

US EPA ARCHIVE DOCUMENT

10/15/84

CORPORATION COUNSEL'S STATEMENT FOR FINAL AUTHORIZATION

I hereby certify, pursuant to my authority as Corporation Counsel and in accordance with Section 3006(b) of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, as amended (42 USC 6901, et seq.), and 40 CFR 271 that in my opinion the laws of the District of Columbia provide adequate authority to carry out the program set forth in the "Program Description" submitted by the Department of Environmental Services. The specific authorities provided, which are contained in statutes or regulations lawfully adopted at the time this Statement is signed and which shall be fully effective by the time the program is approved, include those identified below.

I. IDENTIFICATION AND LISTING

A. D.C. statutes and regulations define hazardous waste so as to control all the hazardous waste controlled under 40 CFR 261 as indicated in Checklist IA.

B. D.C. statutes and regulations contain a list of hazardous waste and characteristics for identifying hazardous waste which encompass all wastes controlled under 40 CFR 261 as indicated in Checklist I B and C.

[Federal Authority: RCRA §3001 (42 U.S.C. 6921); 40 CFR 261, 271.9]

Citation of Laws and Regulations - "District of Columbia Hazardous Waste Management Act of 1977", D.C. Law 2-64, §§2(a), 3, 5 and 6(a)(1)(a) (D.C.

Code, §§ 6-701(a), 6-702, 6-704 & 6-705(a)(1)(1981)) as amended; 40 CFR 261 as adopted by the District of Columbia and Title 20 DCMR §4002.

#### Analysis of Legal Authority

Section 5 of the "District of Columbia Hazardous Waste Management Act of 1977" (D.C. Code, §6-704(1981)) (hereinafter "Act") authorizes a description of the criteria for determining what constitutes a hazardous waste, and identification of the types and quantities of hazardous waste generated in the District of Columbia. In addition, Section 6(a)(1)(a) (D.C. Code, §6-705(a)(1)(1981)) of the Act specifically authorizes the Mayor to adopt rules and regulations regarding the criteria for determining what constitutes a hazardous waste. Such regulations may include the designation of hazardous wastes by characteristics and by list. The definition of the term "hazardous waste" contemplates the designation of such waste based, in part, on physical, chemical or infectious characteristics established by the Mayor. The term "waste" as it is used in §3(b) of the Act may be further defined as "solid waste" as that term is defined in the regulations.

The identification of the types and quantities of hazardous waste generated in the District, and hence those wastes which are to be regulated by this Act, will be based on the criteria for determining what constitutes a hazardous waste. The Mayor is authorized to adopt regulations defining these criteria under section 6 of the Act, which authorizes the Mayor to adopt regulations to carry out the purposes and provisions of the Act. This would include federal regulations, provided they are adopted in accordance with the D.C. Administrative Procedure Act. Since the purposes of the Act are to

insure safe and effective hazardous waste management, and to establish a program of regulation over hazardous wastes in the District, the criteria adopted may include any and all of the characteristics necessary to attain these goals. This would include all of the characteristics and definitions contained in 40 CFR 261 as adopted by the District and 20 DCMR §4002.

## II. STANDARDS FOR GENERATORS

D.C. statutes and regulations provide coverage of all the generators covered by 40 CFR 262 as indicated in Checklist II.

[Federal Authority: RCRA §3002 (42 U.S.C. 6922); 40 CFR 262, 271.10]

Citations of Laws and Regulations D.C. Law 2-64, §§2(a) and 6(a) (D.C. Code, §§6-701(a) and 6-705(a)(1981)) as amended; 40 CFR 262 as adopted by D.C. and 20 DCMR §4003.

### Analysis of Legal Authority

Section 6(a) of the Act grants broad rulemaking authority to the Mayor. He is authorized to adopt rules and regulations necessary to carry out the purposes and provisions of the Act. Although several areas appropriate for rulemaking have been identified in section 6(a), the Mayor's rulemaking authority is not limited only to these areas.

The purposes of this Act are to insure safe and effective hazardous waste management, and to establish a program of regulations over the

storage, transportation, treatment, and disposal of hazardous wastes in the District. It is clear that a comprehensive hazardous waste management plan was intended, one which regulates every aspect of hazardous waste in the District from the point of generation to the final treatment , long-term storage, or disposal. In fact, the Committee on Transportation and Environmental Affairs, in commenting on the definition of the term "treatment facility" contained in the Act, stated that:

"This definition explicitly includes generators of hazardous wastes, recognizing that the environmental threat is no less from wastes managed at the site of generation than from those managed elsewhere." Committee Report on Bill 2-163, "District of Columbia Hazardous Waste Management Act of 1977", p. 10.

Moreover, sections 2(a) and 6(a) of the Hazardous Waste Management Act have been amended to include specific references to regulation of the generation of hazardous waste in the District of Columbia.

Thus, the Mayor is clearly authorized to adopt any regulations regarding generators of hazardous waste which are necessary to carry out the purposes and provisions of the Act. This would include all of the regulations regarding generators contained in 40 CFR 262, as adopted by the District and 20 DCMR §4003.

### III. STANDARDS FOR TRANSPORTERS

D.C. statutes and regulations provide coverage of all the transporters covered by 40 CFR 263 as indicated in Checklist III.

[ Federal Authority: RCRA §3003 (42 U.S.C. 6923); 40 CFR 263, 271.11 ]

Citation of Laws and Regulations D.C. Law 2-64, §§2(a), 6(a)(1)(C) and (G) (D.C. Code, §§6-701(a), 6-705(a)(3) & (7) (1981)) as amended; 40 CFR 263.10 as adopted by D.C. and 20 DCMR §4004.

#### Analysis of Legal Authority

Section 6(a) of the Act grants the Mayor broad rulemaking authority to carry out the purposes and provisions of the Act. The Mayor is authorized to adopt regulations regarding the transportation, containerization, and labeling of hazardous wastes, procedures and requirements for the use of a manifest, and any regulations necessary to insure a safe and effective hazardous waste management program. This would include the regulations regarding transporters contained in 40 CFR 263, as adopted by the District and 20 DCMR §4004.

### IV. STANDARDS FOR FACILITIES

A. D.C. statutes and regulations provide permit standards for hazardous waste management facilities covered by 40 CFR 264 as indicated in Checklist IV A.

B. D.C. statutes and regulations provide for interim status and include interim status standards for hazardous waste management facilities covered by 40 CFR 265 as indicated in Checklist IV B.

1. D.C. statutes and regulations authorize owners and operators of hazardous waste management facilities which would qualify for interim status under the federal program to remain in operation until a final decision is made on the permit application;

2. D.C. law and regulations authorize continued operation of hazardous waste management facilities provided that owners and operators of such facilities comply with standards at least as stringent as EPA's interim status standards at 40 CFR 265; and

3. D.C. law and regulations assure that any facility qualifying for D.C. interim status continues to qualify for Federal interim status.

[Federal Authority: RCRA §§3004, 3005(e) (42 U.S.C. 6924, 6925); 40 CFR 264, 265, 271.12, 271.13(a)]

Citation of Laws and Regulations D.C. Law 2-64, §§2(a), 4 and 6(a) (D.C. Code, §§6-701(a), 6-703 and 6-705(a) (1981)) as amended; 40 CFR 264 and 265, as adopted by D.C. and 20 DCMR §§4005 and 4006.

### Analysis of Legal Authority

Section 4 of the Act authorizes the Mayor to issue permits for the storage, treatment, transportation or disposal of hazardous wastes in the District. However, it does not specify the standards or requirements which must be met to obtain a permit. Hence, the law could not be carried out without further delineation. Section 6(a) of the Act, however, specifically authorizes the Mayor to adopt regulations regarding the storage, treatment, and disposal of hazardous wastes, and any other regulations necessary to carry out the purposes and provisions of the Act. Thus, the Mayor can adopt any regulations regarding permitting requirements for storage, treatment or disposal facilities. This would include the permit standards contained in 40 CFR 264, as adopted by the District and 20 DCMR §4005. In addition, all relevant regulations adopted by the Mayor pursuant to section 6(a) of the Act would be equally applicable to section 4 permitted facilities, and may be included as permit requirements or standards. The Mayor can also adopt regulations regarding those facilities which qualify for interim status under the Federal program. They may be allowed to continue to operate pending permit action provided they comply with the applicable requirements contained in Part 265 and Part 270 of these regulations and 20 DCMR §§4006 and 4007. They will be viewed as having permits to be enforced via the self-implementing standards contained in Part 265 and 20 DCMR §4006, which the Mayor has adopted pursuant to his authority in section 6(a) of the Act.



V. REQUIREMENTS FOR PERMITS

D.C. statutes and regulations provide requirements for permits as indicated in Checklist V.

[Federal Authority: RCRA §3005 (42 U.S.C. 6925); RCRA §7004 (42 U.S.C. 6974); 40 CFR 271.13 and .14]

Citation of Laws and Regulations D.C. Law 2-64, §§4, 6(a) and 10 (D.C. Code, §§6-703, 6-705(a) and 6-709 (1981)) as amended; 40 CFR 270 as adopted by D.C. and 20 DCMR §4007.

Analysis of Legal Authority

Section 4 of the Act requires a permit to construct or operate any hazardous waste storage, treatment or disposal facility, or to generate, store, transport, treat, or dispose of any hazardous waste. It authorizes the Mayor to issue, modify, suspend, revoke, or deny such permit to achieve the purposes of the Act. Pursuant to section 6(a) of the Act, the Mayor can adopt any regulations necessary to carry out the purposes and provisions of the Act. This would include regulations regarding permitting requirements, applications and procedures, and permit modification, suspension and revocation conditions, as contained in 40 CFR 270 as adopted by the District and 20 DCMR §§4007 and 4010.

In addition, section 10 of the Act authorizes the Mayor to suspend or revoke a permit for any violation of the Act or the rules and regulations

promulgated pursuant thereto. This would include a violation of any of the applicable requirements contained in Part 270 of the regulations and 20 DCMR §§4007 and 4010.

## VI. INSPECTIONS

D.C. law provides authority for officers engaged in compliance evaluation activities to enter any conveyance, vehicle, facility or premises subject to regulation or in which records relevant to program operation are kept in order to inspect, monitor, or otherwise investigate compliance with the District's program including compliance with permit terms and conditions and other program requirements.

[Federal Authority: RCRA §3007 (42 U.S.C. 6927), 40 CFR 271.15]

Citation of Laws and Regulations D.C. Law 2-64, §8(a) (D.C. Code, § 6-707(a) (1981)) as amended.

### Analysis of Legal Authority

Section 8(a) of the Act authorizes the Mayor to enter any place, any location, wherever hazardous wastes are generated, stored, treated, transported, or disposed. This would include vehicles and conveyances, as well as warehouses and treatment facilities. It also includes facilities where hazardous wastes have been generated, stored, treated, transported, or disposed, as this is necessary for effective enforcement. In addition, samples

of any substances used in the treatment of waste may be obtained. This would include samples of containers and labels used where there are regulations governing their use. For the purpose of enforcing the Act and any regulations promulgated pursuant thereto, the Mayor may enter without delay, inspect and obtain samples, and copy any relevant records, documents, or reports. Since permits are required under section 4 of the Act, the Mayor is authorized to conduct inspections to determine compliance with the provisions of that section and the regulations adopted pursuant thereto.

## VII. ENFORCEMENT REMEDIES

D.C. statutes and regulations provide the following:

- A. Authority to restrain immediately by order or by suit in D.C. Superior Court any person from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment.

[Federal Authority: RCRA §3006 (42 U.S.C. 6926); 40 CFR 271.16(a)(1)]

Citation of Laws and Regulations D.C. Law 2-64, §11 (D.C. Code, §6-710 (1981)) as amended.

### Analysis of Legal Authority

Section 11 of the Act, as amended, authorizes the Mayor to immediately restrain, by appropriate civil action in the District of Columbia Superior Court, any person who is operating a storage, treatment, or disposal

facility, or is generating or transporting hazardous wastes in an illegal, unsafe, or otherwise improper manner so as to endanger the public health or welfare or the environment.

- B. Authority to sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit.

[Federal Authority: RCRA §3006 (42 U.S.C. 6926); 40 CFR 271.16(a)(2)]

Citation of Laws and Regulations D.C. Law 2-64, §§11 and 12(a) (D.C. Code, §§6-710 and 6-711(a) (1981)) as amended.

#### Analysis of Legal Authority

Section 11 of the Act authorizes the Mayor to enjoin a threatened violation, since an actual violation of the Act or regulations promulgated pursuant thereto is not necessary. Under this provision, the Mayor may seek to enjoin any action he finds unsafe or so improper as to endanger the public health or welfare or the environment. At this stage it need not, under section 11, be equivalent to a violation of the Act or regulations promulgated pursuant thereto.

Section 12(a) of the Act authorizes the Mayor to institute such action as is necessary to terminate a continuing violation of any provision of the Act or the rules and regulations promulgated pursuant thereto. This would include a civil action in the D.C. Superior Court to secure a temporary

restraining order, a preliminary injunction, or a permanent injunction. Neither section 11, nor section 12(a), requires prior revocation of a permit before seeking to enjoin a threatened or continuing violation.

- C. Authority to assess or sue to recover in court civil penalties in at least the amount of \$10,000 per day for any program violation.

[Federal Authority: RCRA §3006 (42 U.S.C. 6926); 40 CFR 271.16(a)(3)(i)]

Citation of Laws and Regulations D.C. Law 2-64, §12(b) (D.C. Code, §6-711(b) (1981)) as amended.

Analysis of Legal Authority

Section 12(b) of the Act, as amended, provides for a civil penalty in an amount not to exceed \$25,000 per day for any violation of the Act or the rules and regulations promulgated pursuant thereto.

- D. Authority to obtain criminal penalties in at least the amount of \$10,000 per day for each violation, and imprisonment for at least six months against any person who knowingly transports any hazardous waste to an unpermitted facility; who treat, stores, or disposes of hazardous waste without a permit; or who makes any false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for the purposes of program compliance.

[Federal Authority: RCRA §3006 (42 U.S.C. 6926); 40 CFR 271.16(a)(3)(ii)]

Citation of Laws and Regulations D.C. Law 2-64, §12(c) (D.C. Code, §6-711(c) (1981)) as amended.

Analysis of Legal Authority

Section 12(c) of the Act, as amended, provides for a criminal penalty of a fine not to exceed \$25,000 or imprisonment not to exceed one year, or both, per day for each violation. This penalty is applicable to any person who knowingly violates any provision of the Act or the rules and regulations promulgated pursuant thereto, including, but not limited to, the transportation of hazardous waste to an unpermitted facility; the treatment, storage, or disposal of hazardous waste without a permit; or falsification of any application, label, manifest, record, report, permit or any other document filed, maintained or used for the purpose of program compliance.

VIII. PUBLIC PARTICIPATION IN THE DISTRICT OF COLUMBIA ENFORCEMENT PROCESS

D.C. laws and regulations provide for public participation in the District's enforcement process by providing either:

- A. Authority to allow intervention as of right in any civil action to obtain the remedies specified in Section VII A, B, and C above by any citizen having an interest which is or may be adversely affected; or
- B. Assurances that the D.C. agency or enforcement authority will:

- (1) Investigate and provide written response to all citizen complaints duly submitted;
- (2) Not oppose intervention by any citizen where permissive intervention may be authorized by statute, rule, or regulation; and
- (3) Publish and provide at least 30 days for public comment on any proposed settlement of a D.C. enforcement action.

[Federal Authority: RCRA §7004 (42 U.S.C. 6974); 40 CFR 271.16(d)]

Citation of Laws and Regulations D.C. Superior Court Civil Rule 24(a).

#### Analysis of Legal Authority

Rule 24(a) of the District of Columbia Superior Court Rules of Civil Procedure provides for intervention as of right in civil actions in the D.C. Superior Court. Rule 24(a) is identical to Federal Rule of Civil Procedure 24(a) and satisfies the requirement contained in subsection A. The District will not oppose public intervention, pursuant to Rule 24(a) of the D.C. Superior Court Rules of Civil Procedure, on the ground that the applicant's interest is adequately represented by the District.

#### IX. AUTHORITY TO SHARE INFORMATION WITH EPA

D.C. statutes and regulations provide authority for any information obtained or used in the administration of the District's program to be available to EPA upon request without restriction.

[Federal Authority: RCRA §3007(b) (42 U.S.C. 6927); 40 CFR 271.17]

Citation of Laws and Regulations D.C. Law 1-96, §2 (D.C. Code, §1-1524 (1981)).

Analysis of Legal Authority

Although section 2 of the D.C. Freedom of Information Act provides for certain exemptions from disclosure, it specifically states that this section shall not operate to prevent disclosure of information where such disclosure is authorized or mandated by other laws. Therefore, section 2 would not prevent the disclosure of information required to be submitted to EPA under RCRA.

X. AUTHORITY OVER INDIAN LANDS

The District of Columbia does not seek authority over Indian lands.



**RESPONSE TO EPA, REGION III, COMMENTS REGARDING  
CORPORATION COUNSEL'S STATEMENT FOR FINAL AUTHORIZATION**

This is in response to several comments made by EPA, Region III, concerning the Corporation Counsel's statement for final authorization, which cannot be addressed within the context of the standardized format recommended for use by EPA. The numbers on the left hand side of the page identify the number of the comment being addressed.

1. Pursuant to the District's home rule charter, the Mayor has the authority to enter into a binding memorandum of agreement with EPA. The Mayor may, in such agreements, limit his discretion to grant variances so that the District's hazardous waste management program will be no less stringent than the Federal program.
2. The term "other entity", since it is not defined in the Act, is defined by common usage. The term "other entity" would include any other being, existence, thing, person, creature, body, object, organism, etc. It would, therefore, include a state, a subdivision of a state, a municipality or an interstate body.
3. The Mayor has the authority to regulate hazardous waste, whether it has been recycled or not, pursuant to §6(a) of the Hazardous Waste Management Act (HWMA).
4. The definition of the term "transport" includes transportation to a treatment facility, as that would be an intermediate site between generation and the ultimate storage or disposal of the waste.

5. See Corporation Counsel's Statement for Final Authorization, Sections II, III and IV, pages 3 through 6.
6. The District's hazardous waste management program will not allow certain types of disposal methods, such as landfills or surface impoundments, and therefore, the District did not adopt those portions of the Federal regulations dealing with such activities. In fact, all land treatment is banned in the District of Columbia. This should make the District's program more stringent than the Federal program and, as such, fully approvable.
7. The permitting provision of the Act is not specifically directed at either owners or operators, but rather at the type of facility or activity involved. Anyone (whether owner or operator) is subject to the requirements of §4 to obtain a permit before constructing, altering or operating a hazardous waste facility, or generating, storing, transporting, treating or disposing of hazardous wastes.  
  
Re: "interim status", see Corporation Counsel's Statement for Final Authorization, page 7.
8. Suspension of a permit pursuant to §10 of the HWMA is effective immediately and remains in effect until a new permit is granted. A permit may be suspended for any violation of the Act or the rules promulgated pursuant thereto. Additionally, a permit may be revoked where there is a history of repeated violations or a previous suspension, or where the initial violation endangers the public health, welfare or the environment. However, revocation of a permit is not immediate, except in cases of endangerment of the public health, welfare or the environment. Pursuant to §10 of the Act, the Mayor may suspend or revoke a permit for any of the reasons listed in 270.43 and 20 DCMR §4007.

9. The District's authority to enjoin a threatened program violation is similar to EPA's authority to enjoin a threatened program violation. Section 11 of the D.C. HWMA, which provides for injunctive relief, was modeled after section 7003 of RCRA, the only provision in the federal act which authorizes injunctive relief. Section 7003 of RCRA provides for injunctive relief where there is "an imminent and substantial endangerment to health or the environment". Section 11 of the D.C. HWMA provides for injunctive relief when an action "endangers the public health, the public welfare, or the environment". You will note that section 11 is broader than section 7003 in that there is no requirement of a certain level of harm (i.e., "substantial") and there is concern for "the public welfare" as well as the public health. Thus, the District's authority to seek injunctive relief pursuant to the HWMA is not only equivalent to but broader than EPA's authority to seek injunctive relief under RCRA.

Moreover, the standard for injunctive relief, at least in this jurisdiction, requires a showing of irreparable injury or harm. See Virginia Petroleum Jobbers Association v. Federal Power Commission, 104 U.S. App. D.C. 106, 259 F2d 921 (1958). It is, therefore, doubtful whether even EPA could obtain injunctive relief for any threatened violation of any program requirement. Any program violation, whether threatened or continuing, which does not constitute an irreparable injury must be dealt with via other enforcement mechanisms by both EPA and the District of Columbia.

10. The District adopted 40 CFR Part 270, as amended by the District, as of July 1, 1983.

11. The proposed statutory amendments were enacted by the Council of the District of Columbia on June 6, 1984. However, under the District's home rule charter, no act may become law in the District of Columbia until Congress has had 30 working days to review it, exclusive of weekends, holidays, and adjournments or recesses. D.C. Act 5-144 became D.C. Law 5-103, effective August 10, 1984, after the thirty day Congressional review period had expired. See 31 DCR 4070 (August 17, 1984).
12. The Corporation Counsel's statement which was submitted for interim authorization may be incorporated in its entirety into the final authorization statement, provided that, where an inconsistency exists between the interim authorization statement and the final authorization statement the latter statement shall govern.
13. DCRA has provided EPA with such assurance in the MOA, page 12.

**RESPONSE TO NORTHERN STATES REVIEW TEAM COMMENTS REGARDING  
CORPORATION COUNSEL'S STATEMENT FOR FINAL AUTHORIZATION**

This is in response to the comments made by the Northern States Review Team concerning the District's statutory authority and the Corporation Counsel's statement for final authorization. The numbers on the left hand side of the page identify the number of the comment being addressed.

1. See response to EPA, Region III, comment #4.
2. Section 6(a) of the HWMA authorizes the Mayor to adopt rules and regulations necessary to carry out the purposes and provisions of the Act, including, but not limited to rules and regulations regarding the specific aspects of hazardous waste management identified in section 6(a). Therefore, a specific reference to design and construction standards for TSD facilities is not required. The Mayor has the authority to adopt regulations containing such standards, as they are necessary to insure safe and effective hazardous waste management.
3. See MOA, page 12. See also response to EPA, Region III, comment #1.
4. D.C. has not defined the term revocation in either the HWMA or the accompanying regulations. The D.C. program provides for the immediate suspension of a permit for any violation of the HWMA or the regulations promulgated pursuant thereto, regardless of any threat to public health, public welfare, or the environment. Thus, the D.C. program is equivalent to the Federal program.

5. All program requirements and permit conditions are contained in the Hazardous Waste Management Regulations adopted by the District. Therefore, any violation of a permit condition or program requirement would be a violation of the District's Hazardous Waste Management Regulations.
6. Section 6(a) of the HWMA authorizes the Mayor to adopt regulations necessary to carry out the purposes and provisions of the Act. One of the purposes of the Act, pursuant to section 2(a), is to insure safe and effective hazardous waste management. Thus, the Mayor is authorized to adopt regulations requiring monitoring, recordkeeping and reporting, as they are necessary to insure safe and effective hazardous waste management.
7. Although the D.C. Freedom of Information Act lists certain exemptions from disclosure, such as trade secrets, it would not prevent disclosure of such information as the name and address of a permit applicant or permittee.
8. See response to EPA, Region III, comment #3.
9. Requirements for public participation in the permitting process are contained in section 4010 of the District's Hazardous Waste Management Regulations, which were adopted pursuant to section 6(a) of the HWMA. Public participation in the enforcement process has been addressed in the Corporation Counsel's statement for final authorization, section VIII, page 13.
10. Done, see revised page 9.

11. Sections 2(a) and 6(a) of the HWMA.
12. Sections 2(a) and 6(a) of the HWMA.
13. See response to Northern States Review Team comment #2.
14. The Corporation Counsel has addressed these various points.

See Corporation Counsel's Statement for Final Authorization, Section IV, pages 6-7. Also see response to EPA, Region III, comment #7.

15. On July 22, 1983, the District adopted 40 CFR Parts 260 through 265 (July 1982 ed.), as amended by D.C., and 40 CFR Part 270 (July 1983 ed.), as amended by D.C. In addition, the District adopted regulations (20 DCMR §4010) which are equivalent to 40 CFR Part 124, Subpart A (July 1983 ed.). See 20 DCMR, Chapter 40, as amended. The latest amendments to the District's hazardous waste management regulations became effective on September 28, 1984. See 31 DCR 4807 (September 28, 1984).

The District's incorporation is not intended to include any future revisions. See 20 DCMR 4001.5, as amended.

16. See response to EPA, Region III, comment #9.

Inez Reid  
Inez Smith Reid  
Corporation Counsel, D.C.

10/15/84  
DATE



CORPORATION COUNSEL'S STATEMENT

Attach to end  
of Final Authorization  
A6 statement 10/15/84

I hereby certify, pursuant to my authority as Corporation Counsel and in accordance with Section 3006(c) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 USC 6901, et seq.), and 40 CFR 271 that in my opinion the laws of the District of Columbia provide adequate authority to carry out the program set forth in the "Program Description" submitted by the Department of Environmental Services (DES). I further certify that the enabling legislation for the program was in existence within 90 days after the May 19, 1980, promulgation date of 40 CFR 271. The specific authorities provided, which are contained in statutes or regulations lawfully adopted at the time of this Statement and which are or shall be in full force and effect at the time the program is approved, include those identified below. The District is adopting the applicable regulations contained in 40 CFR Parts 260-265, Part 270 and Part 124, Subpart A, pursuant to the rulemaking authority granted the Mayor in section 6(a) of the D.C. Hazardous Waste Management Act. D.C. Law 2-64, § 6(a), March 16, 1978 (D.C. Code, §6-705(a), (1981)). The District is adopting, with certain amendments, the regulations contained in the July 1, 1982 edition of the Code of Federal Regulations, as amended by a notice of final rulemaking published in the Federal Register on April 1, 1983. (48 Fed. Reg. 14146 (1983)). If these regulations are further amended by EPA, the District may amend its regulations accordingly, provided that the amendments are determined to be consistent with the purposes and provisions of the Act. I further certify that in my opinion the

authorization plan submitted by DES pursuant to 40 CFR 271.127(a), if carried out, would provide the District with the legal authority to meet the requirements for both interim and final authorization contained in Phase I & Phase II (Components A & B).

## I. IDENTIFICATION AND LISTING

D.C. statutes and regulations provide control over a universe of hazardous waste generated, transported, treated, stored and disposed of in the State at the time of program approval which is nearly identical to that which would be controlled by the Federal program under 40 CFR 261.

[Federal Authority: RCRA §3001(b) (42 USC 6921); 40 CFR 261, 271.128(a).]

Citation of Laws and Regulations - "District of Columbia Hazardous Waste Management Act of 1977", D.C. Law 2-64, §§2(a), 5 and 6(a)(1)(a) (D.C. Code, §§ 6-701(a), 6-704 & 6-705(a)(1)(1981)); 40 CFR 261 as adopted by the District of Columbia.

Date of Enactment of Enabling Legislation - March 16, 1978

### Remarks of the Corporation Counsel

Section 5 of the "District of Columbia Hazardous Waste Management Act of 1977" (D.C. Code, §6-704(1981)) (hereinafter "Act") authorizes a description of the criteria for determining what constitutes a hazardous waste, and identification of the types and quantities of hazardous waste generated in the District of Columbia. In addition, Section 6(a)(1)(a) (D.C. Code, §6-705(a)(1)(1981)) of the Act specifically authorizes the Mayor to adopt rules and regulations regarding the criteria for determining what constitutes a hazardous waste. Such regulations may include the designation of hazardous wastes by characteristics and by list. The definition of the term "hazardous waste" contemplates the designation of such waste based, in part, on physical, chemical or infectious characteristics established by the Mayor.

The identification of the types and quantities of hazardous waste generated in the District, and hence those wastes which are to be regulated by this Act, will be based on the criteria for determining what constitutes a hazardous waste. The Mayor is authorized to adopt regulations defining these criteria under section 6 of the Act, which authorizes the Mayor to adopt regulations to carry out the purposes and provisions of the Act. Since the purposes of the Act are to insure safe and effective hazardous waste management, and to establish a program of regulation over hazardous wastes in the District, the criteria adopted may include any and all of the characteristics necessary to attain these goals.

## **II. STANDARDS FOR GENERATORS OF HAZARDOUS WASTE\***

- A. D.C. statutes and regulations provide coverage of all the generators of hazardous waste which is regulated under the D.C. program.

[Federal Authority: RCRA §3002 (42 USC 6922); 40 CFR 262., 271.128(b)(2)]

Citations of Laws and Regulations D.C. Law 2-64, §§2(a) and 6(a) (D.C. Code, §§6-701(a) and 6-705(a)(1981)); 40 CFR 262 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

### Remarks of the Corporation Counsel

Section 6(a) of the Act grants broad rulemaking authority to the Mayor. He is authorized to adopt rules and regulations necessary to carry out the purposes and provisions of the Act. Although several areas appropriate for rulemaking have been identified in section 6(a), the Mayor's rulemaking authority is not limited only to these areas.

The purposes of this Act are to insure safe and effective hazardous waste management, and to establish a program of regulations over the storage,

transportation, treatment, and disposal of hazardous wastes in the District. It is clear that a comprehensive hazardous waste management plan was intended, one which regulates every aspect of hazardous waste in the District from the point of generation to the final treatment, long-term storage, or disposal. In fact, the Committee on Transportation and Environmental Affairs, in commenting on the definition of the term "treatment facility" contained in the Act, stated that:

"This definition explicitly includes generators of hazardous wastes, recognizing that the environmental threat is no less from wastes managed at the site of generation than from those managed elsewhere." Committee Report on Bill 2-163, "District of Columbia Hazardous Waste Management Act of 1977", p. 10.

Thus, the Mayor is clearly authorized to adopt any regulations regarding generators of hazardous waste which are necessary to carry out the purposes and provisions of the Act.

B. D.C. statutes and regulations require all generators of waste to determine whether their waste is hazardous.

[Federal Authority: RCRA §3002 (42 USC 6922), 40 CFR 262.11.

Citations of Laws and Regulations D.C. Law 2-64, §§2(a) and 6(a)(1) (D.C. Code, §§ 6-701(a) and 6-705(a)(1)(1981)); 40 CFR 262.11 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Remarks of the Corporation Counsel

Section 6(a)(1) of the Act authorizes the Mayor to adopt regulations regarding criteria for determining what constitutes a hazardous waste. Under the Mayor's general rulemaking authority to insure safe and effective hazardous waste management, the Mayor can require generators to determine whether their waste is hazardous based on these criteria.

- C. D.C. statutes and regulations require all generators covered by the State program to comply with reporting and recordkeeping requirements substantially equivalent to those found at 40 CFR 262.40 and 40 CFR 262.41.

[Federal Authority: RCRA §3002 (42 USC 6922); 40 CFR 262.40, .41, 271.128(b)(3)]

Citations of Laws and Regulations - D.C. Law 2-64, §§2(a) and 6(a) (D.C. Code §§6-701(a) and 6-705(a) (1981)); 40 CFR 262.40 and 262.41 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Remarks of the Corporation Counsel

The Mayor has the authority to adopt any and all regulations necessary to insure safe and effective hazardous waste management. Adequate recordkeeping and reporting requirements, such as those contained in 40 CFR 262.40 and 262.41, are necessary to effectuate these goals.

- D. For hazardous wastes that are accumulated by such generators for short periods of time prior to shipment, D.C. statutes and regulations require that such generators accumulate such wastes in a manner that does not present a hazard to human health or the environment.

[Federal Authority: RCRA §3002 (42 USC 6922); 40 CFR 262.34, 271.128(b)(4)]

Citations of Laws and Regulations - D.C. 2-64, §6(a) (D.C. Code, § 6-705(a) (1981)); 40 CFR 262.34 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Remarks of the Corporation Counsel

Section 6(a) of the Act authorizes the Mayor to adopt rules and regulations regarding both the storage and on-site handling of hazardous wastes.

- E. Respecting international shipments, D.C. laws and regulations provide requirements which are substantially equivalent to those at 40 CFR 262.50, except that advance notification of international shipment, as required by 40 CFR 262.50(b)(1), shall be filed with the Administrator.

[Federal Authority: RCRA §3002 (42 USC 6922); 40 CFR 262.50, 271.128(b)(5)]

Citations of Laws and Regulations - D.C. Law 2-64, §6(a)(D.C. Code, §6-705(a)(1981)); 40 CFR 262.50 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Remarks of the Corporation Counsel

The Mayor is authorized to adopt regulations regarding the transportation of hazardous wastes.

- F. D.C. statutes and regulations require that such generators of hazardous waste who transport (or offer for transport) such hazardous waste off-site use a manifest system that ensures that inter and intrastate shipments of hazardous waste are designated for delivery and, in the case of intrastate shipments, are delivered only to facilities that are authorized to operate under an approved D.C. or State program or the Federal program.

[Federal Authority: RCRA §3002 (42 USC 6922); 40 CFR 262.20, 271.128(b)(6)]

Citations of Laws and Regulations - D.C. Law 2-64, §6(a)(1)(G) (D.C. Code, §6-705(a)(7)(1981)); 40 CFR 262.20 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Remarks of the Corporation Counsel

The Mayor is authorized to adopt regulations regarding procedures and requirements for the use of a manifest system. He may include any procedures or



requirements necessary to carry out the purposes of the Act including, but not limited to, those identified in 40 CFR 262.20.

G. The D.C. manifest system requires that:

1. The manifest itself identify the generator, transporter, designated facility to which the hazardous waste will be transported, and the hazardous waste being transported.

[Federal Authority: RCRA §3002 (42 USC 6922); 40 CFR 262.21, 271.128(b)(7)(i)]

Citations of Laws and Regulations D.C. Law 2-64, §6(a)(1)(G) (D.C. Code, §6-705(a)(7)(1981)); 40 CFR 262.21 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Remarks of the Corporation Counsel

Section 6(a)(1)(G) authorizes the Mayor to adopt regulations regarding procedures and requirements for the use of a manifest. These may include any requirements consistent with the purposes and provisions of the Act.

2. The manifest must accompany all wastes offered for transport except in the case of shipments by rail or water specified in 40 CFR 262.23(c) and 263.20(e).

[Federal Authority: RCRA §3002 (42 USC 6922); 40 CFR 262.23, 271.128(b)(7)(ii)]

Citations of Laws and Regulations D.C. Law 2-64, §6(a)(1)(G) (D.C. Code, §6-705(a)(7)(1981)); 40 CFR 262.23 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Remarks of the Corporation Counsel

See above.

3. Shipments of hazardous waste that are not delivered to a designated facility are either identified and reported by the



generator to D.C. where the shipment originated or are independently identified by D.C..

[Federal Authority: RCRA §3002 (42 USC 6922); 40 CFR 262.42, 271.128(b)(7)(iii)]

Citation of Laws and Regulations D.C. Law 2-64, §6(a)(1)(G) (D.C. Code, §6-705(a)(7)(1981)); 40 CFR 262.42 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Remarks of the Corporation Counsel

The Mayor is authorized to adopt regulations regarding procedures and requirements for the use of a manifest. The regulations adopted may include any procedures and requirements consistent with the purposes and provisions of the Act.

4. There is notification of undelivered interstate shipments to D.C. and the State in which the facility designated on the manifest is located and to the State in which the shipment may have been delivered (or EPA for unauthorized States).

[Federal Authority: RCRA §3002 (42 USC 6922); 40 CFR 262.42, 271.128(b)(8)]

Citation of Laws and Regulations D.C. Law 2-64, §6(a)(1)(G) (D.C. Code, §6-705(a)(7)(1981)); 40 CFR 262.42 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Remarks of the Corporation Counsel

The notification requirements referred to above are included in the MOA between D.C. and EPA. The District will develop regulations regarding these requirements pursuant to its authorization plan.

### III. STANDARDS FOR TRANSPORTERS OF HAZARDOUS WASTE\*

- A. D.C. statutes and regulations provide coverage of all the transporters of hazardous waste which is regulated under the D.C. program.

[Federal authority: RCRA §3003 (42 USC 6923); 40 CFR 263.10, 271.128(c)(2)]

Citation of Laws and Regulations D.C. Law 2-64, §§2(a), 6(a)(1)(C) and (G) (D.C. Code, §§6-701(a), 6-705(a)(3) & (7) (1981)); 40 CFR 263.10 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Remarks of the Corporation Counsel

Section 6(a) of the Act grants the Mayor broad rulemaking authority to carry out the purposes and provisions of the Act. The Mayor is authorized to adopt regulations regarding the transportation, containerization, and labeling of hazardous wastes, procedures and requirements for the use of a manifest, and any regulations necessary to insure a safe and effective hazardous waste management program.

- B. D.C. statutes and regulations require all transporters covered by the D.C. program to comply with recordkeeping requirements substantially equivalent to those found at 40 CFR 263.22.

[Federal Authority: RCRA §3002 (42 USC 6923); 40 CFR 263.22, 271.128(c)(3)]

Citation of Laws and Regulations D.C. Law 2-64, §§2(a) and 6(a) (D.C. Code, §§6-701(a) and 6-705(a)(1981)); 40 CFR 263.22 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Remarks of the Corporation Counsel

The Mayor is authorized to adopt any regulations regarding the transportation of hazardous wastes which are necessary to insure a safe and effective hazardous waste management program.

- C. D.C. statutes and regulations require such transporters of hazardous waste to use a manifest system that ensures that inter- and intrastate

shipments of hazardous waste are delivered only to facilities that are authorized under an approved D.C. or State program or Federal program.

[Federal Authority: RCRA §3003 (42 USC 6923); 40 CFR 263.20, 271.128(c)(4)]

Citation of Laws and Regulations D.C. Law 2-64, §§2(a) and 6(a)(1)(G) (D.C. Code, §§6-701(a) and 6-705(a)(7)(1981)); 40 CFR 263.20 as adopted by D.C.

Date of Enactment Enabling Legislation March 16, 1978

Remarks of the Corporation Counsel

Section 6(a)(1)(G) of the Act authorizes the Mayor to adopt regulations regarding procedures and requirements for the use of a manifest. The regulations adopted may include any procedures and requirements necessary to carry out the purposes of the Act, one of which is to establish a comprehensive program of regulation over the transportation of hazardous wastes in the District.

- D. D.C. statutes and regulations require that such transporter carry the manifest with all shipments except in the case of shipments by rail or water specified in 40 CFR 263.20(e).

[Federal Authority: RCRA §3003 (42 USC 6923); 40 CFR 263.20(e), 271.128(c)(5)]

Citation of Laws and Regulations D.C. Law 2-64, §§2(a) and 6(a)(1)(G) (D.C. Code, §§6-701(a) and 6-705(a)(7)(1981)); 40 CFR 263.20(e) as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Remarks of the Corporation Counsel

See above.

- E. For hazardous wastes that are discharged in transit, D.C. statutes and regulations require such transporters to notify appropriate D.C. and Federal agencies of the discharges and to clean up such wastes or to take action so that such wastes do not present a hazard to human health

or the environment. Such requirements are substantially equivalent to those found at 40 CFR 263.30 and .31.

[Federal Authority: RCRA §3003 (26 USC 6922); 40 CFR 263.30, 271.128(c)(6)]

Citation of Laws and Regulations D.C. Law 2-64, §§2(a) and 6(a)(1)(C) (D.C. Code, §§6-701(a) and 6-705(a)(3)(1981)); 40 CFR 263.30 and 263.31 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Remarks of the Corporation Counsel

The Mayor is authorized to adopt regulations regarding the transportation of hazardous wastes in the District of Columbia. The purpose of these regulations is to insure safe and effective hazardous waste management. The Council of the District of Columbia found that the public health and safety, and the environment, are threatened where hazardous wastes are not managed in an environmentally sound manner. Since unauthorized discharges or spills of hazardous wastes threaten public health and safety, as well as the environment, the Mayor has the authority to adopt regulations regarding such discharges to insure a safe and effective hazardous waste management program.

#### **IV. STANDARDS FOR STORAGE, TREATMENT AND DISPOSAL FACILITIES**

D.C. statutes and regulations provide standards applicable to storage, treatment and disposal facilities which are substantially equivalent to 40 CFR 265. D.C. law prohibits the operation of facilities not in compliance with such standards. These standards include:

- A. Preparedness for and prevention of releases of hazardous waste controlled by the District and contingency plans and emergency procedures to be followed in the event of a release of such hazardous waste.

[Federal Authority: RCRA §3004 (42 USC 6924); 40 CFR 265 Subparts C and D, 271.128(e)(1)]

Citation of Laws and Regulations D.C. Law 2-64 §§5 & 6(a) (D.C. Code, §§6-704 & 6-705(a) (1981)); 40 CFR 265, Subparts C and D, as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Remarks of the Corporation Counsel

The Mayor is authorized to develop a hazardous waste management plan and to adopt regulations necessary to carry out the purposes and provisions of the Act including, but not limited to, regulations regarding the storage, treatment, and disposal of hazardous wastes, and the operation and maintenance of hazardous waste treatment or disposal facilities. It is necessary for the Mayor to adopt regulations regarding contingency plans and emergency procedures if the District is to have an effective hazardous waste management plan pursuant to §5 of the Act.

B. Closure and post-closure requirements.

[Federal Authority: RCRA §3004 (42 USC 6924); 40 CFR 265 Subparts G and H, 271.128(e)(2)]

Citation of Laws and Regulations D.C. Law 2-64, §§2(a) and 6(a) (D.C. Code, §§6-701(a) and 6-705(a) (1981)); 40 CFR 265, Subparts G and H, as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Remarks of the Corporation Counsel

Section 6 of the Act grants the Mayor broad rulemaking authority. He is authorized to adopt any and all regulations necessary to carry out the purposes and provisions of the Act. To insure safe and effective hazardous waste management,

the Mayor can adopt regulations regarding closure and post-closure requirements for storage, treatment, and disposal facilities in the District.

**C. Groundwater monitoring.**

[Federal Authority: RCRA §3004 (42 USC 6924); 40 CFR 265 Subpart F, 271.128(e)(3)]

Citation of Laws and Regulations D.C. is not adopting the regulations contained in 40 CFR 265, Subpart F, regarding groundwater monitoring as there are no facilities in the District to which these regulations would apply, according to DES.

**D. Security to prevent unknowing and unauthorized access to the facility.**

[Federal Authority: RCRA §3004 (42 USC 6924); 40 CFR 265.14, 271.128(e)(4)]

Citation of Laws and Regulations D.C. Law 2-64, §§2(a) and 6(a) (D.C. Code, §§6-701(a) and 6-705(a)(1981)); 40 CFR 265.14 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Remarks of the Corporation Counsel

Since the Mayor is authorized to adopt regulations to insure safe and effective hazardous waste management, he can adopt regulations regarding security requirements at storage, treatment and disposal facilities.

**E. Facility personnel training.**

[Federal Authority: RCRA §3004 (42 USC 6924); 40 CFR 265.16, 271.128(e)(5)]

Citation of Laws and Regulations D.C. Law 2-64, §6(a) (D.C. Code, §6-705(a)(1981)); 40 CFR 265.16 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Remarks of the Corporation Counsel

Section 6(a) authorizes the Mayor to adopt regulations regarding the storage, treatment and disposal of hazardous wastes including, but not limited to, the

operation and maintenance of hazardous waste treatment or disposal facilities, and the certification of supervisory personnel at hazardous waste treatment or disposal facilities.

F. Inspection, monitoring, recordkeeping, and reporting.

[Federal Authority: RCRA §3004 (42 USC 6924); 40 CFR 265.15, 271.128(e)(6)]

Citation of Laws and Regulations D.C. Law 2-64, §§2(a) and 6(a) (D.C. Code, §§6-701(a) and 6-705(a) (1981)); 40 CFR 265.15 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Remarks of the Corporation Counsel

Section 6(a) authorizes the Mayor to adopt any regulations necessary to carry out the purposes and provisions of the Act, particularly with regard to the storage, treatment and disposal of hazardous wastes. Accurate recordkeeping, reporting, monitoring and inspection requirements are necessary to effectively regulate the storage, treatment and disposal of hazardous wastes.

- G. Compliance with the manifest system including the requirement that the facility owner or operator or the State in which the facility is located must return a copy of the manifest to the generator or to D.C. where the generator is located indicating delivery of the waste shipment.

[Federal Authority: RCRA §3004 (42 USC 6924); 40 CFR 265.71, 271.128(e)(7)]

Citation of Laws and Regulations D.C. Law 2-64, §6(a)(1)(G) (D.C. Code, §6-705(a)(7) (1981)); 40 CFR 265.71 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

### Remarks of the Corporation Counsel

Section 6(a)(1)(G) authorizes the Mayor to adopt regulations regarding procedures and requirements for the use of a manifest during the transportation of hazardous wastes from the point of generation to the point of disposal, treatment, or storage.

- H. Other facility standards to the extent that they are included in 40 CFR 264 and 265. 40 CFR 265, Subparts F, K, L, M, N and Q, are not being adopted by the District, as they would not apply to any facilities located within D.C.

[Federal Authority: RCRA §3004 (42 USC 6924); 40 CFR 271.128(e)(8)]

Citation of Laws and Regulations D.C. Law 2-64, §6(a) (D.C. Code, §6-705(a)(1981)); 40 CFR 264 and 265 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

### Remarks of the Corporation Counsel

The Mayor is specifically authorized to adopt regulations regarding the storage, treatment, and disposal of hazardous wastes, and any other regulations necessary to carry out the purposes and provisions of the Act.

### **V. INSPECTIONS**

D.C. law provides authority for officers engaged in compliance evaluation activities to enter any conveyance, vehicle, facility or premises subject to regulation or in which records relevant to program operation are kept in order to inspect, monitor, or otherwise investigate compliance with the D.C. program including compliance with permit terms and conditions and other program requirements.



[Federal Authority: RCRA §3007 (42 USC 6927), 40 CFR 271.128(g)]

Citation of Laws and Regulations D.C. Law 2-64, §8(a) (D.C. Code, §6-707(a) (1981)).

Date of Enactment of Enabling Legislation March 16, 1978

Remarks of the Corporation Counsel

Section 8(a) of the Act authorizes the Mayor to enter any place, any location, wherever hazardous wastes are generated, stored, treated, or disposed. This would include vehicles and conveyances, as well as warehouses and treatment facilities. It would also include facilities where hazardous wastes have been recently handled or stored, as this is necessary for effective enforcement. In addition, samples of any substances used in the treatment of waste may be obtained. This would include samples of containers and labels used where there are regulations governing their use. For the purpose of enforcing the Act and any regulations promulgated pursuant thereto, the Mayor may enter without delay, inspect and obtain samples, and copy any relevant records, documents, or reports. Since permits are required under §4 of the Act, the Mayor is authorized to conduct inspections to determine compliance with the provisions of that section and any regulations promulgated pursuant thereto.

## **VI. ENFORCEMENT REMEDIES**

D.C. statutes and regulations provide the following:

- A. Authority to restrain immediately by order or by suit in D.C. Superior Court any person from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment.

[Federal Authority: RCRA §3006 (42 USC 6926); 40 CFR 271.128(f) (1) (i)]

Citation of Laws and Regulations D.C. Law 2-64, §§2(a) and 11 (D.C. Code, §§6-701(a) and 6-710 (1981)).

Date of Enactment of Enabling Legislation March 16, 1978.

Remarks of the Corporation Counsel

Section 11 of the Act authorizes the Mayor to restrain immediately, by order or by appropriate civil action in D.C. Superior Court, any person engaged in the storage, treatment, transportation or disposal of hazardous wastes in an illegal, unsafe, or otherwise improper manner as to endanger the public health and welfare. This would include generators as well, since they do store hazardous wastes as defined in the Act. Moreover, to exclude generators from this provision would be inconsistent with the purposes and provisions of the Act. It is clear, both from the Act and its legislative history, that it was the intent of the Council to regulate hazardous wastes in the District from the point of generation to final disposition. Likewise, the Council was concerned with threats to the environment, as well as public health and safety, by improper hazardous waste management.

Illegal, unsafe or improper storage, treatment, transportation, or disposal of hazardous wastes which would have an adverse impact on the environment would have a similarly adverse impact on public health and welfare. The public does not live in a vacuum. The public welfare depends upon the state of the environment in which it exists. Therefore, in order to carry out the purposes and provisions of the Act it is necessary, and hence authorized, to protect against threats to the environment as well as threats to the public health and welfare.

- B. Authority to sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement;

[Federal Authority: RCRA §3006 (42 USC 692); 40 CFR 271.128(f) (1) (ii)]

Citation of Laws and Regulations D.C. Law 2-64, §§11 and 12(a) (D.C. Code, §§6-710 & 6-711(a) (1981)).

Date of Enactment of Enabling Legislation March 16, 1978

Remarks of the Corporation Counsel

Section 12(a) of the Act authorizes the Mayor to institute such action as is necessary to terminate a continuing violation of any provision of the Act or the rules and regulations promulgated pursuant thereto. This would include a civil action in the D.C. Superior Court to secure a temporary restraining order, a preliminary injunction, or a permanent injunction.

Section 11 authorizes the Mayor to enjoin a threatened violation, since an actual violation of the Act or regulations promulgated pursuant thereto is not necessary. Under this provision, the Mayor may seek to enjoin any action he finds unsafe or so improper as to endanger the public health and welfare. At this stage it need not, under Section 11, be equivalent to a violation of the Act or regulations promulgated pursuant thereto.

- C. Authority to assess or sue to recover in court civil penalties in at least the amount of \$1,000 per day for any program violation or seek criminal remedies including fines in at least the amount of \$1,000 per day for any program violation.

[Federal Authority: RCRA §3004 (42 USC 692); 40 CFR 271.128(f) (1) (iii)]

Citation of Laws and Regulations D.C. Law 2-64, §12(b) (D.C. Code, §6-711(b) (1981)).

Date of Enactment of Enabling Legislation March 16, 1978

### Remarks of the Corporation Counsel

Section 12(b) of the Act provides for a criminal penalty of a fine not to exceed \$10,000 or imprisonment not to exceed 6 months, or both, with each day of a violation constituting a separate offense. It applies to a violation of any provision of the Act or of the rules and regulations promulgated pursuant thereto. Prosecution would be by the U.S. Attorney for the District of Columbia.

Although the Act does not provide for a civil monetary penalty, it does provide for the issuance of a compliance order by the Mayor, and commencement of a civil action to secure a temporary restraining order, a preliminary injunction, a permanent injunction, or other appropriate relief. This would include a civil action to obtain damages, or to reimburse the District for clean-up costs, when public property has been affected. All of these remedies, taken together, are sufficient to redress violations of the Act or regulations enacted pursuant thereto, and provide an effective deterrent to future violations.

### **VII. PUBLIC PARTICIPATION IN THE D.C. ENFORCEMENT PROCESS.**

D.C. laws and regulations provide for public participation in the state enforcement process by providing either:

- A. Authority which allows intervention as of right in any civil or administrative action to obtain the remedies specified in VI above by any citizen having an interest which is or may be adversely affected; or
- B. Assurances that the D.C. agency or enforcement authority will:
  - (1) Investigate and provide written response to all citizen complaints duly submitted.

- (2) Not oppose intervention by any citizen where permissive intervention may be authorized by statute, rule, or regulation; and
- (3) Publish and provide at least 30 days for public comment on any proposed settlement of a D.C. enforcement action.

[Federal Authority: RCRA §7004, 40 CFR 271.128(f)(2)]

Citation of Laws and Regulations D.C. Law 2-64, §6(a) (D.C. Code, §6-705(a)(1981)).

Date of Enactment of Enabling Legislation March 16, 1978

Remarks of the Corporation Counsel

Section 6(a) of the Act authorizes the Mayor to adopt any regulations necessary to carry out the purposes and provisions of the Act. This would include regulations regarding public participation in the permitting and enforcement process such as those delineated in subsection B, consistent with the D.C. Administrative Procedure Act. The procedures identified in subsection B have been included in the MOA between EPA and D.C.. The District will develop regulations regarding these requirements pursuant to its authorization plan.

**VIII. AUTHORITY TO SHARE INFORMATION WITH EPA**

D.C. statutes and regulations provide authority for any information obtained or used in the administration of the D.C. program to be available to EPA upon request without restriction.

[Federal Authority: RCRA §3007(b) (42 USC 6927); 40 CFR 271.132(a)]

Citation of Laws and Regulations D.C. Law 1-96, §2 (D.C. Code, §1-1524 (1981)).

Date of Enactment of Enabling Legislation March 25, 1977

Remarks of the Corporation Counsel

Although section 2 of the D.C. Freedom of Information Act provides for certain exemptions from disclosure, it specifically states that this section shall not operate to prevent disclosure of information where such disclosure is authorized or mandated by other laws. Therefore, section 2 would not prevent the disclosure of information required to be submitted to EPA under the Resource Conservation and Recovery Act (RCRA).

## PHASE II (A & B)

### I. STANDARDS FOR STORAGE, TREATMENT AND DISPOSAL FACILITIES

RCRA §3004, 42 USC §6924

State statutes and regulations provide standards for financial responsibility and closure and post closure care applicable to storage, treatment and disposal facilities which are substantially equivalent to 40 CFR 265 Subparts G and H, as amended by 46 Fed. Reg. 2802 et seq. (January 12, 1981). State law prohibits the operation of facilities not in compliance with such standards in the following manner:

Citation of Laws and Regulations D.C. Law 2-64, §§2(a) and 6(a) (D.C. Code, §§6-701(a) and 6-705(a) (1981)); 40 CFR 265, Subparts G and H, as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

#### Analysis of Legal Authority

Section 6(a) of the Act grants the Mayor broad rulemaking authority. He is authorized to adopt any and all regulations necessary to carry out the purposes and provisions of the Act. To insure safe and effective hazardous waste management, the Mayor can adopt regulations regarding financial responsibility, closure and post-closure requirements for storage, treatment and disposal facilities in the District.



## II. D.C. PERMITTING REQUIREMENTS

RCRA §3005, 42 USC §6925

- A. D.C. statutes and regulations prohibit the construction of new facilities or the operation of existing facilities engaged in the storage of hazardous waste in containers or in the storage or treatment of hazardous waste in tanks, surface impoundments, incinerators or waste piles without a permit [and/or the District allows the above named facilities which would qualify for interim status under the Federal program to remain in operation pending permit action if they comply with D.C. facility standards substantially equivalent to EPA interim status standards at 40 CFR Part 265 (See 40 CFR 271.129(b))].

Citation of Laws and Regulations D.C. Law 2-64, §§4 and 6(a) (D.C. Code, §§6-703 & 6-705(a)(1981); 40 CFR 265 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

### Analysis of Legal Authority

Section 4 of the Act authorizes the Mayor to issue permits for the storage, treatment, transportation or disposal of hazardous wastes in the District. However, it does not specify the standards or requirements which must be met to obtain a permit. Hence, the law could not be carried out without further delineation. Section 6(a) of the Act, however, authorizes the Mayor to adopt regulations necessary to carry out the purposes and provisions of the Act. Thus, the Mayor can adopt any regulations regarding permitting requirements for



storage, treatment or disposal facilities. The Mayor can also adopt regulations regarding those facilities which qualify for interim status under the Federal program. They may be allowed to continue to operate pending permit action provided they comply with the applicable requirements contained in Part 265 and Part 270 of these regulations. They will be viewed as having temporary permits to be enforced via the self-implementing standards contained in Part 265, which the Mayor has adopted pursuant to his authority in section 6(a) of the Act.

- B. D.C. statutes and regulations require that facilities that would be deemed to have a Federal permit by rule under 40 CFR 270.60 must obtain permits or are otherwise subject to fully enforceable D.C. standards which are substantially equivalent to Federal standards at 40 CFR 270.60. (See 40 CFR 271.129(f)).

Citation of Laws and Regulations D.C. Law 2-64, §§4 and 6(a) (D.C. Code, §§6-703 & 6-705(a) (1981)); 40 CFR 270.60 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Analysis of Legal Authority

All treatment, storage, or disposal facilities must obtain a permit to operate in the District under section 4 of the Act. The Mayor can adopt specific rules or regulations dealing with permits under section 6(a) of the Act. This would include regulations dealing with permits by rule as well as any other type of permit.

- C. D.C. statutes and regulations which allow exemptions from D.C. permitting requirements do not apply to persons other than those excluded by the Federal program at 40 CFR 270.1 (c)(2) (See 40 CFR 271.129(d) and 271.14).

Citation of Laws and Regulations D.C. Law 2-64, §§4 & 6(a) (D.C. Code, §§6-703 & 6-705(a) (1981)); 40 CFR 270 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978.

Analysis of Legal Authority

Section 6(a) of the Act authorizes the Mayor to adopt regulations to carry out the permitting provisions contained in section 4 of the Act.

- D. D.C. statutes and regulations require that permits be effective for fixed terms no greater than 10 years. (See 40 CFR 271.129(e)).

Citation of Laws and Regulations D.C. Law 2-64, §4 (b) (D.C. Code, §6-703(b) (1981))

Date of Enactment of Enabling Legislation March 16, 1978

Analysis of Legal Authority

Section 4(b) of the Act limits the term of a permit to one year.

- E. D.C. statutes and regulations require that all permits contain fully enforceable conditions that are substantially equivalent to those at 40 CFR 270.30, 270.31 and 270.32. (See 40 CFR 271.129(d) and 271.14)

Citation of Laws and Regulations D.C. Law 2-64, §§4 and 6(a) (D.C. Code §§6-703 & 6-705(a) (1981)); 40 CFR 270 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Analysis of Legal Authority

The Mayor is authorized to adopt regulations regarding permit conditions and requirements, since they are necessary to carry out the permitting provision of the Act.

- F. Where D.C. statutes and regulations authorize permit variances, permits are required to contain enforceable requirements that compliance be attained in fixed schedules and as soon as possible. Schedules of compliance are required where immediate compliance is not required. (See 40 CFR 271.129(d), 271.14 and 270.33).

Citation of Laws and Regulations D.C. Law 2-64, §§4 and 6(a) (D.C. Code, §§6-703 & 6-705 (a) (1981)); 40 CFR 270.33 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Analysis of Legal Authority

Section 4(b) of the Act authorizes the Mayor to vary or modify the terms of any permit. Section 6(a) authorizes the Mayor to adopt regulations regarding permitting requirements including, but not limited to, compliance schedules.

- G. D.C. statutes and regulations provide that where permits are transferred, the transferee must comply with all requirements of the permit and the District must be notified in advance of the transfer. (See 40 CFR 271.14 and 270.40).

Citation of Laws and Regulations D.C. Law 2-64, §§4 and 6(a) (D.C. Code, §§6-703 & 6-705(a)(1981)); 40 CFR 270.40 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Analysis of Legal Authority

The Mayor is authorized, under Section 6(a) of the Act, to adopt any regulations necessary to carry out the purposes and provisions of the Act.

- H. D.C. statutes and regulations authorize modification of permits where alterations are made to a facility or to activities at a facility or where new information is received. (See 40 CFR 271.129(d), 271.14, 270.41).

Citation of Laws and Regulations D.C. Law 2-64, §§4 and 6(a) (D.C. Code, §§6-703 & 6-705(a)(1981)); 40 CFR 270.41 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Analysis of Legal Authority

Section 4(b) of the Act authorizes modification of permits. Section 6(a) authorizes the Mayor to adopt regulations regarding the modification of permits and other permitting requirements.

- I. D.C. statutes and regulations authorize termination of permits for cause, including noncompliance with the permit, misrepresentation of or failure to disclose all relevant facts during permit issuance or the permit term and where the activity endangers human health or the environment and can only be acceptably regulated by termination. (See 40 CFR §271.129(d), §271.14 and 270.43)

Citation of Laws and Regulations D.C. Law 2-64 §§4(b), 6(a) and 10 (D.C. Code, §§6-703(b), 6-705(a) and 6-709(1981)); 40 CFR 270.43 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Analysis of Legal Authority

Section 4(b) authorizes the Mayor to suspend, revoke, or deny a permit to achieve the purposes of the Act. The Mayor can adopt regulations regarding

permit revocation conditions pursuant to Section 6(a) of the Act. Section 10 of the Act authorizes the Mayor to suspend or revoke a permit for a violation of the Act or regulations promulgated pursuant thereto. A suspension is equivalent to a revocation except that it cannot exceed 3 months. It would be equally unlawful to operate a hazardous waste treatment, storage, or disposal facility with a suspended permit as with one that has been revoked. Although a suspension would expire after 3 months, this can be extended, where necessary, by subsequent suspensions or revocation. Additionally, the suspension takes effect immediately with an "appeal" or hearing to follow.

J. D.C. statutes and regulations require that a facility operating in interim status amend its application where changes occur in:

- (i) the wastes handled at the facility;
- (ii) processes and activities at the facility; and
- (iii) facility ownership or operational control.

(See 40 CFR 271.129(d), 271.14, 270.10 and 270.72).

Citation of Laws and Regulations D.C. Law 2-64 §6(a) (D.C. Code, §6-705(a) (1981)); 40 CFR 270.10 & 270.72 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Analysis of Legal Authority

Section 6(a) of the Act authorizes the Mayor to adopt regulations regarding permitting procedures and requirements to carry out the purposes and provisions of the Act.

- K. If the District allows the use of emergency permits, D.C. statutes and regulations only allow such temporary emergency permits in cases of

imminent and substantial endangerment to human health similar to those at 40 CFR 270.61. (See CFR 271.129(d) and 271.14).

Citation of Laws and Regulations D.C. Law 2-64, §6(a) (D.C. Code, §6-705(a)(1981)); 40 CFR 270.61 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Analysis of Legal Authority

See above.

### **III. D.C. PERMITTING STANDARDS**

RCRA §3004, 42 USC §6924

D.C. Statutes and regulations require that all permits issued by the District require compliance with standards substantially equivalent to Federal standards at 40 CFR Part 264 Subparts A through L and Subpart O. These standards include:

- A. Preparedness for and prevention of releases of hazardous waste controlled by the District, and contingency plans and emergency procedures to be followed in the event of a release of such hazardous waste. (See 40 CFR 264 Subparts C and D).

Citation of Laws and Regulations D.C. Law 2-64 §§ 5 and 6(a) (D.C. Code, §§6-704 & 6-705(a)(1981)); 40 CFR 264, Subparts C & D, as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

### Analysis of Legal Authority

Section 6(a) authorizes the Mayor to adopt regulations regarding permitting requirements and conditions. Section 5 of the Act authorizes the Mayor to develop a hazardous waste management plan for the District. Although such a plan has not yet been developed, it could include contingency plans and emergency procedures.

#### B. Security to prevent unknowing and unauthorized access to the facility.

(See 40 CFR 264.14).

Citation of Laws and Regulations D.C. Law 2-64 §§2(a) and 6(a) (D.C. Code, §§6-701(a) and 6-705(a) (1981)); 40 CFR 264.14 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

### Analysis of Legal Authority

The Mayor can adopt regulations regarding the operation and maintenance of hazardous waste treatment or disposal facilities and any other regulations necessary to insure safe and effective hazardous waste management.

#### C. Facility personnel training. (See 40 CFR 264.16).

Citation of Laws and Regulations D.C. Law 2-64 §§2(a) and 6(a) (D.C. Code, §§6-701(a) and 6-705(a) (1981)); 40 CFR 264.16 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

### Analysis of Legal Authority

The Mayor can adopt any regulations necessary to insure safe and effective storage, treatment, or disposal of hazardous wastes in the District.

- D. Compliance with the manifest system, including the requirement that the facility owner or operator, or the State in which the facility is located, must return a copy of the manifest to the generator or D.C. indicating delivery of the waste shipment. (See 40 CFR 264.71).

Citation of Laws and Regulations D.C. Law 2-64 §6(a)(1)(G) (D.C. Code, §6-705(a)(7)(1981)); 40 CFR 264.71 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Analysis of Legal Authority

Section §6(a)(1)(G) authorizes the Mayor to adopt regulations regarding procedures and requirements for the use of a manifest during the transportation of hazardous wastes from the point of generation to the point of disposal, treatment or storage.

- E. Closure and post-closure care and financial requirements (See 40 CFR Part 264 Subpart G and H).

Citation of Laws and Regulations D.C. Law 2-64 §§2(a) and 6(a) (D.C. Code, §§6-701(a) and 6-705(a)(1981)); 40 CFR 264, Subparts G & H, as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Analysis of Legal Authority

Section 6(a) of the Act authorizes the Mayor to adopt any regulations necessary to carry out the purposes and provisions of the Act. To insure safe and



effective hazardous waste management, the Mayor can adopt regulations regarding closure, post-closure and financial requirements.

- F. Inspections, monitoring, recordkeeping, and reporting by facility personnel. (See 40 CFR 264.15 and Part 264 Subpart E).

Citation of Laws and Regulations D.C. Law 2-64, §§2(a), 6(a) and 8(a) (D.C. Code, §§6-701(a), 6-705(a) & 6-707(a)(1981)); 40 CFR 264.15 and 40 CFR 264, subpart E, as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Analysis of Legal Authority

The Mayor is authorized to adopt any regulations necessary to carry out the purposes and provisions of the Act. Accurate recordkeeping and reporting is necessary for safe and effective hazardous waste management. Section 8(a) of the Act specifically authorizes the Mayor to enter and inspect any place where hazardous wastes are generated, stored, treated or disposed.

- G. Use and management of containers (See 40 CFR Part 264 Subpart I).
- H. Requirements for tanks (See 40 CFR Part 264 Subpart J).
- I. Requirements for surface impoundments (See 40 CFR Part 264 Subpart K).
- J. Requirements for waste piles (See 40 CFR Part 264 Subpart L).

K. Requirements for Incinerators (See 40 CFR Part 264 Subpart O).

Citation of Laws and Regulations D.C. Law 2-64, §6(a) (D.C. Code, §6-705(a)(1981)); 40 CFR 264, Subparts I,J,K,L & O, as adopted by D.C. (Note: The citations and legal analysis contained in this section apply to subsections G through K.)

Date of Enactment of Enabling Legislation March 16, 1978

Analysis of Legal Authority

Section 6(a) of the Act grants broad rulemaking authority to the Mayor. He can adopt regulations regarding the storage, treatment and disposal of hazardous wastes; the transportation and containerization of hazardous wastes; the operation and maintenance of hazardous waste treatment or disposal facilities; and any other regulations necessary to carry out the purposes and provisions of the Act.

IV. D.C. PERMITTING PROCEDURES

RCRA §3005, 42 USC §6925

- A. D.C. statutes and regulations require that all new facilities for the storage of hazardous waste in containers or for hazardous waste storage or treatment in tanks, incinerators, surface impoundments or waste piles obtain a permit prior to beginning physical construction of the facility. For existing facilities legally in operation, the District requires completion of the permit application process within a reasonable time. (See 40 CFR 271.129(d), 271.14, 270.10).

B. D.C. statutes and regulations require that permit applications contain information that is substantially equivalent to information required at 40 CFR 270.10, 270.13 and 270.14 - 270.29. (See 40 CFR 271.129(d) and 271.14).

C. D.C. statutes and regulations set standards for "trial burn" permits, utilized to make certain determinations, which are substantially equivalent to those at 40 CFR 270.62. (See 40 CFR 271.129(d) and 271.14).

Citation of Laws and Regulations D.C. Law 2-64, §§4 and 6(a) (D.C. Code, §§6-703 & 6-705(a)(1981)); 40 CFR 270.10, 270.13 - 270.29, and 270.62 as adopted by D.C. (Note: The citations and legal analysis contained in this section apply to subsections A through C.)

Date of Enactment of Enabling Legislation March 16, 1978

Analysis of Legal Authority

Section 4 of the Act requires a permit to construct or operate any hazardous waste storage, treatment or disposal facility. Section 6(a) authorizes the Mayor to adopt regulations necessary to carry out the purposes and provisions of the Act. This would include regulations regarding permitting requirements, applications and procedures.

D. D.C. statutes and regulations which provide for the protection of confidential information do not allow the name and address of the permit applicant or permittee to be entitled to such treatment. (See 40 CFR 271.129(d), 271.14 and 270.12).

Citation of Laws and Regulations D.C. Law 1-96, §2 (D.C. Code, §1-1524 (1981));  
40 CFR 270.12 as adopted by D.C.

Date of Enactment of Enabling Legislation March 16, 1978

Analysis of Legal Authority

Although the D.C. Freedom of Information Act lists certain exemptions from disclosure, such as trade secrets, it would not prevent disclosure of such information as the name and address of a permit applicant.

- E. D.C. statutes and regulations require that permit applications be signed by persons authorized to bind the owner and operator of the facility under D.C. law and contain a certification that the information contained in the application is true and accurate. (See 40 CFR 271.129(d), 271.14 and 270.11).
- F. D.C. statutes and regulations require that the District make available for public comment, prior to permit issuance, information substantially equivalent to that required at 40 CFR 124.6 and 124.8. That information may be contained in a draft permit. (See 40 CFR 271.129(d) and 271.14).
- G. D.C. statutes and regulations require that notice be issued to the public of preparation of the document containing the information at III E or draft permit and of scheduling of a public hearing. (See 40 CFR 271.129(d), 271.14 and 124.10(a)).

- H. D.C. statutes and regulations require that the public notice contain information substantially equivalent to that in 40 CFR 124.10(d)(1)(i)-(v) and (ix), 124.10(d)(2) and 124.10(e). (See 40 CFR 271.14).
- I. D.C. statutes and regulations require that the notice be published in major local newspapers and broadcast over local radio stations and be sent to each unit of local government having jurisdiction over the area in which the proposed facility seeks to locate and other D.C. agencies with authority over facility construction or operation. (See Solid Waste Disposal Act Amendments of 1980, P.L. 96-482 Section 26).
- J. D.C. statutes and regulations allow any interested person to submit written comments. (See 40 CFR 271.129(d), 271.14 and 124.11).
- K. D.C. statutes and regulations provide for informal public hearings if the District receives written opposition and a request for a hearing within 45 days of publication of the notice. (See Solid Waste Disposal Act Amendments of 1980, P.L. 90-482 Section 26).
- L. D.C. statutes and regulations require that such public hearings allow the presentation of written and oral comments and be conducted in a manner substantially equivalent to the requirements of 40 CFR 124.17 (See 40 CFR 271.129(d) and 271.14).

M. D.C. statutes and regulations require that written responses to significant comments be made available to the public. (See 40 CFR 271.129(d), 271.14 and 124.17).

Citation of Laws and Regulations D.C. Law 2-64, §6(a) (D.C. Code, §6-705(a)(1981)); 40 CFR 270.11 & 40 CFR 124, Subpart A, as adopted by D.C. (Note: The citations and legal analysis contained in this section apply to subsections E through M.)

Date of Enactment of Enabling Legislation March 16, 1978

Analysis of Legal Authority

The Mayor has the authority to adopt rules and regulations regarding the above listed requirements (E-M). Pursuant to section 6(a) of the Act, the Mayor is authorized to adopt any and all regulations necessary to carry out the purposes and provisions of the Act. This would include regulations regarding public participation in the permitting process, consistent with the District's Administrative Procedure Act. It also includes the requirements contained in 40 CFR 124.10(c)(1)(ix) and 124.10(c)(2)(ii), which were inadvertently omitted by EPA when 40 CFR Part 124 was republished in the Federal Register, and therefore, not included in the District's Notice of Proposed Rulemaking published in the District Register on June 10, 1983. 48 Fed. Reg. 14264 (1983); 30 DCR 2841 (June 10, 1983). The Notice of Final Rulemaking which will be published in the District Register will indicate the inclusion of these two sections in the Hazardous Waste Management Regulations adopted by the District.

## ADDENDUM

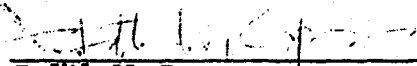
This is in response to several comments made by EPA concerning the Corporation Counsel's statement which cannot be addressed within the context of the standardized form used above. The numbers on the left hand side of the page identify the number of the comment being addressed.

3. As previously stated, §6(a) of the HWMA authorizes the Mayor to adopt any rules and regulations necessary to carry out the purposes and provisions of the Act. This would include federal regulations, provided they are adopted in accordance with the D.C. Administrative Procedure Act.
27. The term "waste" as it is used in §3(b) of the Act may be further defined as "solid waste" as that term is defined in the regulations.
28. The term "other entity", since it is not defined in the Act, is defined by common usage. The term "other entity" would include any other being, existence, thing, person, creature, body, object, organism, etc. It would, therefore, include a state, a subdivision of a State, a municipality or an interstate body.
29. The term "treatment" includes any method, techniques or process which would render hazardous waste nonhazardous, safer for transport or less hazardous, amenable for recovery of material resources or energy, reduced in volume or safer to store and dispose of.
30. The definition of the term "transport" does include transportation to a treatment facility as that would be an intermediate site between generation and the ultimate storage or disposal of the waste.

32. Any regulations adopted by the Mayor pursuant to §6(a) of the Act would be equally applicable to permitted facilities under §4 of the Act. Indeed, additional standards or regulations are necessary before the provisions of §4 of the Act can be carried out. All relevant regulations under §6(a) would apply to §4 facilities, and they may be included as requirements in permits.
33. The permitting provision of the Act is not specifically directed at either owners or operators, but rather at the type of facility or activity involved. Anyone (whether owner or operator) is subject to the requirements of §4 to obtain a permit before constructing, altering or operating a hazardous waste facility, or storing, transporting, treating or disposing of hazardous wastes.
37. Although the Mayor may grant a variance pursuant to §7 of the Act, the District has agreed, in the Memorandum of Agreement between D.C. and EPA (p. 11), not to exercise this authority in such a manner as to render the District's program less stringent than the Federal program. Since the variance provision in the Act is optional, and not mandatory, the Mayor is not required to issue any variances whatsoever. He may, therefore, restrict the granting of a variance to insure that the District's program is no less stringent than the Federal program.
38. Section 6(a) of the Act authorizes the Mayor to adopt rules and regulations necessary to carry out the purposes and provisions of the Act. Section 5, another provision of the Act, mentions the recycling or



reuse of hazardous wastes as part of a hazardous waste management plan. In order to carry out or develop such a plan it would be necessary for the Mayor to adopt rules and regulations regarding the recycling or reuse of hazardous wastes.

  
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Judith W. Rogers  
Corporation Counsel, D.C.

7/13/83  
DATE