informal public meeting before submitting an application for a RCRA permit and to advertise this meeting in the newspaper, through broadcast media, and on a sign posted at or near the property. This rule also directs the permitting agency to mail a notice to interested persons when the facility submits its application and, as the agency deems necessary, to require a facility owner or operator to set up an information repository that will hold all information and documents the permitting agency has decided as necessary. Finally, this rule requires combustion facilities (i.e., incinerators and other facilities that burn hazardous wastes) to notify the public before they hold a trial burn.

State Authorization: This rule is placed in RCRA Cluster VI. The State modification deadline is July 1, 1997 (or July 1, 1998 if a State statutory change is necessary). These changes do not go into effect until States become authorized for them because this rule was promulgated under pre-HSWA authorities. Only final authorization is available. Note that although a change has not been made to 40 CFR 271.14, States are required to include §§124.31, 124.32, and 124.33 as part of their permit program.

The State Revision Application must include applicable regulations, AG statement addendum, Revision Checklist 148, other associated checklists and other application materials, i.e., a program description and an MOA, as determined by the Regional office.

Attorney General's Statement Entry: The following entry should be placed at Subsection XVI Z in the Model Revision Attorney General's Statement.

Z. State statutes and regulations provide for opportunities for earlier public involvement in the permitting process and expand public access to information throughout the permitting process and the operational lives of facilities as indicated in Revision Checklist 148.

Federal Authority: RCRA §§2002, 3004, 3005, and 7004(b), 40 CFR 124.31, 124.32, 124.33, 270.2, 270.14(b)(22), 270.30(m), **270.61(b)(5)**, 270.62(b)(6), 270.62(d), 270.66(d)(3), and 270.66(g).

Citation of Laws and Regulations; Date of Enactment and Adoption

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Remarks of the Attorney General**Special Guidance on Incorporating the Provision of this Rule**A. Incorporation by reference

States need to except from the incorporation by reference the limiting language at 40 CFR §§124.31(a), 124.32(a) and 124.33(a). This can be accomplished in one of the following manners:

- (1) except the entire paragraph from the incorporation by reference and replace it with the version shown below, or
- (2) incorporate by reference the entire paragraph subject to the modifications shown below. (Note an example of how to word this is shown at the end of this section after the modifications needed to 124.33(a).)

§ 124.31 Pre-application public meeting and notice.

(a) *Applicability.* The requirements of this section shall apply to all ~~RCRA part B~~ **[insert the name of the appropriate State hazardous waste permit]** applications seeking initial permits for hazardous waste management units ~~over which EPA has permit issuance authority~~. The requirements of this section shall also apply to ~~RCRA part B~~ **[insert the name of the appropriate State hazardous waste permit]** applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a “significant change” is any change that would qualify as a ~~class 3 permit modification~~ **[insert State analog to class 3 permit modification]** under ~~40 CFR 270.42~~ **[insert State analog to 40 CFR 270.42]**. For the purposes of this section only, “hazardous waste management units over which EPA has permit issuance authority” refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271. The requirements of this section do not apply to permit modifications under ~~40 CFR 270.42~~ **[insert State analog to 40 CFR 270.42]** or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

§ 124.32 Public notice requirements at the application stage.

(a) *Applicability.* The requirements of this section shall apply to all ~~RCRA part B~~ **[insert the name of the appropriate State hazardous waste permit]** applications seeking initial permits for hazardous waste management units ~~over which EPA has permit issuance authority~~. The requirements of this section shall also apply to ~~RCRA part B~~ **[insert the name of the appropriate State hazardous waste permit]** applications seeking renewal of permits for such units under ~~40 CFR 270.51~~ **[insert State analog to 40**

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~~CFR 270.51]. For the purposes of this section only, "hazardous waste management units over which EPA has permit issuance authority" refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271. The requirements of this section do not apply to permit modifications under 40 CFR 270.42 [insert State analog to 40 CFR 270.42] or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.~~

§ 124.33 Information repository

(a) *Applicability.* The requirements of this section apply to all applications seeking RCRA [insert the name of the appropriate State hazardous waste permit] permits for hazardous waste management units ~~over which EPA has permit issuance authority. For the purposes of this section only, "hazardous waste management units over which EPA has permit issuance authority" refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271.~~

Example of incorporation by reference of §124.31 (a) with modifications:

"The provisions at 40 CFR 124.31(a) are incorporated by reference as of July 1, 1996 with the following modifications:

- (a) *Replace both occurrences of "RCRA Part B" with the "State Part B";*
- (b) *Replace "class 3 permit modification" with "State class 3 permit modification";*
- (c) *Replace all references to "40 CFR 270.42" with [insert state analog to 270.42, e.g., "30-170.42"]; and*
- (d) *Delete the following sentence "For the purpose of the section only, 'hazardous waste management units over which EPA has permit issuance authority' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271."*

B. Verbatim Adoption

States need to exclude the limiting language referencing RCRA permits and EPA by modifying the language at 40 CFR §§124.31(a), 124.32(a), and 124.33(a), as shown below:

§ 124.31 Pre-application public meeting and notice.

(a) *Applicability.* The requirements of this section shall apply to all ~~RCRA part B~~ [insert the name of the appropriate State hazardous waste permit] applications seeking initial permits for hazardous waste management units ~~over which EPA has permit issuance~~

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authority. The requirements of this section shall also apply to ~~RCRA part B~~ **[insert the name of the appropriate State hazardous waste permit]** applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a “significant change” is any change that would qualify as a ~~class 3 permit modification~~ **[insert State analog to class 3 permit modification]** under ~~40 CFR 270.42~~ **[insert State analog to 40 CFR 270.42]**. For the purposes of this section only, “hazardous waste management units over which EPA has permit issuance authority” refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271. The requirements of this section do not apply to permit modifications under ~~40 CFR 270.42~~ **[insert State analog to 40 CFR 270.42]** or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

§ 124.32 Public notice requirements at the application stage.

(a) *Applicability.* The requirements of this section shall apply to all ~~RCRA part B~~ **[insert the name of the appropriate State hazardous waste permit]** applications seeking initial permits for hazardous waste management units ~~over which EPA has permit issuance authority~~. The requirements of this section shall also apply to ~~RCRA part B~~ **[insert the name of the appropriate State hazardous waste permit]** applications seeking renewal of permits for such units under ~~40 CFR 270.51~~ **[insert State analog to 40 CFR 270.51]**. For the purposes of this section only, “hazardous waste management units over which EPA has permit issuance authority” refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271. The requirements of this section do not apply to permit modifications under ~~40 CFR 270.42~~ **[insert State analog to 40 CFR 270.42]** or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

§ 124.33 Information repository

(a) *Applicability.* The requirements of this section apply to all applications seeking ~~RCRA~~ **[insert the name of the appropriate State hazardous waste permit]** permits for hazardous waste management units ~~over which EPA has permit issuance authority~~. For the purposes of this section only, “hazardous waste management units over which EPA has permit issuance authority” refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271.