

US EPA ARCHIVE DOCUMENT

**DISTRICT OF COLUMBIA CONSOLIDATED
CORPORATION COUNSEL'S STATEMENT
FOR FINAL AUTHORIZATION,
INCLUDING CHANGES TO THE
FEDERAL RCRA PROGRAM
THROUGH JUNE 1997**

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DISTRICT OF COLUMBIA CONSOLIDATED
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THROUGH JUNE 1997

I hereby certify, pursuant to my authority as Corporation Counsel for the District of Columbia and in accordance with Section 3006(b) of the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, 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 District of Columbia Department of Health, Environmental Health Administration. The specific authorities provided are contained in statutes or regulations lawfully adopted at the time this Statement is signed and which are in effect now as specified below.

This current Statement supercedes the prior "Corporation Counsel's Statement" signed by Judith Rogers dated July 1, 1983 and the "Corporation Counsel's Statement for Final Authorization" signed by Inez Smith Reid dated October 15, 1984 which contain the statement and certification of the authorities for the District of Columbia's "base" hazardous waste program. The prior Statements are based upon the authority in the District of Columbia Hazardous Waste Management Act of 1977, D.C. Law 2-64, D.C. Code §6-701 *et seq.* To the extent that opinions contained in the previous Statements are still relevant, the previous language has been incorporated into this Corporation Counsel Statement.

The District of Columbia Hazardous Waste Management Act is still the statutory authority for the District's program, but has been amended by D.C. Laws 5-103, 6-42, 8-37, 8-229, 10-68 and 12-261 as contained in the D.C. Code §6-701 *et seq.* (1981 ed., 1995 Repl. Vol., 1999 Supplement). These statutory provisions have not changed since 1999. The statutory authorities for the District are documented in the District's Legislation Checklist and HSWA Statutory Checklist, herein incorporated by reference.

The District's regulations, while still appearing in Title 20 of the District of Columbia Municipal Regulations (DCMR), have also been amended so that, rather than incorporating by reference, the Federal provisions have been restated and renumbered in the format of the District of Columbia regulations for the benefit of the regulated community. Because of this change in the District's regulations, this current Corporation Counsel's Statement contains the statement and certification for the District's provisions analogous to the Federal base program and all revisions to that program through June of 1997 (that is, through RCRA Cluster VII), including making assessment information available to the Agency for Toxic Substances and Disease Registry (non-checklist item SI), except for the following:

- (1) corrective action (Revision Checklists 17L, 44A, 44B, 44C and 121),
- (2) the "Availability of Information" requirements (Non-checklist Item AI),
- (3) requirements for existing and newly regulated surface impoundments provided in RCRA §3005(j)(1)&(6) (Non-checklist Item SR1),
- (4) the variances from surface impoundment requirements provided in RCRA §3005(j)(2), (9) and (13) (Non-checklist Item SR2),

- (5) radioactive mixed waste (non-checklist item MW),
- (6) burning and blending of hazardous waste (RCRA §§ 3004(q)(2)(A) and 3004(r)(2)&3) (non-checklist item BB)..

The criminal penalties for used oil violations (CP), as originally intended for authorization, addressed the violations of the requirements under 40 CFR 266.40 through 266.44. These provisions have been replaced by the recycled used oil management standards in 40 CFR Part 279. The District has adopted the 40 CFR Part 279 standards and subjects used oil violators to the same criminal penalties for hazardous waste violators, as required under 40 CFR 271.16(a)(3)(ii).

The District's regulatory provisions are documented in Consolidated Checklists C1 through C11 in Appendices I through XI. An "X" in the "Equivalent" column implies that the District provision is identical to the its Federal counterpart. A "D" in this column implies that the District has made modifications to the Federal text, but the provision is equivalent to the Federal counterpart. Differences between the District's provisions and the Federal provisions are noted on the Consolidated Checklists.

A supplemental Corporation Counsel's Statement contains the statement and certification for the District's provisions addressing changes made to the Federal program between July 1, 1997 and July 1, 1998 (RCRA Cluster VIII). The 20 DCMR regulations addressed by the Consolidated Corporation Counsel's Statement and the Supplemental Statement are effective September 29, 2000.

I. DEFINITION OF TERMS, REFERENCES AND TEST METHODS

A. *District of Columbia statutes and regulations contain definition of terms and a list of publications (as in 40 CFR 260.11) which have applicability throughout the statutes and regulations as indicated in Consolidated Checklist C1 which includes the revisions made by Revision Checklists 5, 11, 13, 23, 24, 28, 34, 35, 39, 45, 49, 52, 67, 71, 73, 79, 82, 85, 99, 100, 109, 111, 112, 118, 125, 126, 128, 132, 139, 141, 142A, 142B, 142C, 142D, 154, 156, and 158.*

Federal Authority: RCRA §§2002(a), 3001 through 3007, 3010, 3014, 3015, 3017 through 3019 and 7004; 40 CFR 260.10 and 260.11, as amended March 20, 1984 (49 FR 10490), December 4, 1984 (49 FR 47390), January 4, 1985 (50 FR 614), March 24, 1986 (51 FR 10146), May 2, 1986 (51 FR 16422), July 14, 1986 (51 FR 25422), November 7, 1986 (51 FR 40572), March 16, 1987 (52 FR 8072), July 8, 1987 (52 FR 25760), October 27, 1987 (52 FR 41295), December 10, 1987 (52 FR 46946), July 19, 1988 (53 FR 27290), September 2, 1988 (53 FR 34079), September 29, 1989 (54 FR 40260), January 23, 1990 (55 FR 2322), March 9, 1990 (55 FR 8948), June 21, 1990 (55 FR 25454), December 6, 1990 (55 FR 50450), February 21, 1991 (56 FR 7134), December 23, 1991 (56 FR 66365), January 29, 1992 (57 FR 3462), August 18, 1992 (57 FR 37194), August 25, 1992 (57 FR 38558), September 10, 1992 (57 FR 41566), November 18, 1992 (57 FR 54452), July 20, 1993 (58 FR 38816), August 31, 1993 (58 FR 46040), January 4, 1994 (59 FR 458), June 2, 1994 (59 FR 28484), December 6, 1994 (59 FR 62896), January 13, 1995 (60 FR 3089), April 4, 1995 (60 FR 17001), May 11, 1995 (60 FR 25492), February 12, 1997 (63 FR 6622), and June 13, 1997 (62 FR 32452).

Citation of Laws and Regulations; Date of Enactment and Adoption

D.C. Code §§6-701(a), 6-702(1)-(3), 6-702(5)-(9) and 6-705(a)

Title 20 District of Columbia Municipal Regulations (hereinafter 20 DCMR) §§5400.1, 4017.1, and 4017.3.

Remarks of the Corporation Counsel

D.C. Code §§6-701(a) and 6-705(a) authorize the Mayor to develop a regulatory program to properly handle hazardous waste management and as such may define terms and list publications which have applicability throughout the District's regulations. At § 6-702, the District has defined terms which are used in the District of Columbia Hazardous Waste Management Act. As indicated on the Legislation Checklist, the District's definitions for "generator", "hazardous waste", "manifest", "storage", "transport" and "treatment" are consistent with and equivalent to federal definitions. The definition of "person in the D.C. Code § 6-702(5) includes the Federal government but does not include political subdivisions or States. However, the definition includes "other entity". 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. In addition, the District's definition for "person" at 20 DCMR 5400.1 is equivalent to the Federal definition at 40 CFR 260.10. Like RCRA, the District's statutes do not contain a definition for treatment, storage or disposal facility. However, in addition to the definition at § 6-702(9), which addresses treatment facilities, under §§ 6-702(a)(2) &(a)(5), the Mayor has the authority to promulgate regulations regarding the generation, storage, treatment and disposal of hazardous waste, as well as the operation and maintenance of hazardous waste treatment or disposal facilities. The District's Hazardous Waste Management Act does not contain a definition of either "waste" or "solid waste"; however, in its regulations the District adopts the Federal definitions of both "solid" and "hazardous waste" and, as such, views hazardous waste as a subset of solid waste in the same manner in which the Federal program views these wastes. In addition, the District's definition of solid waste at D.C. Code §6-3451(10) in the District's Solid Waste Management Act is similar and consistent with RCRA §1004(27).

The 20 DCMR §5400.1 definitions listed on Consolidated Checklist C1 found in Appendix I are identical to their Federal counterparts except where certain terms, such as "Act" are redefined to address the State, rather than the Federal, counterpart and except as listed below. Note that because of the District's requirements for regulatory development all of the definitions pertaining to the District's hazardous waste regulations must be placed in 20 DCMR §5400.1. Thus, that section contains definitions found at 40 CFR 261.1(c), 262.81, 264.141, 264.1031, 266.201, 268.2, 270.2, 273.6, and 279.61 as well as the following District-specific definitions: Department, Director, District Agency, District or D.C., District of Columbia/EPA Agreement, District only wastes, hazardous waste transfer facility, HSWA tank, HWMA, and non-HSWA tank.

The definitions of small quantity generator, manifest, storage, and disposal, while in the Federal regulations, differ from their Federal counterparts. These differences are discussed in Consolidated Checklist C1 found in Appendix I of this Statement. In the Federal regulations, the definition of "full regulation" is found in the comment after 40 CFR 261.5(e)(2). This definition has been included in the District's definitions at 20 DCMR Chapter 54. It differs from the Federal definition in that full regulations apply to generators of more than 100 kilograms per calendar month rather than 1,000 kilograms per calendar month. This difference makes the District's program more stringent than the Federal program.

20 DCMR §§4017.1 and 4017.3 are identical to 40 CFR 260.11(a)&(b). Note that the District regulations do not have analogs to 40 CFR 260.1 through 260.3 because they are primarily introductory in nature and are not required for authorization. Revision Checklist 34 did revise these provisions, but the change was non-substantive.

B. District of Columbia statutes and regulations allow petitions for equivalent testing or analytical methods as specified in 40 CFR 260.21 and as indicated in Consolidated Checklist C1 which includes the requirements indicated in Revision Checklist 11.

Federal Authority: RCRA §§2002(a), 3001 and 3004; 40 CFR 260.21, as amended December 4, 1984 (49 FR 47390).

Citation of Laws and Regulations; Date of Enactment and Adoption

D.C. Code §§6-701(a) and 6-705(a)
20 DCMR §§4001.6 through 4001.9

Remarks of the Corporation Counsel

D.C. Code §§6-701(a) and 6-705(a) authorize the Mayor to develop a regulatory program to properly handle hazardous waste including the authority to grant variances such as those addressed by 40 CFR 260.21 allowing any person to petition for a regulatory amendment to add testing or analytical methods. The District has left the authority for granting these variances with the EPA Administrator. 20 DCMR §§4001.6 through 4001.9 are identical to 40 CFR 260.21 except for renumbering.

II. IDENTIFICATION AND LISTING

Federal Authority: Statutory Authorization RCRA §3001; 40 CFR 271.9, as amended September 22, 1986 (51 FR 33712).

A. District of Columbia statutes and regulations contain a list of hazardous wastes and characteristics for identifying hazardous waste which encompasses all wastes controlled under 40 CFR Part 261 as indicated in Consolidated Checklist C2 (formerly Checklists I B and I C), which includes the changes made by Revision Checklists 4, 7, 13, 14, 17 J, 18, 20, 21, 22, 23, 26, 29, 33, 34, 37, 41, 46, 53, 56, 57, 67, 68, 69, 72, 73, 74, 75, 76, 78, 81, 82, 83, 86, 88, 89, 91, 92, 110, 115, 119, 120, 126, 128, 134, 140, and 159.

Federal Authority: RCRA §3001(b); 40 CFR 261.10 through 261.35 and applicable appendices as amended February 10, 1984 (49 FR 5308), May 10, 1984 (49 FR 19922), January 4, 1985 (50 FR 614), January 14, 1985 (50 FR 1978), April 11, 1985 (50 FR 14216), July 15, 1985 (50 FR 28702), October 23, 1985 (50 FR 42936), December 31, 1985 (50 FR 53315), February 13, 1986 (51 FR 5327), February 25, 1986 (51 FR 6537), March 24, 1986 (51 FR 10146), May 28, 1986 (51 FR 19320), August 6, 1986 (51 FR 28296), October 24, 1986 (51 FR 37725), November 7, 1986 (51 FR 40572), June 5, 1987 (52 FR 21306), July 10, 1987 (52 FR 26012), April 22, 1988 (53 FR 13382), September 13, 1988 (53 FR 35412), October 31, 1988 (53 FR 43878), October 31, 1988 (53 FR 43881), September 29, 1989 (54 FR 40260), October 6, 1989 (54 FR 41402), December 11, 1989 (54 FR 50968), February 14, 1990 (55 FR 5340), March 9, 1990 (55 FR 8948), March 29, 1990 (55 FR 11798), May 2, 1990 (55 FR 18496), May 4, 1990 (55 FR 18726), June 1, 1990 (55 FR 22520), June 29, 1990 (55 FR 26986), November 2, 1990 (55 FR 46354), December 6, 1990 (55 FR 50450), December 17, 1990 (55 FR 51707), January 31, 1991 (56 FR 3864), February 25, 1991 (56 FR 7567), May 1, 1991 (56 FR 19951), May 13, 1991 (56 FR 21955), June 13, 1991 (56 FR 27332), July 1, 1991 (56 FR 30192), August 18, 1992 (57 FR 37284), October 15, 1992 (57 FR 47376), November 24, 1992 (57 FR 55114), December 24, 1992 (57 FR 61492), February 2, 1993 (58 FR 6854), August 31, 1993 (58 FR 46040), January 4, 1994 (59 FR 458), June 20, 1994 (59 FR 31551), February 9, 1995 (60 FR 7824), April 17, 1995 (60 FR 19165), and May 12, 1995 (60 FR 25619).

Citation of Laws and Regulations; Date of Enactment and Adoption

D.C. Code §§6-701(a) and 6-705(a)

20 DCMR §§4107 through 4110, 4112, Chapter 41 Appendices I&II and 4016.

Remarks of the Corporation Counsel

D.C. Code §§6-701(a) and 6-705(a) provide the Mayor with the general authority to promulgate rules that properly manage hazardous waste. D. C. Code §6-705(a)(1) specifically authorizes the Mayor to adopt rules and regulations regarding the criteria for determining what constitutes hazardous waste. Such regulations may include the designation of hazardous wastes by characteristics and by list. This would include federal regulations, provided they are adopted in accordance with the D.C. Administrative Procedures Act. Since the purposes of the District of Columbia Hazardous Waste Management Act are to ensure 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 characteristics necessary to attain these goals.

The provisions at 20 DCMR §§4107 through 4110, 4112.1(b)&(c), and Chapter 41 Appendices I&II are identical to their Federal analogs except that the introductory language for certain of the provisions has been modified slightly to accommodate the formatting and numbering restrictions of the *District of Columbia Register*. Note that Revision Checklist 165 also affected the provisions in Chapter 41. The Supplemental Corporate Counsel Statement addresses the amendments made relative to this checklist.

At 20 DCMR §4112, the District incorporates by reference 40 CFR 261, Appendices I, II, III and IX. The District's authority for incorporation by reference is set forth in regulations issued pursuant to the District of Columbia Documents Act, D.C. Law 2-153 (D.C. Code, Section 1-1531 *et seq.* at 1 DCMR 501.6). The date for the incorporation by reference is given at 20 DCMR §4016. Any references to the Federal regulations are to the version of those regulations as they appear in the July 1, 1998 Code of Federal Regulations.

B. District of Columbia statute and regulations define solid and hazardous waste so as to control all hazardous waste controlled under 40 CFR Part 261, as indicated in Consolidated Checklist C2 (formerly Checklist I A) which includes the changes made by Revision Checklists 8, 9, 13, 17 C, 19, 23, 28, 34, 49, 65, 71, 74, 80, 82, 83, 84, 85, 90, 92, 94, 95, 96, 104, 105, 107, 108, 109, 110, 111, 112, 117 A, 117 B, 122, 129, 135, 137, 140, 150, 156, and 157.

Federal Authority: RCRA §3001; 40 CFR 261.1 through 261.4 as amended June 5, 1984 (49 FR 23284), November 13, 1984 (49 FR 44978), January 4, 1985 (50 FR 614), April 11, 1985 (50 FR 14216), August 20, 1985 (50 FR 33541), July 15, 1985 (50 FR 28702), November 29, 1985 (50 FR 49164), November 19, 1986 (51 FR 41900), April 13, 1987 (52 FR 11819), March 24, 1986 (51 FR 10146), July 14, 1986 (51 FR 25422), November 7, 1986 (51 FR 40572), July 19, 1988 (53 FR 27290), September 1, 1989 (54 FR 36592), January 23, 1990 (55 FR 2322), March 29, 1990 (55 FR 11798), June 29, 1990 (55 FR 26986), October 5, 1990 (55 FR 40834), December 6, 1990 (55 FR 50450), January 31, 1991 (56 FR 3864), February 1, 1991 (56 FR 3978), February 13, 1991 (56 FR 5910), February 21, 1991 (56 FR 7134), April 2, 1991 (56 FR 13406), June 13, 1991 (56 FR 27300), July 1, 1991 (56 FR 30192), July 17, 1991 (56 FR 32688), August 19, 1991 (56 FR 41164), August 27, 1991 (56 FR 42504), May 20, 1992 (57 FR 21524), June 22, 1992 (57 FR 27880), July 1, 1992 (57 FR 29220), July 10, 1992 (57 FR 30657), August 18, 1992 (57 FR 37194), August 18, 1992 (57 FR 37284), August 25, 1992 (57 FR 38558), September 10, 1992 (57 FR 41566), March 3, 1992 (57 FR 7628), June 1, 1992 (57 FR 23062), October 30, 1992 (57 FR 49278), May 3, 1993 (58 FR 26420), June 17, 1993 (58 FR 33341), February 18, 1994 (59 FR 8362), July 28, 1994 (59 FR 38536), September 19, 1994 (59 FR 47982), January 3, 1995 (60 FR

242), February 9, 1995 (60 FR 7824), April 17, 1995 (60 FR 19165), May 12, 1995 (60 FR 25619), March 26, 1996 (61 FR 13103), February 12, 1997 (62 FR 6622), and May 12, 1997 (62 FR 25998).

Citation of Laws and Regulations; Date of Enactment and Adoption

D.C. Code §§6-701(a) and 6-705(a)
20 DCMR §§4100 through 4101 and 5400.1

Remarks of the Corporation Counsel

D.C. Code §§6-701(a) and 6-705(a) give the Mayor general authority to develop a regulatory program to ensure the proper handling of hazardous waste including the authority to define both solid and hazardous waste as well as allow exclusion of certain solid and hazardous wastes provided that such exclusions do not jeopardize the safe and effective handling of hazardous waste in the District. The definition of "hazardous waste" contemplates the designation of such waste based, in part, on physical, chemical or infectious characteristics established by the Mayor. The Mayor may also choose not to adopt an exclusion included in the Federal program because nothing in the District or Federal law precludes the District from being more stringent or broader in scope than the Federal program.

Except where noted in Consolidated Checklist C2 included in Appendix II, 20 DCMR §§4100 through 4101 are identical to their Federal analogs except the introductory language for certain of the provisions has been modified slightly to accommodate the formatting and numbering restrictions of the *District of Columbia Register*. The specific provisions which are not identical to the Federal program are addressed on Consolidated Checklist C2. In all cases the District provision is either equivalent, more stringent, or broader in scope than its Federal counterpart.

Note that Revision Checklists 164, 167D-F, and 168 also affected the District's provisions analogous to 40 CFR 261.1 through 261.4. The Supplemental Corporate Counsel Statement addresses the amendments made relative to these checklists.

C. District of Columbia statutes and regulations provide: 1) exemption from regulations for hazardous waste as specified at 40 CFR 261.5, 261.6, 261.7, 261.8, 260.40 and 260.41, 2) variance from classification as a solid waste as specified at 260.30, 260.31 and 260.33, 3) variance to be classified as a boiler as specified at 260.32 and 260.33, 4) regulation as a universal waste as specified in 261.9, or 5) capability to add a hazardous wastes as a universal waste as specified in 260.23 and indicated in Consolidated Checklists C1 and C2 (formerly Checklist I A) which include the changes made by Revision Checklists 13, 14, 17 A, 17 J, 19, 23, 31, 34, 47, 74, 79, 112, 135, 137, 142A, 142B, 142C, 142D, 142E, 153, 154, and 157.

Federal Authority: RCRA §3001; 40 CFR 260.23, 260.30 through 260.41, and 261.5 through 261.9, as amended January 4, 1985 (50 FR 614), January 14, 1985 (50 FR 1978), April 11, 1985 (50 FR 14216), August 20, 1985 (50 FR 33541), July 15, 1985 (50 FR 28702), November 29, 1985 (50 FR 49164), March 24, 1986 (51 FR 10146), August 8, 1986 (51 FR 28664), November 7, 1986 (51 FR 40572), November 19, 1986 (51 FR 41900), April 13, 1987 (52 FR 11819), July 19, 1988 (53 FR 27162), March 29, 1990 (55 FR 11798), June 21, 1990 (55 FR 25454), June 29, 1990 (55 FR 26986), September 10, 1992 (57 FR 41566), July 28, 1994 (59 FR 38536), September 19, 1994 (59 FR 47982), January 3, 1995 (60 FR 242), May 11, 1995 (60 FR 25492), July 1, 1996 (61 FR 34252), November 25, 1996 (61 FR 59932), and May 12, 1997 (62 FR 25998).

Citation of Laws and Regulations; Date of Enactment and Adoption

D.C. Code §§6-701(a) and 6-705(a)
20 DCMR §§4001.11 through 4001.19, 4102 through 4106 and 4200.2

Remarks of the Corporation Counsel

D.C. Code §§6-701(a) and 6-705(a) give the Mayor general authority to develop a regulatory program to ensure the proper handling of hazardous waste including the authority to define both solid and hazardous waste as well as allow exclusion of certain solid and hazardous wastes provided that such exclusions do not jeopardize the safe and effective handling of hazardous waste in the District. The Mayor may also choose not to adopt an exclusion included in the Federal program because nothing in District or Federal law precludes the District from being more stringent or broader in scope than the Federal program. The Mayor also has the authority to regulate any quantity of hazardous waste and establish standards for "small quantity" generators under these same general authorities.

Except where noted in Consolidated Checklists C1 and C2 included in Appendices I and II, 20 DCMR §§4001.11 through 4001.19 and 4102 through 4106 are identical to their Federal analogs except the introductory language for certain of the provisions has been modified slightly to accommodate the formatting and numbering restrictions of the *District of Columbia Register*.

Many of the differences between the District and the Federal program addressed on Consolidated Checklist C2 are associated with generators of small amounts of hazardous waste because the District has adopted a two-tier approach to regulating generators of hazardous waste, in contrast to the three-tier approach adopted in the Federal regulations. Generators who generate 100 kilograms or less of hazardous waste per calendar month are small quantity generators. These generators must also meet the generation limits of 20 DCMR 4102.5 (the analog to 40 CFR 261.5(e)). Generators of over 100 kilograms of hazardous waste per calendar month or who do not meet the generation limits of 20 DCMR 4102.5 are "generators" or large quantity generators and are subjected to the same degree of regulation as are generators of over 1,000 kilograms of hazardous waste under the Federal program.

The District does not conditionally exempt generators of hazardous waste. Under the District's program, small quantity generators of 0 to 100 kilograms of hazardous waste per month are required to file a biennial report, to have a contingency plan and employee training, and to manifest and dispose of their waste in the same manner as Federal large quantity generators. In fact, the only differences in the District's treatment of its small quantity generators and its "generators" or large quantity generators is that small quantity generators may accumulate waste for up to 180 days as long as they do not accumulate more than 600 kilograms of hazardous waste nor exceed the accumulation limits for acute hazardous waste. Large quantity generators may only store hazardous waste for 90 days or less. Note that under the Federal program, conditionally exempt small quantity generators may accumulate wastes indefinitely provided that the requirements at 40 CFR 261.5(f)(2) or 261.5(g)(2) are met. Because the District does not conditionally exempt any generators, it does not have direct analogs to 40 CFR 261.5(f)(1) and (g)(1) in 20 DCMR § 4102 (the District's analog to 261.5). Instead, at § 4200.2, generators who qualify for the reduced requirements of 20 DCMR § 4102, are subject to the generator requirements of Chapter 2, which includes the waste analysis requirements identical to those at 40 CFR 262.11. These differences relative to generators make the District's program both broader in scope (because conditionally exempt generators who will be exempt from Federal regulation are subject to full regulation in the District) and more stringent (because of the stricter requirements) than the Federal program.

Note that Revision Checklist 166 also affected the District's provisions analogous to 40 CFR 260.23, 260.30 through 260.41 and 261.5 through 261.9. The Supplemental Corporate Counsel Statement addresses the amendments made relative to this checklist.

D. District of Columbia statutes and regulations provide for delisting hazardous wastes including public notice and opportunity for comment before requests are granted or denied as indicated in Consolidated Checklist C1 which includes the changes made by Revision Checklists 17 B, 34, 111, 126 and 142E.

Federal Authority: RCRA §§2002(a) and 3001; 40 CFR 260.20 and 260.22, as amended July 15, 1985 (50 FR 28702), November 7, 1986 (51 FR 40572), June 27, 1989 (54 FR 27114) August 25, 1992 (57 FR 38558), August 31, 1993 (58 FR 46040), and May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations; Date of Enactment and Adoption

D.C. Code §§6-701(a) and 6-705(a)
20 DCMR §§4001.1 through 4001.5 and 4001.10

Remarks of the Corporation Counsel

D.C. Code §6-705(a)(1) specifically authorizes the Mayor to promulgate rules that establish criteria for determining what constitutes a hazardous waste. The listing or delisting of a waste is implicit in this authority; however, the District has chosen not to exercise its independent authority to delist hazardous waste. As indicated at 20 DCMR §§ 4001.10, the District's regulations permit delisting only by applying directly to the EPA Administrator and only if authorized by the EPA Administrator. In the MOA, the District has agreed to notify and transmit to EPA all delisting petitions received. Hazardous wastes delisted by EPA are deemed to be delisted in the District.

As indicated on Consolidated Checklist C1 in Appendix I, The District provisions at 20 DCMR §§4001.1 through 4001.5 and 4001.10 are identical to 40 CFR 260.20 and 260.22 except the introductory language for certain of the provisions has been modified slightly to accommodate the formatting and numbering restrictions of the *District of Columbia Register*.

III. STANDARDS FOR GENERATORS

Federal Authority: RCRA §3002; 40 CFR 271.10, as amended April 1, 1983 (48 FR 14146), June 30, 1983 (48 FR 30113), March 20, 1984 (49 FR 10490), March 26, 1984 (49 FR 11180), August 8, 1986 (51 FR 28664), and September 22, 1986 (51 FR 33712).

A. District of Columbia statutes and regulations provide coverage of all generators covered by 40 CFR Part 262 and include requirements for EPA identification number, reporting and recordkeeping, accumulation of hazardous waste for short time periods, waste placed in containment buildings, packaging, labeling, marking, placarding, international shipments, manifesting of hazardous waste for off-site shipment, notification procedures for interstate shipments as indicated in Consolidated Checklist C3 (formerly Checklist II) which includes the revisions represented by Revision Checklists 1, 5, 12, 17 D, 17 R, 23, 28, 31, 32, 34, 39, 42, 48, 71, 78, 82, 83, 92, 97 109, 142A, 154, and 156.

Federal Authority: RCRA §3002; 40 CFR Part 262, as amended January 28, 1983 (48 FR 3977), March 20, 1984 (49 FR 10490), December 20, 1984 (49 FR 49568), July 15, 1985 (50 FR 28702), March 24, 1986 (51 FR 10146), July 14, 1986 (51 FR 25422), August 8, 1986 (51 FR 28664), October 1, 1986 (51 FR 35190), November 7, 1986 (51 FR 40572), July 8, 1987 (52 FR 25760), September 23, 1987 (52 FR 35894), July 19, 1988 (53 FR 27164), January 23, 1990 (55 FR 2322), June 1, 1990 (55 FR 22520), December 6, 1990 (55 FR 50450), January 31, 1991 (56 FR 3864), July 1, 1991 (56 FR 30192),

September 4, 1991 (56 FR 43704), August 18, 1992 (57 FR 37194), December 6, 1994 (59 FR 62896), May 11, 1995 (60 FR 25492), February 9, 1996 (61 FR 4903), November 25, 1996 (61 FR 59932), and February 12, 1997 (62 FR 6622).

Citation of Laws and Regulations; Date of Enactment and Adoption

D.C. Code §§6-701(a) and 6-705(a)
20 DCMR Chapter 42 and §§5400.1 and 4016

Remarks of the Corporation Counsel

D.C. Code §§6-701(a) and 6-705(a) give the Mayor the authority to develop a regulatory program for the proper handling of hazardous waste encompassing all of the requirements of 40 CFR 271.10. He is authorized to adopt rules and regulations necessary carry out the purposes and provisions of the District of Columbia Hazardous Waste Management Act. D.C. Code §6-705(a)(2) provides specific authority with regard to the generation of hazardous waste. These authorities allow the District to regulate all of the generators regulated under the Federal program, require generators to obtain an identification number as well as require that generators comply with the reporting and recordkeeping requirements equivalent to 40 CFR 262.40 and 262.41. D.C. Code §6-705(a)(7) specifically addresses the authority for developing procedures and requirements for a manifest system. D.C. Code §6-705(a)(3) provides specific authority to establish regulations regarding the labeling of hazardous waste that are consistent with the U.S. Department of Transportation requirements. The District also has the authority to develop regulations respecting international shipments equivalent to 40 CFR 262 Subparts E, F and H.

Except where noted on Consolidated Checklist C3 in Appendix III, 20 DCMR Chapter 42 is identical to 40 CFR Part 262 except the introductory language for certain of the provisions has been modified slightly to accommodate the formatting and numbering restrictions of the *District of Columbia Register*.

The District has adopted a two-tiered approach for regulating generators, rather than a three-tiered approach like the Federal program. No generators are conditionally exempt under the District's regulations and at 20 DCMR §4200.2, the District's small quantity generators (those generating 100 kilograms or less of hazardous waste per month—analogue to the Federal conditionally exempt small quantity generator) are subject to the generator requirements of 20 DCMR Chapter 42 rather than just the reduced requirements of the District's analog to 40 CFR 261.5. Generators of between 100 kilograms and 1,000 kilograms per calendar month are regulated like large quantity generators. As such, the District's program is broader in scope and more stringent than the Federal program with regard to the generators of 100 kilograms or less per calendar month, and is more stringent with regard to generators of between 100 kilograms and 1,000 kilograms per calendar month.

The District also has more stringent notification and reporting requirements, as noted on Consolidated Checklist C3. Also, the District's provision at 20 DCMR § 4208 requires all generators to obtain a permit and pay permit fees, thus making the District's program is broader in scope than the Federal program.

The District has included analogs to 40 CFR 262 Subparts E, F and H addressing the imports and exports of hazardous waste. In all cases where appropriate, the authority for these requirements has been left with the EPA Administrator.

At 20 DCMR §4209, the District incorporates by reference the 40 CFR 262 Appendix. The District's authority for incorporation by reference is set forth in regulations issued pursuant to the District of Columbia Documents Act, D.C. Law 2-153 (D.C. Code, Section 1-1531 *et seq.* at 1 DCMR 501.6). The

date for the incorporation by reference is given at 20 DCMR §4016 . Any references to the Federal regulations are to the version of the those regulations as they appear in the July 1, 1998 Code of Federal Regulations.

IV. STANDARDS FOR TRANSPORTERS

Federal Authority: RCRA §3003; 40 CFR 271.11, as amended April 1, 1983 (48 FR 14146), August 8, 1986 (51 FR 28664), and September 22, 1986 (51 FR 33712).

A. *District of Columbia statutes and regulations provide coverage of all the transporters covered by 40 CFR Part 263 and include requirements for EPA identification number, recordkeeping, manifesting, and actions regarding hazardous waste discharged during transit, as indicated in Consolidated Checklist C4 (formerly Checklist III) which includes the changes made by Revision Checklists 23, 31, 34, and 156.*

Federal Authority: RCRA §3003; 40 CFR Part 263, as amended March 24, 1986 (51 FR 10146), August 8, 1986 (51 FR 28664), November 7, 1986 (51 FR 40572), and February 12, 1997 (62 FR 6622).

Citation of Laws and Regulations; Date of Enactment and Adoption

D.C. Code §§6-701(a) and 6-705(a)
20 DCMR Chapter 43

Remarks of the Corporation Counsel

D.C. Code §§6-701(a) and 6-705(a) give the Mayor the authority to develop a regulatory program for the proper management of hazardous waste. D.C. Code §6-705(a)(3) gives the Mayor specific authority to regulate the transport of hazardous waste with the restriction that the regulations must be consistent with the U.S. Department of Transportation requirements. The Mayor is authorized to adopt regulations regarding the transportation, containerization, and labeling of hazardous wastes, and any regulations necessary to ensure a safe and effective hazardous waste management program. This authority includes the ability to regulate all transporters covered by the Federal program and to require that transporters obtain identification numbers, carry a manifest, and be responsible for spills discharged in transit.

Except where noted on Consolidated Checklist C4 included in Appendix IV, 20 DCMR Chapter 43 is identical to 40 CFR Part 263, except the introductory language for certain of the provisions has been modified slightly to accommodate the formatting and numbering restrictions of the *District of Columbia Register*. Specifically, the District has more stringent requirements in its analogs to 40 CFR 263.12, 263.20(h) and 263.30(c)(2). Also, at § 4300.12, the district has a 24 hour parking limit for vacuum trucks, pump trucks and tankers containing hazardous waste.

20 DCMR §4300.11 is an additional provision not found in the Federal program. It requires that all transporters holding a hazardous waste at a transfer facility in the District must obtain a Hazardous Waste Transfer Facility Permit pursuant to the requirements of 20 DCMR 4303, including the payment of fees. These requirements make the District's program broader in scope than the Federal program.

V. STANDARDS FOR FACILITIES

Federal Authority: RCRA §§3004 and 3004(e); 40 CFR 271.12 and 271.13(a), as amended on April 1, 1983 (48 FR 14146) and September 22, 1986 (51 FR 33712).

A. *District of Columbia statutes and regulations provide standards for hazardous waste management facilities equivalent to 40 CFR Parts 264 and 266 including: 1) technical standards for tanks, containers, waste piles, incineration, chemical, physical and biological treatment facilities, surface impoundments, landfills, land treatment facilities, boilers and industrial furnaces, containment buildings, corrective action management units and temporary units 2) financial responsibility during facility operation, 3) preparedness for and prevention of discharges or releases of hazardous waste, 4) contingency plans and emergency procedures, 5) closure and post-closure requirements, including financial requirements ensuring that money will be available during these periods for monitoring and maintenance, 6) ground-water monitoring, 7) security to prevent unauthorized access to the facility, 8) facility personnel training, 9) inspections, monitoring, recordkeeping and reporting; 10) manifest requirements, and 11) other requirements to the extent they are included in 40 CFR Parts 264 and 266. These standards for hazardous waste management facilities are as indicated in Consolidated Checklists C5 (formerly Checklist IV A) and C7 which include the changes made by Revision Checklists 1, 13, 14, 16, 17 D, 17 E, 17 F, 17 G, 17 H, 17 I, 17 J, 17 K, 19, 24, 27, 28, 30, 34, 37, 39, 40, 43, 45, 48, 50, 52, 54, 55, 64, 66, 74, 77, 78, 79, 82, 85, 87, 91, 92, 94, 96, 98, 100, 101, 102, 105, 109, 111, 112, 113, 114, 118, 120, 122, 124, 125, 126, 127, 131, 133, 135, 136, 137, 142A, 142B, 142C, 142D, 145, 154, 156, and 158.*

Federal Authority: RCRA §3004; 40 CFR Parts 264 and 266, as amended January 28, 1983 (48 FR 3977), January 4, 1985 (50 FR 614), January 14, 1985 (50 FR 1978), April 11, 1985 (50 FR 14216), April 30, 1985 (50 FR 18370), August 20, 1985 (50 FR 33541), November 29, 1985 (50 FR 49164), May 2, 1986 (51 FR 16422), July 11, 1986 (51 FR 25350), July 14, 1986 (51 FR 25422), August 15, 1986 (51 FR 29430), August 8, 1986 (51 FR 28556), November 7, 1986 (51 FR 40572), November 19, 1986 (51 FR 41900), April 13, 1987 (52 FR 11819), June 4, 1987 (52 FR 21010), June 5, 1987 (52 FR 21306), July 8, 1987 (52 FR 25760), July 9, 1987 (52 FR 25942), November 18, 1987 (52 FR 44314), December 10, 1987 (52 FR 46946), July 19, 1988 (53 FR 27164), August 17, 1988 (53 FR 31138), September 1, 1988 (53 FR 33938), September 2, 1988 (53 FR 34079), September 28, 1988 (53 FR 37912), October 11, 1988 (53 FR 39720), August 14, 1989 (54 FR 33376), September 6, 1989 (54 FR 36967), March 29, 1990 (55 FR 11798), May 9, 1990 (55 FR 19262), June 1, 1990 (55 FR 22520), June 21, 1990 (55 FR 25454), December 6, 1990 (55 FR 50450), February 21, 1991 (56 FR 7134), April 26, 1991 (56 FR 19290), June 13, 1991 (56 FR 27332), July 1, 1991 (56 FR 30192), July 1, 1991 (56 FR 30200), July 17, 1991 (56 FR 32688), August 27, 1991 (56 FR 42504), September 5, 1991 (56 FR 43874), January 29, 1992 (57 FR 3462), February 18, 1992 (57 FR 5859), March 6, 1992 (57 FR 8086), June 22, 1992 (57 FR 27880), August 18, 1992 (57 FR 37194), August 25, 1992 (57 FR 38558), July 1, 1991 (56 FR 30200), September 10, 1992 (57 FR 41566), September 16, 1992 (57 FR 42832), September 30, 1992 (57 FR 44999), November 18, 1992 (57 FR 54452), December 24, 1992 (57 FR 61492), May 3, 1993 (58 FR 26420), May 24, 1993 (58 FR 29860), June 17, 1993 (58 FR 33341), July 20, 1993 (58 FR 38816), August 31, 1993 (58 FR 46040), November 9, 1993 (59 FR 59598), March 24, 1994 (59 FR 13891), June 10, 1994 (59 FR 29958), July 28, 1994, (59 FR 38536), August 24, 1994 (59 FR 43496), September 19, 1994 (59 FR 47982), December 6, 1994 (59 FR 62896), January 3, 1995 (60 FR 242), May 11, 1995 (60 FR 25492), May 19, 1995 (60 FR 26828), July 11, 1995 (60 FR 35703), September 29, 1995 (60 FR 50426), November 13, 1995 (60 FR 56952), February 9, 1996 (61 FR 4903), June 5, 1996 (61 FR 28508), November 25, 1996 (61 FR 59932), February 12, 1997 (62 FR 6622), and June 13, 1997 (62 FR 32452).

Citation of Laws and Regulations; Date of Enactment and Adoption

D.C. Code §§6-701(a), 6-702(1), 6-703(b), 6-705(a), 6-904, 6-905, and 6-906
20 DCMR Chapters 1-6, Chapters 44 and 45, 20 DCMR §§5400.1, 4016 and 4018

Remarks of the Corporation Counsel

D.C. Code §§ 6-701(a) and 6-705(a) give the Mayor general authority to develop a regulatory program to properly manage hazardous waste including the following requirements for treatment, storage or disposal facilities: general facility standards, preparedness and prevention, contingency plan and emergency procedures, manifesting and recordkeeping/reporting, releases from solid waste management units, closure/post closure, financial responsibility, operation and management requirements for specific types of hazardous waste management units, corrective action for solid waste management units, air emission standards for hazardous waste units and storage of hazardous waste munitions and explosives. D.C. Code §6-705(a) also provides specific authority addressing a regulatory program for the treatment, storage and disposal of hazardous waste. D.C. Code §6-705(a)(5) provides authority to develop regulations for the operation and management of hazardous waste treatment, storage or disposal facilities or sites. D.C. Code §6-705(a)(7) addresses regulatory authority relative to the procedures and requirements for the use of a manifest system.

Note that the District is not applying for authorization for the corrective action program with this authorization package. However, D.C. Code §6-705(a)(9) gives specific authority to the Mayor to develop regulations for the requirement for on-site and off-site corrective action for owners or operators of a disposal, storage and treatment facility. D.C. Code §6-703(b) provides the authority to place the requirement for corrective action in a permit requiring the permit holder to take corrective action within or beyond the facility boundary if necessary to protect human health and the environment.

The District's authority to control air emissions from hazardous waste management units comes from the general authorities at D.C. Code §§6-701(a) and 6-705(a), the definition of "disposal" which includes emission into the air, and from the D.C. Air Pollution Control Act, D.C. Code §§6-904 through 6-906 and regulations issued pursuant thereto found at 20 DCMR Chapters 1-6.

At D.C. Code §§6-701(a)(2) and 6-705(a)(8), the Mayor has the specific authority to develop a regulatory program for the marketing, distribution and burning of fuel produced from a hazardous waste or containing a hazardous waste. The District's regulations are more stringent in that the burning of hazardous waste for energy recovery is prohibited (as is the burning of used oil containing any amount of hazardous waste) in incinerators, industrial furnaces, cement kilns, or boilers. The District's air regulations at 20 DCMR §504 prohibit single chamber and flue-fed incinerators, as well as the construction of any new incinerators in the District. Existing incinerators are required to have permits which explicitly list what can be burned. These permits prohibit the burning of hazardous waste and any used oil mixed with hazardous waste. The Mayor is not precluded from promulgating regulations which are more stringent than the Federal requirements. The Mayor has the authority to prohibit certain hazardous waste management and disposal practices to ensure safe and effective hazardous waste management in the District.

Except where noted in Consolidated Checklist C5 in Appendix V and Consolidated Checklist C7 in Appendix VII, 20 DCMR Chapters 44 and 45 are identical to 40 CFR Parts 264 and 266 except the introductory language for certain of the provisions has been modified slightly to accommodate the formatting and numbering restrictions of the *District of Columbia Register*. Many of the differences between the District's program and Federal program result from the District's prohibition, at 20 DCMR §§4400.3 and 4018, of the use of surface impoundments, landfills, land treatment and incinerators for the

treatment, storage or disposal of hazardous waste. As such, 20 DCMR Chapter 44 does not contain standards for surface impoundments (40 CFR 264 Subpart K), land treatment (40 CFR 264 Subpart M), landfills (40 CFR 264 Subpart N), and incinerators (40 CFR 264 Subpart O). On Consolidated Checklist C5, the 20 DCMR §§4400.3 and 4018 prohibitions for these units are cited as the analogs for 40 CFR 264 Subparts K, M, N and O. These prohibitions make the District's program more stringent than the Federal program.

Throughout 20 DCMR Chapter 44, as in 40 CFR Part 264, there are many references to interim status standards. In some cases, the District's interim status standards are more stringent than the Federal analog. The differences between the District's analog and 40 CFR Part 265 are listed at 20 DCMR §4401.2. Because of the way in which the District's interim status standards are structured, when there is a reference to an interim status standard within 40 CFR Part 264 it has been either replaced with the 20 DCMR Chapter 44 counterpart or the Federal interim status requirement is directly cited with the caveat that it is restricted by 20 DCMR §4401.2.

At 20 DCMR §4496, the District incorporates by reference 40 CFR 264, Appendices I, IV, V, VI, and IX. The District's authority for incorporation by reference is set forth in regulations issued pursuant to the District of Columbia Documents Act, D.C. Law 2-153 (D.C. Code, Section 1-1531 *et seq.* at 1 DCMR 501.6). The date for the incorporation by reference is given at 20 DCMR §4016. Any references to the Federal regulations are to the version of the those regulations as they appear in the July 1, 1998 Code of Federal Regulations.

Because of the District's prohibition on the burning of hazardous wastes and hazardous waste fuels in boilers and industrial furnaces (BIFs), the District's regulations contain an abbreviated version of 40 CFR 266 Subpart H at 20 DCMR §4507. This section only contains the 40 CFR 266, Subpart H requirements for the generation, transport and storage of hazardous waste and hazardous waste fuel that will be burned in a BIF. Such waste is generated, stored and transported within the District prior to arriving at and being burned in a BIF outside the District. The introductory paragraph to 20 DCMR §4507 contains a sentence which points to 40 CFR 266, Subpart H for the requirements which apply to the BIFs, outside the District, to which this waste is sent. Relative to generation, storage and transport, the District's program is equivalent to the Federal program, but is more stringent because of the prohibition on hazardous waste and hazardous waste fuel burning in the District. Specific differences are addressed on Revision Checklist C7 which addresses 40 CFR Part 266 and is found in Appendix VII of this Corporation Counsel Statement. Because of the BIF prohibition in the District and because of the manner in which 40 CFR 266, Subpart H is addressed in 20 DCMR §4507.1, the 40 CFR Part 266 Appendices were not included in the District's regulations. This omission does not affect the stringency of the District's requirements.

Note that Revision Checklist 163 also affected the District provisions analogous to 40 CFR Part 264. The Supplemental Corporate Counsel Statement addresses the amendments made relative to that checklist.

B. District of Columbia statutes and regulations provide for interim status and include interim status standards for hazardous waste management facilities covered by 40 CFR Part 265 as indicated in Consolidated Checklist C6 (formerly Checklist IV B) which includes the changes made by Revision Checklists 1, 3, 10, 13, 14, 15, 16, 17 E, 17 F, 17 H, 19, 24, 25, 27, 28, 30, 34, 36, 39, 43, 48, 50, 52, 54, 64, 74, 78, 79, 82, 85, 87, 91, 92, 94, 96, 99, 100, 101, 102, 108, 109, 111, 113, 118, 120, 122, 124, 126, 131, 137, 142A, 142B, 142C, 142D, 145, 154, 156, and 158. Specific requirements are as follows:

- (1) District of Columbia statutes and regulations authorize owners and operators of hazardous waste management facilities that would qualify for interim status under***

the federal program to remain in operation until a final decision is made on the permit application;

- (2) *District of Columbia 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 Part 265; and*
- (3) *District of Columbia law and regulations assure that any facility qualifying for District of Columbia interim status continues to qualify for Federal interim status.*

Federal Authority: RCRA §3005(e); 40 CFR Part 265, as amended January 28, 1983 (48 FR 3977), November 22, 1983 (48 FR 52718), November 21, 1984 (49 FR 46094), January 4, 1985 (50 FR 614), January 14, 1985 (50 FR 1978), April 23, 1985 (50 FR 16044), April 30, 1985 (50 FR 18370), July 15, 1985 (50 FR 28702), November 29, 1985 (50 FR 49164), November 19, 1986 (51 FR 41900), May 2, 1986 (51 FR 16422), May 28, 1986 (51 FR 19176), July 11, 1986 (51 FR 25350), July 14, 1986 (51 FR 25422), August 15, 1986 (51 FR 29430), August 8, 1986 (51 FR 28556), November 7, 1986 (51 FR 40572), March 19, 1987 (52 FR 8704), July 8, 1987 (52 FR 25760), November 18, 1987 (52 FR 44314), July 19, 1988 (53 FR 27164), August 17, 1988 (53 FR 31138), September 1, 1988 (53 FR 33938), September 2, 1988 (53 FR 34079), September 28, 1988 (53 FR 37912), August 14, 1989 (54 FR 33376), March 29, 1990 (55 FR 11798), June 1, 1990 (55 FR 22520), June 21, 1990 (55 FR 25454), December 6, 1990 (55 FR 50450), February 21, 1991 (56 FR 7134), April 26, 1991 (56 FR 19290), June 13, 1991 (56 FR 27332), July 1, 1991 (56 FR 30192), July 1, 1991 (56 FR 30200), July 17, 1991 (56 FR 32688), August 27, 1991 (56 FR 42504), December 23, 1991 (56 FR 66365), January 29, 1992 (56 FR 3462), February 18, 1992 (56 FR 5859), March 6, 1992 (57 FR 8086), July 10, 1992 (57 FR 30657), August 18, 1992 (57 FR 37194), August 25, 1992 (57 FR 38558), September 16, 1992 (57 FR 42832), November 18, 1992 (57 FR 54452), December 24, 1992 (57 FR 61492), May 3, 1993 (58 FR 26420), May 24, 1993 (58 FR 29860), June 17, 1993 (58 FR 33341), August 31, 1993 (58 FR 46040), March 4, 1994 (59 FR 13891), September 19, 1994 (59 FR 47982), December 6, 1994 (59 FR 62896), January 3, 1995 (60 FR 242), May 11, 1995 (60 FR 25492), May 19, 1995 (60 FR 26828), July 11, 1995 (60 FR 35703), September 29, 1995 (60 FR 50426), November 13, 1995 (60 FR 56952), February 9, 1996 (61 FR 4903), June 5, 1996 (61 FR 28508), November 25, 1996 (61 FR 59932), February 12, 1997 (62 FR 6622), and June 13, 1997 (62 FR 32452).

Citation of Laws and Regulations; Date of Enactment and Adoption

D.C. Code §§ 6-701(a), 6-702(1), 6-705(a), 6-904, 6-905, and 6-906.
20 DCMR Chapters 1 through 6 and §§4401, 4016 and 5400.1.

Remarks of the Corporation Counsel

The District statutes do not contain a specific authority for interim status. However, D.C. Code §§6-701(a) and 6-705(a) give the Mayor general authority to develop regulations for the proper management of hazardous waste. Implicit in this authority is the ability to develop regulations for those facilities which qualify for interim status under the Federal program, including the following requirements for treatment, storage or disposal facilities: general facility standards, preparedness and prevention, contingency plan and emergency procedures, manifesting and recordkeeping/reporting, releases from solid waste management units, closure/post closure, financial requirements, operation and management requirements for specific types of hazardous waste management units, air emission standards for hazardous waste units and storage of hazardous waste munitions and explosives. D.C. Code §6-705(a) also provides specific authority addressing a regulatory program for the treatment, storage and disposal

of hazardous waste. D.C. Code §6-705(a)(5) specifically addresses authority relative to the operation and management of hazardous waste treatment, storage or disposal facilities or sites. D.C. Code §6-703(a)(7) addresses regulatory authority in the procedures and requirements in using a manifest system.

The District's authority to control air emissions from hazardous waste management units comes from the general authorities at D.C. Code §§6-701(a) and 6-705(a), the definition of "disposal" which includes emission into the air, and from the D.C. Air Pollution Control Act, D.C. Code §§6-904 through 6-906 and regulations issued pursuant thereto, found at 20 DCMR Chapters 1-6.

Interim status facilities may be allowed to continue to operate pending permit action provided they comply with the applicable requirements. At 20 DCMR §4401, facilities which meet the requirements of interim status specified at 20 DCMR §4401.1, are subject to the requirements of 40 CFR Part 265 and to the restrictions that are found at 20 DCMR §4401.2. Comments regarding each of the restrictions is included in Consolidated Checklist C6 found in Appendix VI. Most of the comments result from the District's prohibition, at 20 DCMR §§4400.3 and 4018, of the use of surface impoundments, landfills, land treatment and incinerators for the treatment, storage or disposal of hazardous waste. As such, 20 DCMR Chapter 44 does not contain standards for surface impoundments (40 CFR 264 Subpart K), land treatment (40 CFR 264 Subpart M), landfills (40 CFR 264 Subpart N), and incinerators (40 CFR 264 Subpart O). In addition, the District (1) requires post-closure care and financial assurance as well as clean closure for all units even those for storage or treatment; (2) has more stringent standards for transfer facilities, waste piles, and containers; (3) requires recycling for a universal waste to be subject to the reduced universal waste requirements; and (4) does not allow a Clean Water Act report to substitute for a release report. 20 DCMR §4016 establishes that the version of 40 CFR Part 265, to which interim status facilities are subject, is the version as it appears in the July 1, 1998 CFR.

Any references within 40 CFR Part 265 to Federal provisions outside 40 CFR Part 265 are to the analogous District of Columbia provision. Appendix I to 20 DCMR Chapter 44 is a table listing each 40 CFR 265 provision containing a reference to a Federal provision outside 40 CFR Part 265, the Federal provision referenced and the District of Columbia's analog to that referenced Federal provision.

Note that Revision Checklist 163 also affected the District provisions analogous to 40 CFR Part 265. The Supplemental Corporate Counsel Statement addresses the amendments made relative to this checklist.

VI. LAND DISPOSAL RESTRICTIONS

Federal Authority: RCRA §§1006, 2002(a), 3001 and 3004

A. *District of Columbia statutes and regulations restrict the land disposal of hazardous wastes as specified in 40 CFR Part 268 and indicated in Consolidated Checklist C8 which includes the provisions of Revision Checklists 34, 39, 50, 62, 63, 66, 74, 78, 83, 95, 102, 103, 106, 109, 116, 123, 124, 126, 134, 136, 137, 142A, 142B, 142C, 142D, 151, 155, 157, and 159.*

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR Part 268, as amended November 7, 1986 (51 FR 40572), June 4, 1987 (52 FR 21010), July 8, 1987 (52 FR 25760), October 27, 1987 (52 FR 41295), August 17, 1988 (53 FR 31138), February 27, 1989 (54 FR 8264), May 2, 1989 (54 FR 18836), June 23, 1989 (54 FR 26594), September 6, 1989 (54 FR 36967), June 13, 1990 (55 FR 23935), March 29, 1990 (55 FR 11798), June 1, 1990 (55 FR 22520), January 31, 1991 (56 FR 3864), August 19, 1991 (56 FR 41164), March 6, 1992 (57 FR 8086), May 15, 1992 (57 FR 20766), June 26, 1992 (57 FR 28628), August 18, 1992 (57 FR 37194), October 20, 1992 (57 FR 47772), May 14, 1993 (58 FR 28506), May 24, 1993 (58 FR 29860), August 31, 1993 (58 FR 46040), June 20, 1994 (59 FR 31551), August 24, 1994

(59 FR 43496), September 19, 1994 (59 FR 47980), September 19, 1994 (59 FR 47982), January 3, 1995 (60 FR 242), May 11, 1995 (60 FR 25492), April 8, 1996 (61 FR 15566 and 61 FR 15660), April 30, 1996 (61 FR 19117), June 28, 1996 (61 FR 33680), July 10, 1996 (61 FR 36419), August 26, 1996 (61 FR 43924), January 14, 1997 (62 FR 1992), February 19, 1997 (62 FR 7502), May 12, 1997 (62 FR 25998), and June 17, 1997 (62 FR 32974).

Citation of Laws and Regulations; Date of Enactment and Adoption

D.C. Code §§6-701(a) and 6-705(a)
20 DCMR Chapter 50 and §§5400.1 and 4016

Remarks of the Corporation Counsel

D.C. Code §§6-701(a) and 6-705(a) authorize the Mayor to establish a program of regulation over all areas of hazardous waste management, including land disposal. The District regulations at 20 DCMR §§4400.3 and 4018 prohibit land disposal of any form. However, generators and transporters who handle waste that is destined for disposal outside the District are still subject to the land disposal requirements.

20 DCMR Chapter 50 contains the District's land disposal requirements which are equivalent to, and in some cases more stringent than, the Federal requirements. These requirements have been rewritten slightly to accommodate the 20 DCMR §§4400.3 and 4018 prohibitions and the other areas where the District's program is more stringent than the Federal program. The specific differences are discussed on Consolidated Checklist C8 found in Appendix VIII of this Statement.

The District has chosen to leave the authority for approving site specific variances (40 CFR 268.44(h)-(o), 20 DCMR §5003.11(h)-(n)) with the EPA Administrator. The District does not want to assume this responsibility at this time.

At 40 DCMR §§5003.9, 5003.13, and 5005, the District incorporates by reference 40 CFR 268.40 and 268.48 tables and the 40 CFR 268 Appendices. The District's authority for incorporation by reference is set forth in regulations issued pursuant to the District of Columbia Documents Act, D.C. Law 2-153, (D.C. Code Section 1-1531 *et seq.*, at 1 DCMR 501.6). The date for the incorporation by reference is given at 20 DCMR §4016. Any references to the Federal regulations are to the version of the those regulations as they appear in the July 1, 1998 Code of Federal Regulations.

Note that Revision Checklists 160, 161, 162, 165 and 167A-C also affected the District provisions analogous to 40 CFR Part 268. The Supplemental Corporate Counsel Statement addresses the amendments made relative to these checklists.

VII. REQUIREMENTS FOR PERMITS

Federal Authority: RCRA §§3005 and 7004; 40 CFR 271.13 and 271.14, as amended April 1, 1983 (48 FR 14146), June 30, 1983 (48 FR 30113), and September 22, 1986 (51 FR 33712).

A. *District of Columbia statutes and regulations provide permit requirements consistent with the specifications of 40 CFR 271.13 and 271.14 as indicated in Consolidated Checklist C9 (formerly Checklist V) which includes the amendments of Revision Checklists 1, 2, 6, 11, 14, 17 D, 17 F, 17 M, 17 N, 17 O, 17 P, 17 Q, 17 S, 23, 24, 28, 34, 35, 38, 39, 40, 44 D, 44 E, 44 F, 44 G, 45, 48, 52, 54, 59, 60, 61, 64, 70, 78, 79, 82, 83, 85, 87, 92, 94, 100, 109, 124, 126, 142A, 142B, 142C, 142D, 148, 154, and 156.*

Federal Authority: RCRA §§3005 and 7004; 40 CFR Parts 124 and 270, as amended January 28, 1983 (48 FR 3977), April 1, 1983 (48 FR 14146), June 30, 1983 (48 FR 30113), September 1, 1983 (48 FR 39611), April 24, 1984 (49 FR 17716), December 4, 1984 (49 FR 47390), January 14, 1985 (50 FR 1978), March 24, 1986 (51 FR 10146), May 2, 1986 (51 FR 16422), July 14, 1986 (51 FR 25422), August 15, 1986 (51 FR 29430), November 7, 1986 (51 FR 40572), March 16, 1987 (52 FR 8072), June 22, 1987 (52 FR 23447), September 9, 1987 (52 FR 33936), July 8, 1987 (52 FR 25760), July 9, 1987 (52 FR 25942), December 10, 1987 (52 FR 46946), July 19, 1988 (53 FR 27164), July 26, 1988 (53 FR 28118), September 2, 1988 (53 FR 34079), September 26, 1988 (53 FR 37396), September 28, 1988 (53 FR 37912), October 24, 1988 (53 FR 41649), January 4, 1989 (54 FR 246), January 9, 1989 (54 FR 615), January 30, 1989 (54 FR 4286), March 7, 1989 (54 FR 9596), August 14, 1989 (54 FR 33376), June 1, 1990 (55 FR 22520), June 21, 1990 (55 FR 25454), December 6, 1990 (55 FR 50450), January 31, 1991 (56 FR 3864), February 21, 1991 (56 FR 7134), April 26, 1991 (56 FR 19290), July 1, 1991 (56 FR 30192), July 17, 1991 (56 FR 32688), January 29, 1992 (57 FR 3462), August 18, 1992 (57 FR 37194), May 24, 1993 (58 FR 28506), August 31, 1993 (58 FR 46040), December 6, 1994 (59 FR 62896), May 11, 1995 (60 FR 25492), December 11, 1995 (60 FR 63417), February 9, 1996 (61 FR 4903), November 25, 1996 (61 FR 59932), and February 12, 1997 (62 FR 6622).

Citation of Laws and Regulations: Date of Enactment and Adoption

D.C. Code §§6-701(a), 6-703, 6-705(a), and 6-709
20 DCMR Chapters 46 and 47, 20 DCMR §5400.1

Remarks of the Corporation Counsel

D.C. Code §§6-701(a) and 6-705(a) provide the Mayor with general authority to develop a set of regulations to properly manage hazardous waste. Implicitly this authority includes the ability to develop a permit program including the authority to require public participation. D.C. Code §6-703 and 6-709 provide specific authority for permitting including the requirement that all hazardous waste management facilities be permitted. D.C. Code §6-703 also gives the Mayor the authority to place terms within a permit and the ability to vary or modify those terms. Under this same provision the Mayor has the authority to require a permit holder to undertake corrective action both within and beyond the facility boundary; however, the District is not seeking authorization for the corrective action requirements at this time. D.C. Code §6-709 gives the Mayor the authority to suspend or revoke a permit. The Mayor also has the authority under D.C. Code §6-709 to require a permit fee, but has not yet exercised this authority. Finally, D.C. Code §6-709(d) provides the Mayor with the ability to immediately revoke a permit where a violation presents an imminent and substantial endangerment to the public health, the public welfare or the environment.

Except where noted in Consolidated Checklist C9 found in Appendix IX, 20 DCMR Chapters 46 and 47 are identical to 40 CFR Parts 270 and 124 except the introductory language for certain of the provisions has been modified slightly to accommodate the formatting and numbering restrictions of the *District of Columbia Register*. The specific provisions which are not identical to the Federal program are addressed on Consolidated Checklist C9. In all cases the District provision is either equivalent, more stringent, or broader in scope than its Federal counterpart.

At 20 DCMR §§4705 and 4709, the District has included analogs to 40 CFR 124.15 and 124.14 even though these are not required for authorization because these provisions were needed due to internal references in those provisions to 40 CFR Part 124, which are required for authorization.

Note that Revision Checklists 163 and 168 also affected the District provisions analogous to 40 CFR Part 270. The Supplemental Corporate Counsel Statement addresses the amendments made relative to these checklists.

VIII. REQUIREMENTS FOR USED OIL MANAGEMENT

Federal Authority: RCRA §§1004, 1006, 2002, 3001, 3014 and 7004; 40 CFR 271.26, as amended on September 10, 1992 (57 FR 41566) and May 3, 1993 (58 FR 26420).

A. *District of Columbia statutes and regulations provide used oil management standards equivalent to 40 CFR Part 279 for: 1) used oil generators, 2) used oil collection centers and aggregation points, 3) used oil transporters and transfer facilities, 4) used oil processors and re-refiners, 5) used oil burners who burn off-specification used oil for energy recovery, 6) used oil fuel marketers; 7) standards for use as a dust suppressant and disposal of used oil, and 8) other requirements to the extent they are included in 40 CFR Part 279. These standards for used oil management are as indicated in Consolidated Checklist C10 which includes changes made by Revision Checklists 112, 122, and 130.*

Federal Authority: RCRA §§1004, 1006, 2002, 3001, 3014 and 7004; 40 CFR Part 279, as amended September 10, 1992 (57 FR 41566), May 3, 1993 (58 FR 26420), June 17, 1993 (58 FR 33341), and March 4, 1994 (59 FR 10550).

Citation of Laws and Regulations; Date of Enactment and Adoption

D.C. Code §§6-701(a), 6-705(a), and 6-713
20 DCMR Chapter 49 and §5400.1

Remarks of the Corporation Counsel

D.C. Code §§6-701(a) and 6-705(a) provide the Mayor with general authority to develop a regulatory program to address the proper management of hazardous waste including the management of used oil. Unlike the Federal authorities, used oil is not specifically addressed in the District's statutes except for D.C. Code §6-713 which addresses suppression.

The District regulations at 20 DCMR Chapter 49 contain special management standards for generators, transporters, collection centers, processors, re-refiners, burners and marketers of used oil. These requirements are equivalent to and in many cases more stringent than the Federal requirements at 40 CFR Part 279 because of the 20 DCMR §§4018 and 4400.3 prohibitions. In addition, D.C. Code §6-713 specifically prohibits the use of used oil that is mixed or contaminated with dioxin or any other hazardous waste for dust suppression or road treatment in the District. The District's regulations at 20 DCMR Chapter 49 prohibit any used oil from being used as a dust suppressant or road treatment. The Department's interpretation of the District of Columbia Air Pollution Control Regulations is that no used oil is permitted to be burned in the District. The District's air regulations at 20 DCMR §504 prohibit single chamber and flue-fed incinerators, as well as the construction of any new incinerators in the District. Existing incinerators are required to have permits which explicitly list what can be burned. These permits prohibit the burning of any used oil whether or not it is mixed with a hazard waste. Further, when used oil is burned in any other type of unit, such as a "used oil burner" or space heater, the fuel burning equipment is deemed an incinerator and thus prohibited. Also, as used oil is not a refined product, it is highly unlikely that it would meet the opacity and particulate emission standards of 20 DCMR §600.

Except where noted in Consolidated Checklist C10 found in Appendix X, 20 DCMR Chapter 49 and portions of 20 DCMR §5400.1 are identical to 40 CFR Part 279 except the introductory language for certain of the provisions has been modified slightly to accommodate the formatting and numbering restrictions of the *District of Columbia Register*. The specific provisions which are not identical to the Federal program are addressed on Consolidated Checklist C10. In all cases the District provision is either equivalent, more stringent, or broader in scope than its Federal counterpart.

Note that Revision Checklist 166 also affected the District provisions analogous to 40 CFR Part 279. The Supplemental Corporate Counsel Statement addresses the amendments made relative to these checklists.

IX. DELETED LEGALLY OBSOLETE RULES

A. *District of Columbia statutes and regulations include changes to remove legally obsolete rules as indicated by Revision Checklist 144 and included in Consolidated Checklists C2, C7 and C9.*

Federal Authority: See the Preamble for Rule; 40 CFR 261.31(a), 266.103(c)(5), 266.104(f)-(h), 270.2, 270.10(e)(4), 270.10(f)(2), 270.10(g)(1), as amended June 29, 1995 (60 FR 33912).

Citation of Laws and Regulations; Date of Enactment and Adoption

D.C. Code §§6-701(a) and 6-705(a)
20 DCMR §§4109.5, 4507.1, 5400.1, 4601.8, 4601.11, and 4601.12

Remarks of the Corporation Counsel

D.C. Code §§6-701(a) and 6-705(a) give the Mayor general authority to develop a regulatory program for the management of hazardous waste. The authority includes the ability to remove legally obsolete language as required by Revision Checklist 144. The changes required by this checklist have been made and the provisions listed above are addressed on Consolidated Checklists C2, C7 and C9, found in Appendices II, VII, and IX.

X. UNIVERSAL WASTES

A. *District of Columbia statutes and regulations provide universal waste standards equivalent to 40 CFR Part 273 for: 1) small quantity generators, 2) large quantity handlers, 3) transporters 4) destination facilities, 5) imports of universal wastes, and 6) petitions to include other wastes under the Part 273 requirements. These standards for universal waste management are as indicated in Revision Checklists 142A-142E, and included in Consolidated Checklist C11.*

Federal Authority: RCRA §§3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR Part 273, as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations; Date of Enactment and Adoption

D.C. Code §§6-701(a) and 6-705(a)
20 DCMR Chapter 48 and §5400.1

Remarks of the Corporation Counsel

D.C. Code §§6-701(a) and 6-705(b) give the Mayor general authority to develop a program to properly regulate hazardous waste. Implicit in this authority is the ability to develop regulations, like the universal waste regulations, to handle wastes that are frequently generated in a wide variety of settings other than an industrial setting, that are ubiquitous, and that may be present in significant volumes in non-hazardous waste streams.

Except where noted in Consolidated Checklist C11 found in Appendix XI, 20 DCMR Chapter 48 and §5400.1 are identical to their Federal analogs except the introductory language for certain of the provisions has been modified slightly to accommodate the formatting and numbering restrictions of the *District of Columbia Register*. In all cases, the District provision is either equivalent, more stringent, or broader in scope than its Federal counterpart. The specific provisions which are not identical to the Federal program are addressed on Consolidated Checklist C11.

At 20 DCMR §4800.1, the analog to 40 CFR 273.1(a), the District adds mercury containing lamps to its list of universal wastes and at 20 DCMR §§4800.19 and 4806 adds requirements for their regulation. While not identical to the new Federal universal waste requirements for hazardous waste lamps (64 FR 36466; July 6, 1999), the District's mercury containing lamp requirements are consistent with them. The District will seek authorization for the hazardous waste lamp requirements at a later date, because it is currently seeking authorization for the Federal program as of June 30, 1998.

XI. INSPECTIONS

District of Columbia 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; 40 CFR 271.15.

Citation of Laws and Regulations; Date of Enactment and Adoption

D.C. Code §6-707(a)&(b)
20 DCMR §§4002, and 4003.1-4003.5

Remarks of the Corporation Counsel

D.C. Code §6-707(a) authorizes the Mayor to enter any place where hazardous wastes are generated, stored, treated, or disposed. This authority includes the ability to enter vehicles and conveyances, as well as warehouses and treatment facilities. It also includes facilities where hazardous wastes have been recently handled or stored, as necessary for effective enforcement. In addition, under D.C. Code §6-707(b), samples of any substances used in the treatment of waste may be obtained, including samples of containers and labels used where there are regulations governing their use. For the purpose of enforcing the District of Columbia Hazardous Waste Management 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 D.C. Code §6-703 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.

20 DCMR §4002 addresses the right of entry and outlines the Director's right, upon presentation of appropriate credentials to enter without delay any place where wastes are or have been generated, stored, treated or disposed of. "Appropriate credentials" is defined at §4002.2 and, at §4002.3, the conditions are outlined for entry at reasonable time with or without notice. At 20 DCMR §4003, the procedures that the Director will follow, and the authorities that he has upon entry, are outlined including: how samples will be handled, the requirement for owners/operators to provide any information or record with respect to the wastes, how written responses shall be submitted, and the ability of the Director to ask for monitoring or testing.

XII. ENFORCEMENT REMEDIES

District of Columbia statutes and regulations provide the following:

A. Authority to restrain immediately by order or by suit in a District of Columbia 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; 40 CFR 271.16(a)(1).

Citation of Laws and Regulations; Date of Enactment and Adoption

D.C. Code §6-710
20 DCMR §§4003.6-4003.8, 4007 and 4013

Remarks of the Corporation Counsel

D.C. Code §6-710 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 who is generating or transporting hazardous wastes in an illegal, unsafe, or otherwise improper manner so as to endanger the public health, welfare or the environment.

20 DCMR §§4003.6 through 4003.8 address the authorities which the Director has when finding a violation as part of an inspection. 20 DCMR §4003.6 allows the Director to issue a field notice or directive letter to advise the responsible party of the action he/she must take. 20 DCMR §4003.7 allows the Director to give an oral directive to the responsible party to cease and desist from an activity or to take immediate action to mitigate dangers from a spill or release in a situation where there is potential serious danger to health or the environment. The Director must issue a written directive as soon as practicable incorporating the contents of the oral directive. 20 DCMR §4003.8 allows the Director to restrict access to the property and prohibit the removal and handling of hazardous waste on the site if the chemicals or hazardous waste on the property pose an imminent threat to human health or the environment.

20 DCMR §4007 allows the Director or his or her designee to issue, or file a motion before an Administrative Law Judge to issue, a notice of violation together with an immediate compliance order or cease and desist order, in order to require a person to correct a situation which immediately threatens the public health, welfare or the environment or to prohibit any person from engaging in any unauthorized activity that immediately endangers or causes damage to the public health, welfare or the environment.

This section outlines the procedures for issuing an immediate compliance order, allows for a hearing which does not stay the effective date of the order, and allows the Director to conduct corrective action if the order is not complied with.

20 DCMR §4013.2 allows the Director in his discretion to seek a temporary restraining order, preliminary injunction or permanent injunction in Court in lieu of issuing a notice of violation and an administrative compliance order.

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; 40 CFR 271.16(a)(2).

Citation of Laws and Regulations; Date of Enactment and Adoption

D.C. Code §§6-710 and 6-711(a)
20 DCMR §4013.1

Remarks of the Corporation Counsel

D.C. Code §6-710 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 who is generating or transporting hazardous wastes in an illegal, unsafe, or otherwise improper manner so as to endanger the public health, welfare or the environment. Thus, the Mayor may enjoin a threatened violation of the Act or regulation as well as a continuing violation. Under this provision, the Mayor may seek to enjoin any action he finds unsafe or improper so as to endanger the public health and welfare. At this stage it need not, under D.C. Code §6-710, be equivalent to a violation of the Act or regulations promulgated pursuant thereto. Further, §6-710 does not require that the Mayor first pursue administrative remedies.

D.C. Code §6-711(a) 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 includes a civil action in the D.C. Superior Court to secure a temporary restraining order, a preliminary injunction, or a permanent injunction pursuant to §6-710. Neither §6-710 nor §6-711(a) requires prior revocation of a permit before seeking to enjoin a threatened or continuing violation.

20 DCMR §4013.1 gives the Director the discretion to institute a court action for injunctive relief in lieu of proceeding through the administrative process to seek a compliance order or proposed permit suspension or revocation order if a threat or release has occurred.

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; 40 CFR 271.16(a)(3)(i).

Citation of Laws and Regulations; Date of Enactment and Adoption

D.C. Code §6-711(b)

Remarks of the Corporation Counsel

D.C. Code §6-711(b) provides for a civil penalty in an amount not to exceed \$25,000 per day per violation of the Act or the rules and regulations promulgated 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 treats, stores, or disposes of hazardous waste without a permit; who knowingly transports, treats, stores, disposes, recycles, causes to be transported, or otherwise handles any used oil regulated by EPA under section 3014 of RCRA that is not listed or identified as a hazardous waste under the state's hazardous waste program in violation of standards or regulations for management of such used oil; 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 (including compliance with any standards or regulations for used oil regulated by EPA under section 3014 of RCRA that is not listed or identified as hazardous waste).

Federal Authority: RCRA §3006; 40 CFR 271.16(a)(3)(ii).

Citation of Laws and Regulations; Date of Enactment and Adoption

D.C. Code §6-711(c)

Remarks of the Corporation Counsel

D.C. Code §6-711(c) provides for a criminal penalty of a fine not to exceed \$25,000 or imprisonment not to exceed one year, or both. 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 wastes 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. For any violation, each day of the violation constitutes a separate offense and the penalties apply separately to each offense.

The District's definition of hazardous waste at D.C. Code §6-702(2) is equivalent to the Federal definition except that it includes an additional sentence which clarifies that hazardous waste includes, but is not limited to, wastes with certain characteristics, including flammability, as well as containers and receptacles used to hold such wastes. Based upon the definition, the District has identified used oil as a hazardous waste, subject to regulation under the D.C. Hazardous Waste Management Act, although under the District regulations, as under the Federal regulations, used oil is distinguished from, and treated differently from, other listed hazardous wastes. Since the management of used oil is regulated under the D.C. Hazardous Waste Regulations, the criminal penalties of D.C. Code §6-711(c) apply to violations of the used oil regulations.

XIII. PUBLIC PARTICIPATION IN THE DISTRICT OF COLUMBIA ENFORCEMENT PROCESS

District of Columbia laws and regulations provide for public participation in the District's enforcement process by providing:

A. authority to allow intervention as of right in any civil or administrative action to obtain the remedies specified in Section XII A, B and C above by any citizen having an interest which is or may be adversely affected.

Federal Authority: RCRA §7004; 40 CFR 271.16(d).

Citation of Laws and Regulations; Date of Enactment and Adoption

D.C. Code §6-703(a)

D.C. Superior Court Civil Rule 24(a) effective July 1, 1993, D.C. Court Rules, 1999 edition

Remarks of the Corporation Counsel

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 the Federal Rule of Civil Procedures 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 grounds that the applicant's interest is adequately represented by the District. Further, 20 DCMR §4010.10 authorizes intervention by persons having an interest which may be affected.

XIV. AUTHORITY TO SHARE INFORMATION WITH EPA

District of Columbia 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); 40 CFR 271.17.

Citation of Laws and Regulations; Date of Enactment and Adoption

D.C. Law 1-96 Section 3(c) (effective March 29, 1977), §2 (D.C. Code §1-1524), 1981 edition, 1992 Replacement Volume.

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).

XV. AUTHORITY OVER INDIAN LANDS

Federal Authority: 40 CFR 271.7(b).

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

XVI. EXPOSURE ASSESSMENTS

A. *District of Columbia laws and regulations allow the District to make assessment information available to the Agency for Toxic Substances and Disease Registry. [See CERCLA §104(i).]*

Federal Authority: RCRA §3019(b).

Citation of Laws and Regulations; Date of Enactment and Adoption

D.C. Code §§6-705(a) , 6-731 *et seq.*

Remarks of the Corporation Counsel

D.C. Code §6-705(a) gives the authority for regulation of hazardous waste generation, transportation, treatment, storage, and disposal, and addresses the development of a regulatory program. This includes the ability to make assessment information available to the Agency for Toxic Substances and Disease Registry. A section has been added to the MOA that states that the District will share exposure information with the Agency for Toxic Substances and Disease Registry. The Toxic Source Reduction Act, D.C. Law 8-229 effective March 8, 1991, (D.C. Code §6-731 *et seq.*) was enacted as Subchapter III of the D.C. Hazardous Waste Management Act.

Although implementing regulations have not yet been promulgated under the Act, Sections 6-731, 732 and 733, mandate, *inter alia* that the Mayor: 1) establish a library of source reduction literature with computer link-up to pollution prevention data bases at EPA; 2) secure funding and provide for coordination between designated DC agencies and EPA to promote use of toxic source reduction techniques by DC businesses; 3) identify certain D.C. businesses generating toxic chemicals or hazardous wastes; 4) require annual reporting by D.C. businesses on EPA Form R with respect to releases of toxic chemicals and generation of hazardous wastes. These mandates clearly contemplate a cooperative relationship and sharing of information with EPA and any related Federal agency maintaining data on toxic substances, to protect human health and the environment.

XVII. RADIOACTIVE MIXED WASTES

As indicated below, the District can meet the statutory and regulatory requirements for regulating the hazardous portion of radioactive mixed wastes as a hazardous waste. However, the District is not seeking authorization for this part of its program at this time.

A. *District of Columbia statutes and regulations define solid wastes to include the hazardous components of radioactive mixed wastes, July 3, 1986 [51 FR 24504]. See State Program Advisory (SPA) #2.*

Federal Authority: RCRA §§1004(27) and 3001(b).

Citation of Laws and Regulations; Date of Enactment and Adoption

D.C. Code §6-702
20 DCMR §4101(a)

Remarks of the Corporation Counsel

The District's HWMA definitions at D.C. Code Section 6-702 do not include a definition of solid waste. However, the District of Columbia Solid Waste Management and Multi-Material Recycling Act, D.C. Law §7-226, effective March 16, 1989, as amended by D.C. Law 11-94, effective February 27, 1996 (D.C. Code Section 6-3401 *et seq.*), which addresses the management and recycling of solid waste in the District includes the following definition at D.C. Code 6-3451(10):

"Solid waste" means garbage, refuse or any other waste product, including solid, liquid, semisolid, or contained gaseous material, resulting from commercial, industrial, or government operation, or residential or community activity.

Source, special nuclear, and by-product waste are included within this definition. They are also included within the Federal RCRA definition of solid waste, adopted in the D.C. Hazardous Waste Regulations at 20 DCMR §4100.3 and are not excluded from the definition of solid waste by exclusions in 20 DCMR §4100.15. Thus, the District considers both the hazardous component and the radioactive component of mixed wastes to be subject to the District's hazardous waste requirements regardless of the nature of the radioactive component of the waste. The District's hazardous waste regulations and the Atomic Energy Act (AEA) regulations should be compatible in most cases. However, in the event that any inconsistency arises, the AEA requirements would take precedence over D.C. requirements, since the AEA is a Federal statute. Further, RCRA §1006 makes clear that RCRA does not apply to activities or substances regulated under the Atomic Energy Act.

XVIII. AVAILABILITY OF INFORMATION

The District is not seeking authorization for the "Availability of Information" requirements at this time.

XIX. MEMORANDUM OF AGREEMENT (MOA)

The District of Columbia has authority to enter into a memorandum of agreement with the U.S. Environmental Protection Agency. Pursuant to D.C. Code § 1-102 (1981 ed., 1992 Repl. Vol.) the District of Columbia "is constituted a body corporate for municipal purposes, and may contract and be contracted with, sue and be sued, plead and be impleaded, have a seal, and exercise all other powers of a municipal corporation not inconsistent with the Constitution and laws of the United States and the provisions of this Code." Pursuant to D.C. Code § 1-242, "the executive power of the District" is "vested in the Mayor who shall be the chief executive officer of the District government." In Mayor's order Number 88-16, dated January 22, 1988, the Mayor delegated to the City Administrator for the District of Columbia:

the authority of the Mayor to take final actions and perform all functions of the Mayor conferred by law, including approval of grants or other agreements between the Government of the United States, its officers and instrumentalities, and/or the several States of the United States and the District of Columbia.

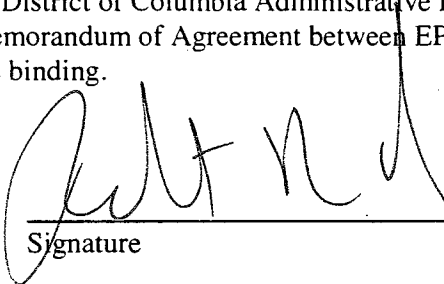
The District of Columbia has the authority to carry out the provisions of the proposed Memorandum of Agreement between the District of Columbia and U.S. EPA Region III. The District of Columbia Hazardous Waste Management Act of 1977, D.C. Code § 6-701 *et seq.*, authorizes the Mayor to establish a program of regulation over all areas of hazardous waste management. The Act authorizes the Mayor to promulgate rules to effect these purposes, which authority has been delegated to the Director of the

Department of Health. The Department has promulgated regulations which encompass the required elements of RCRA and the Federal Hazardous Waste Regulations promulgated under RCRA, and which make the District's program equivalent (and in some instances more stringent) than the Federal RCRA program. Thus, the District has the statutory authority to assume primary responsibility for implementing the authorized provisions of the RCRA hazardous waste program within its boundaries. More specifically, District statutes and regulations contain provisions governing the issuance, modification and revocation of permits, compliance and enforcement which the District is authorized to implement and which are equivalent to federal requirements.

The District has authority under the District's Freedom of Information Act, D.C. Code § 1-1521 *et seq.*, as set forth in Section XIX above, to share information with EPA on the management of the District's hazardous waste as provided for in the Memorandum of Agreement.

No District of Columbia statute (including the District of Columbia Administrative Procedures Act) requires that the procedures set forth in the Memorandum of Agreement between EPA Region III and the District be promulgated as a rule in order to be binding.

Seal of Office



Signature

Robert R. Rigsby

Name (Type or Print)

Corporation Counsel, D.C.

Title

May 31, 2001

Date