

US EPA ARCHIVE DOCUMENT

Revision Checklist 113 Summary

| | |
|----------------------------|--|
| Rule Titles: | This rule consolidates the changes made by the following three rules: <ul style="list-style-type: none">● Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Liability Coverage● Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities; Liability Requirements● Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities; Financial Responsibility for Third-Party Liability, Closure, and Post-Closure |
| Checklist Title: | Consolidated Liability Requirements |
| References: | 53 <u>FR</u> 33938-33960, 56 <u>FR</u> 30200, and 57 <u>FR</u> 42832-42844 |
| Promulgation Dates: | September 1, 1988; July 1, 1991; and September 16, 1992 |
| Effective Dates: | October 3, 1988; July 1, 1991; September 16, 1992 |
| Cluster: | RCRA Cluster III |
| Provision Type: | Non-HSWA |
| Linkage: | None |
| Optional: | No, but certain portions of this checklist are optional |

Summary: On September 1, 1988, (53 FR 33938), the Agency issued a final rule that expanded the instruments available to owners and operators to demonstrate financial responsibility for third-party liability assurance. This rule also established, at §§264.147 and 265.147, a claims reporting requirement for third-party claims. Chemical Waste Management, Inc. (CWM) challenged several portions of this rule and on February 23, 1990 entered into a settlement agreement with EPA in which the Agency agreed to make several changes to the liability coverage requirements. Because of this litigation and resulting settlement agreement, the checklist (i.e. Revision Checklist 51) for this rule was withheld. The Agency encouraged States to not adopt the provisions addressed by the September 1, 1988 rule until all of the amendments agreed to in the settlement agreement were made. On July 1, 1991 (56 FR 30200) a final rule correcting the September 1, 1988 rule was issued. Specifically, that rule corrected the omission of "miscellaneous" units as subject to the requirements of 264.147(b) and, as part of satisfying the settlement agreement, references to 264.147(f) and 265.147(f) were inserted into 264.147(a)(2) and 265.147(a)(2), respectively. The Agency also withheld the checklist (i.e., Revision Checklist 93) for that rule because this correction did not address all of the regulatory amendments required by the settlement agreement. The remaining settlement agreement amendments were made by the September 16, 1992 rule (57 FR 42832). That notice also promulgated a conforming change to §§264.147(f)(6) and 265.147(f)(6) to expand the instruments available to owners and operators that no longer meet the requirements of the financial test for liability coverage.

This present checklist, Revision Checklist 113, is a special checklist which consolidates the changes made to the Federal regulations by the September 1, 1988, the July 1, 1991, and the September 16, 1992 final rules so that States can adopt these changes at one time. Revision Checklists 51 and 93 will not be issued, nor will a separate checklist be developed for the September 16, 1992 rule. Rather, States should use this Consolidated Liability Requirements Checklist to adopt the provisions of these three final rules. States that

Revision Checklist 113 Summary (cont'd)

already have adopted changes based on the September 1, 1988 final rule are strongly encouraged to complete this consolidated checklist to ensure that all revisions pursuant to the later two amendments are correctly made in the State's code. Note that the deadline for this Consolidated Checklist is based on the promulgation date of the most recent of the rules.

State Authorization: This checklist is placed in RCRA Cluster III. The State modification deadline is July 1, 1994 (or July 1, 1995 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 the claims reporting requirements as promulgated by the September 1, 1988 rule were originally classified as optional; however, as there were no reporting requirements prior to that time, the Agency has determined that these requirements were, in fact, more stringent. States should have been required to modify their programs to include these requirements by July 1, 1990. However, since States were not notified of this obligation, the Agency will, for the purposes of determining applicable deadlines under §271.21(e)(2), treat these requirements as if they were promulgated on September 16, 1992.

Note, however, that the revisions to the claims reporting requirements that were promulgated by the September 16, 1992 rule are not more stringent than the reporting requirement at §§264.147(a)(7)&(b)(7) and 265.147(a)(7)&(b)(7) as promulgated by the September 1, 1988 rule. Therefore, States that have already adopted the claims requirements as promulgated by the September 1, 1988 rule are not required to adopt the clarified reporting requirement, although EPA urges them to do so. States that have not yet adopted the September 1, 1988 rule's claims reporting requirements should not do so, but should adopt the clarified version promulgated by the September 16, 1992 rule as indicated by Revision Checklist 113.

The State revision application must include applicable regulations, an AG statement addendum, the Consolidated Liability Requirements Checklist, 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 entries should be placed at Subsections XV O, P and Q in the Model Revision Attorney General's Statement.

O. [OPTIONAL]: This is a reduced requirement.] State statutes and regulations allow the use of additional financial instruments (letter of credit, a surety bond, a guarantee, trust fund, and purchase of insurance by other firms) to meet the liability coverage requirements as specified in Revision Checklist 113.

Federal Authority: RCRA §§2002(a), 3004 and 3005; 40 CFR 264.141, 264.147, 264.151, 265.141, 265.147 and 265.151 as amended September 1, 1988 (53 FR 33938), July 1, 1991 (56 FR 30200), and September 16, 1992 (57 FR 42832).

Citation of Laws and Regulations; Date of Enactment and Adoption

Remarks of the Attorney General

Revision Checklist 113 Summary (cont'd)

P. [OPTIONAL]: This is a reduced requirement.] State statutes and regulations include conforming changes to 264.147(f)(6) and 265.147(f)(6) to expand the instruments available to owners and operators that no longer meet the requirements of the financial test for liability coverage as indicated in Revision Checklist 113.

Federal Authority: RCRA §3004; 40 CFR 264.147(f)(6) and 265.147(f)(6) as amended September 16, 1992 (57 FR 42832).

Citation of Laws and Regulations; Date of Enactment and AdoptionRemarks of the Attorney General

Q. State statutes and regulations require reporting of third-party claims against an owner's or operator's liability coverage as indicated by Revision Checklist 113.

Federal Authority: RCRA §§2002(a), 3004 and 3005; 40 CFR 264.147(a)(7)&(b)(7) and 265.147(a)(7)&(b)(7) as amended September 1, 1988 (53 FR 33938) and September 16, 1992 (57 FR 42832).

Citation of Laws and Regulations; Date of Enactment and AdoptionRemarks of the Attorney General