

US EPA ARCHIVE DOCUMENT

SECTION C

ATTORNEY GENERAL'S STATEMENT



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PLEASE REPLY TO :

STATE OF DELAWARE
ATTORNEY GENERAL'S STATEMENT FOR FINAL
AUTHORIZATION FOR CHANGES TO THE FEDERAL
RCRA PROGRAM THROUGH APRIL 23, 2001

I hereby certify, pursuant to my authority as Attorney General 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 (42 USC 6901 *et seq.*), and 40 CFR 271 that in my opinion the laws of the State of Delaware provide adequate authority to carry out the program set forth in the revised "Program Description" submitted by the Department of Natural Resources and Environmental Control. The specific authorities provided are contained in statutes and regulations lawfully adopted and in effect at the time this Statement is signed, as specified below. These authorities and this certification supplement the previously certified authorities described in my predecessors' certification(s) of July 26, 1983, March 20, 1996, June 12, 1998 and January 21, 2000.

The State of Delaware was previously granted authorization for requirements contained in clusters referred to by the United States Environmental Protection Agency (U.S.E.P.A.) as Base Program, non-HSWA requirements prior to non-HSWA Cluster I, non-HSWA Clusters I through VI, HSWA Clusters I and II, RCRA Clusters I through VIII, and RCRA Cluster IX (Checklists 169, 171, 172, 174, and 177).

This Attorney General's statement coincides with the rules addressed in RCRA Cluster IX (Checklists 175, 176, 178, 179, and 180), and RCRA Cluster X (Checklists 181, 183, 184, 185 and 187).

I. IDENTIFICATION AND LISTING

A. State statutes and regulations contain lists of hazardous waste which encompass all wastes controlled under the following Federal regulations as indicated in the designated Revision Checklists:

- (32) Removal of five vacated K-code wastes (K064, K065, K066, K090, and K091) from table at 40 CFR 261.32 as amended October 20, 1999 [64 FR 56469], Revision Checklist 183.

(33) Removal of two vacated wastes (K140 and U408) from tables at 40 CFR 261.32; 261.33(f), and Part 261 Appendices VII and VIII as amended March 17, 2000 [65 FR 14472], Revision Checklist 185.

Federal Authority: RCRA §3001(b).

Citation of Laws and Regulations; Date of Enactment and Adoption

DRGHW §§261.32, 261.33(f), and Part 261 Appendices VII and VIII as amended 4/23/01 by Revision Checklists 183 and 185;

7 Del. C. §6305(a) as amended 7/13/88.

Remarks of the Attorney General

The State provisions are equivalent as amended.

OO. State statutes and regulations provide for secondary materials from mineral processing to be co-processed with normal raw materials in beneficiation operations which generate Bevill exempt wastes, without changing the exempt status of the resulting Bevill waste, provided certain conditions are met as indicated in Revision Checklist 179.

Federal Authority: RCRA §3001; 40 CFR 261.4(b)(7) as amended May 11, 1999 (64 FR 25408).

Citation of Laws and Regulations; Date of Enactment and Adoption

DRGHW §261.4(b)(7) as amended 6/2/00 by Checklist 179;

7 Del. C. §6305(a) as amended 7/13/88.

Remarks of the Attorney General

The State provisions are equivalent as amended.

SS. State statutes and regulations exclude dredged material from regulation as a hazardous waste provided the material is subject to the requirements of a permit issued under §404 of the Federal Water Pollution Control Act or §103 of the Marine Protection, Research, and Sanctuaries Act as indicated in Revision Checklist 175.

Federal Authority: RCRA §§1006(b), 2002(a) and 3001; 40 CFR 261.4(g), as amended November 30, 1998 (63 FR 65874).

Citation of Laws and Regulations; Date of Enactment and Adoption

DRGHW §261.4(g) as amended 6/2/00 by Checklist 175;

7 Del. C. §6305 as amended 7/13/88.

Remarks of the Attorney

The State provisions are equivalent as amended.

TT. State statutes and regulations exempt, from regulation as a hazardous waste, landfill leachate and gas condensate derived from previously disposed petroleum refinery wastes (K169-K172), as indicated in Revision Checklist 178.

Federal Authority: RCRA §§2002(a) and 3001(a), (b), and (e)(2), 3004(g) and (m), 40 CFR 261.4(b)(15), as amended February 11, 1999 (64 FR 6806).

Citation of Laws and Regulations; Date of Enactment and Adoption

DRGHW §261.4(b)(15) as amended 6/2/00 by Checklist 178;

7 Del. C. §§6304(b) and 6305 as amended 7/11/80 and 7/13/88.

Remarks of the Attorney General

The State provisions are equivalent as amended.

UU. State statutes and regulations (1) incorporate the third edition and updates to "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846), the third edition (November 1986), as amended through Update IIIA (April 1998); and (2) include Method 1664, Revision A, N-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated N-Hexane Extractable Material (SGT-HEM; Non-polar Material) by Extraction and Gravimetry, as indicated in Revision Checklist 180.

Federal Authority: RCRA §§1006, 2002(a), 3001-3007, 3010, 3013-3018, and 7004; 40 CFR 260.11(a)(11) and 260.11(a)(16), as amended May 14, 1999 (64 FR 26315).

Citation of Laws and Regulations; Date of Enactment and Adoption

DRGHW §§260.11(a)(11) and 260.11(a)(16) as amended 6/2/00 by Checklist 180;

7 Del. C. §§6305, 6306, 6307, 6308, 6310 as amended 7/11/80, 6/28/85, 6/26/86, 7/13/88, and 7/17/95.

Remarks of the Attorney General

The State provisions are equivalent as amended.

II. DEFINITION OF SOLID WASTE

D. State statutes and regulations provide for a conditional exclusion from the definition of solid wastes for mineral processing secondary materials as indicated in Revision Checklist 179.

Federal Authority: RCRA §3001; 40 CFR 261.2(c)(3), 261.2(c)(4) Table 1, 261.2(e)(1)(iii), 261.4(a)(16), and 261.4(a)(17) as amended May 11, 1999 (64 FR 25408).

Citation of Laws and Regulations; Date of Enactment and Adoption

DRGHW §§261.2(c)(3), 261.2(c)(4) Table 1, 261.2(e)(1)(iii), 261.4(a)(16), and 261.4(a)(17) as amended 6/2/00 by Checklist 179;

7 Del. C. §6305 as amended 7/13/88.

Remarks of the Attorney General

The State provisions are equivalent as amended.

G. State statutes and regulations include revisions to the exclusion for certain oil-bearing hazardous secondary materials, as well as new exclusions for petrochemical recovered oil, and spent caustic solutions from petroleum refining processes, and the related revisions to the references to these exclusions as indicated in Revision Checklist 187.

Federal Authority: RCRA § 3001; 40 CFR 261.31(a)/Table as amended June 8, 2000 (64 FR 36365).

Citation of Laws and Regulations; Date of Enactment and Adoption

DRGHW §261.31(a)/Table as amended 4/23/01 by Revision Checklist 187;

7 Del. C. §6305(a) as amended 7/13/88.

Remarks of the Attorney General

The State provisions are equivalent as amended.

IV. ACCUMULATION

B. State statutes and regulations allow generators who generate 1,000 kilograms or more of hazardous waste per calendar month who also generate wastewater treatment sludges from electroplating operations that meet the F006 listing description, to accumulate F006 waste on-site for up to 180 days (or 270 days in certain circumstances) without a permit or interim status as indicated in Revision Checklist 184.

Federal Authority: RCRA §§2002 and 3002; 40 CFR 262.34(g) - (i), as amended March 8, 2000 (65 FR 12378).

Citation of Laws and Regulations; Date of Enactment and Adoption

DRGHW §§262.34(g) - (i), as amended 4/23/01 by Revision Checklist 184;

7 Del. C. §§6305 and 6306 as amended 7/13/88 and 7/17/95.

Remarks of the Attorney General

The State provisions are equivalent as amended.

XIII. CORRECTIVE ACTION

H. State statutes and regulations contain provisions exempting cleanup only remediation waste management sites from 40 CFR 264.101 facility-wide corrective action as indicated in Revision Checklist 175.

Federal Authority: §§2002(a) and 3004; 40 CFR 264.1(j) intro, 264.101(d) and 270.230(e)(1) as amended November 30, 1998 (63 FR 65874).

Citation of Laws and Regulations; Date of Enactment and Adoption

DRGHW §§264.1(j) intro, 264.101(d) and 122.230(e)(1) as amended 6/2/00 by Checklist 175;

7 Del. C. §6307 as amended 6/26/86.

Remarks of the Attorney General

The State provisions are equivalent as amended.

XV. STANDARDS FOR FACILITIES

CC. State statutes and regulations provide reduced 40 CFR Part 264, Subparts B, C, and D requirements for remediation waste management sites as indicated in Revision Checklist 175.

Federal Authority: RCRA §§2002(a), 3004, and 3007; 40 CFR 260.10, 264.1(j), and 264.73(b)(17) as amended November 30, 1998 (63 FR 65874).

Citation of Laws and Regulations; Date of Enactment and Adoption

DRGHW §§260.10, 264.1(j), and 264.73(b)(17) as amended 6/2/00 by Checklist 175;

7 Del. C. §§6307 and 6310 as amended 7/11/80 and 7/17/95.

Remarks of the Attorney General

The State provisions are equivalent as amended.

DD. State statutes and regulations contain design criteria as well as management and operating standards for the use of staging piles in storing remediation wastes as indicated in Revision Checklist 175.

Federal Authority: RCRA §§2002(a), 3004, 3005, and 7004; 40 CFR 260.10, 264.554, 265.1(b), 268.2(c), and 268.50(g), as amended November 30, 1998 (63 FR 65874).

Citation of Laws and Regulations; Date of Enactment and Adoption

DRGHW §§260.10, 264.554, 265.1(b), 268.2(c), and 268.50(g), as amended 6/2/00 by Checklist 175;

7 Del. C. §§6305 and 6307 as amended 6/26/86 and 7/13/88.

Remarks of the Attorney General

The State provisions are equivalent as amended.

EE. State statutes and regulations expand the use of Corrective Action Management Units (CAMUs) and Temporary Units to include implementing remedies at permitted facilities which are not subject to 40 CFR 264.101 as indicated in Revision Checklist 175.

Federal Authority: RCRA §§2002(a), 3004, and 3005; 40 CFR 260.10, 264.552(a) and 264.553(a), as amended November 30, 1998 (63 FR 65874).

Citation of Laws and Regulations; Date of Enactment and Adoption

DRGHW §§260.10, 264.552(a) and 264.553(a), as amended 6/2/00 by Checklist 175;

7 Del. C. §§6305 and 6307 as amended 6/26/86 and 7/13/88.

Remarks of the Attorney General

The State provisions are equivalent as amended.

XVI. REQUIREMENTS FOR PERMITS

DD. State statutes and regulations provide for Remedial Action Plans (RAPs) as a special form of RCRA permit for treatment, storage or disposal of hazardous remediation waste at remediation waste management sites, as indicated in Revision Checklist 175.

Federal Authority: RCRA §§ 2002(a), 3005, 3007, and 7004; 40 CFR 270.2, 270.11(d), 270.42, 270.68, 270.73(a), and 270.79-270.230, as amended November 30, 1998 (63 FR 65874).

Citation of Laws and Regulations; Date of Enactment and Adoption

DRGHW §§122.2, 122.11(d), 122.42, 122.68, 122.73(a), and 122.79-122.230, as amended June 2, 2000 by Checklist 175;

7 Del. C. §§6305, 6307 as amended 7/13/88, 6/26/86.

Remarks of the Attorney General

The State provisions are equivalent as amended.

XXI. LAND DISPOSAL RESTRICTIONS

W. State statutes and regulations include revisions of record keeping and paperwork requirements indicated in Revision Checklists 179 and 183.

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 262.34(a)(4), 262.34(d)(4), 268.7(a)(3)(iii), 268.7(b)(3)(ii)/Table, and 268.7(b)(4)(iv) as amended May 11, 1999 (64 FR 25408), and October 20, 1999 (64 FR 56469).

Citation of Laws and Regulations; Date of Enactment and Adoption

DRGHW §268.7(a)(3)(iii) as amended 6/2/00 and 4/23/01 by Revision Checklists 179 and 183 respectively;

7 Del. C. §6307 as amended 6/26/86.

Remarks of the Attorney General

The State provisions are equivalent as amended.

DD. State statutes and regulations include prohibitions and treatment standards for metal constituents in all hazardous wastes including the toxic characteristic wastes as indicated in Revision Checklist 179.

Federal Authority: RCRA §§3004(g)(4) and (m); 40 CFR 268.40 table, and 268.48 as amended May 11, 1999 (64 FR 25408).

Citation of Laws and Regulations; Date of Enactment and Adoption

DRGHW §§268.40 table, and 268.48 as amended 6/2/00 by Checklist 179;

7 Del. C. §6305(a) as amended 7/13/88.

Remarks of the Attorney General

The State provisions are equivalent as amended.

FF. State statutes and regulations include treatment standards for contaminated soils as indicated in Revision Checklist 179 and 183.

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 262.34(d)(4), 268.2(h), 268.2(k), 268.7(a)(4), 268.7(b)(3)(ii)/Table, 268.7(b)(4)(iv), 268.9(d)(2)(i), 268.49 as amended May 11, 1999 (64 FR 25408), and October 20, 1999 (64 FR 56469).

Citation of Laws and Regulations; Date of Enactment and Adoption

DRGHW §§262.34(d)(4), 268.2(h), 268.2(k), 268.7(a)(4), 268.7(b)(3)(ii)/Table, 268.7(b)(4)(iv), 268.9(d)(2)(i), 268.49 as amended 6/2/00 and 4/23/01 by Checklists 179 and 183 respectively;

7 Del. C. §6305 as amended 7/17/88.

Remarks of the Attorney General

The State Provisions are equivalent as amended.

GG. State statutes and regulations include corrections and clarifications to the land disposal restrictions as indicated in Revision Checklist 179.

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 268.7(b)(3)(ii)/Table, 268.7(b)(4)(iv), 268.40/Table, 268.48, as amended May 11, 1999 (64 FR 25408).

Citation of Laws and Regulations; Date of Enactment and Adoption

DRGHW §§268.7(b)(3)(ii)/Table, 268.7(b)(4)(iv), 268.40/Table, 268.48, as amended 6/2/00 by Checklist 179;

7 Del. C. §6305 as amended 7/17/88.

Remarks of the Attorney General

The State provisions are equivalent as amended.

II. State statutes and regulations stay the May 26, 1998 Phase IV Land Disposal Restriction treatment standards for metal-bearing hazardous wastes which exhibit the characteristic of toxicity, until EPA develops more consistent and comprehensive regulations for hazardous waste-derived fertilizers. In the interim, affected fertilizers are subject to the treatment standards that previously existed for toxic metals as specified on Revision Checklist 179.

Federal Authority: RCRA §§3001 and 3004(d), 40 CFR 268.40(i), as amended August 31, 1998 (63 FR 46332) and May 11, 1999 (64 FR 25408).

Citation of Laws and Regulations; Date of Enactment and Adoption

DRGHW §268.40(i), as amended 6/2/00 by Checklist 179;

7 Del. C. §§6305 and 6307 as amended 6/26/83 and 7/13/88.

Remarks of the Attorney General

The State provisions are equivalent as amended.

JJ. State statutes and regulations provide revised treatment standards for seven carbamate wastes and extend indefinitely the temporary treatment standards; remove the treatment standard for one carbamate waste; delete certain carbamate wastes as underlying hazardous constituents; and extend for six months the temporary alternative treatment standards for the other 32 carbamate wastes as indicated in Revision Checklists 179 and 183.

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR 268.40(j), 268.40/Table, and 268.48(a)/Table as amended May 11, 1999 (64 FR 25408) and October 20, 1999 (64 FR 56469).

Citation of Laws and Regulations; Date of Enactment and Adoption

DRGHW §§268.40(j), 268.40/Table, and 268.48(a)/Table as amended 6/2/00 and 4/23/01 by Checklists 179 and 183 respectively;

7 Del. C. §§6305 and 6307 as amended 6/26/83 and 7/13/88.

Remarks of the Attorney General

The State provisions are equivalent as amended.

LL. State statutes and regulations provide for interim replacement standards for spent potliners from primary aluminum reduction (EPA hazardous waste K088) as indicated in Revision Checklists 179 and 183.

Federal Authority: RCRA §3004(d)-(k), and (m); 40 CFR 268.40/Table, as amended May 11, 1999 (64 FR 25408) and October 20, 1999 (64 FR 56469).

Citation of Laws and Regulations; Date of Enactment and Adoption

DRGHW §268.40/Table as amended 6/2/00 and 4/23/01 by Checklists 179 and 183 respectively;

7 Del. C. §§6305 and 6307 as amended 6/26/83 and 7/17/88.

Remarks of the Attorney General

The State provisions are equivalent as amended.

MM. State statutes and regulations include the removal of a waste-specific prohibition and treatment standards for K140 and U408 wastes under the land disposal restrictions program as indicated in Revision Checklist 185.

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR 268.33, 268.40, and 268.48(a)/Table as amended March 17, 2000 (65 FR 14472).

Citation of Laws and Regulations; Date of Enactment and Adoption

DRGHW §§268.33, 268.40, and 268.48(a)/Table as amended 4/23/01 by Revision Checklist 185;

7 Del. C. §6305 as amended 7/13/88.

Remarks of the Attorney General

The State provisions are equivalent as amended.

XXIII. UNIVERSAL WASTES

A. State statutes and regulations provide hazardous waste management standards for the collection and management of certain widely generated wastes determined "universal wastes" as indicated in Revision Checklist 176.

Federal Authority: RCRA §§2002, 3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 273.6, as amended December 24, 1998 (63 FR 71225).

Citation of Laws and Regulations; Date of Enactment and Adoption

DRGHW §273.6, as amended 6/2/00 by Checklist 176;

7 Del. C. §§6305, 6306, 6307, 6308, 6312, and 6313 as amended 7/11/80, 6/28/85, 7/13/88, and 7/17/95.

Remarks of the Attorney General

The State provisions are equivalent as amended.

B. State statutes and regulations include hazardous waste batteries as a universal waste as indicated in Revision Checklist 176.

Federal Authority: RCRA §§3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 266.80(a), 266.80(b), 273.6, as amended December 24, 1998 (63 FR 71225).

Citation of Laws and Regulations; Date of Enactment and Adoption

DRGHW §§266.80(a), 266.80(b), 273.6 as amended 6/2/00 by Checklist 176;

7 Del. C. §§6305, 6306, 6307, 6308, 6312, and 6313 as amended 7/11/80, 6/28/85, 7/13/88, and 7/17/95.

Remarks of the Attorney General

The State provisions are equivalent as amended.

F. State statutes and regulations include spent hazardous waste lamps as a universal waste as indicated in Revision Checklist 181.

Federal Authority: RCRA §§3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 260.10, 261.9(b)-(d), 264.1(g)(11)(ii)-(iv), 265.1(c)(14)(ii)-(iv), 268.1(f)(2)-(4), 270.1(c)(2)(viii)(B)-(D), 273.1(a)(2)-(4), 273.2(a)(1), 273.2(b)(2)&(3), 273.3(a), 273.4(a), 273.5, 273.6, 273.7, 273.8, 273.9, 273.10, 273.13(d), 273.14(e), 273.30, 273.32(b)(4)&(5), 273.33(d), 273.34(e), 273.50, 273.60(a), and 273.81(a) as amended July 6, 1999 (64 FR 36466).

Citation of Laws and Regulations; Date of Enactment and Adoption

DRGHW §§260.10, 261.9(b)-(d), 264.1(g)(11)(ii)-(iv), 265.1(c)(14)(ii)-(iv), 268.1(f)(2)-(4), 122.1(c)(2)(viii)(B)-(D), 273.1(a)(2)-(4), 273.2(a)(1), 273.2(b)(2)&(3), 273.3(a), 273.4(a), 273.5, 273.6, 273.7, 273.8, 273.9, 273.10, 273.13(d), 273.14(e), 273.30, 273.32(b)(4)&(5), 273.33(d), 273.34(e), 273.50, 273.60(a), and 273.81(a) as amended 6/2/00 by Checklist 176;

7 Del. C. §§6305, 6306, 6307, 6308, 6312, and 6313 as amended 7/11/80, 6/28/85, 7/13/88, and 7/17/95.

Remarks of the Attorney General

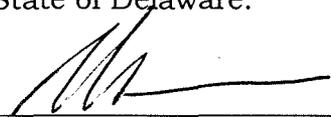
The State provisions are equivalent as amended.

XXV. MEMORANDUM OF AGREEMENT (MOA)

The State uses the MOA to satisfy certain Federal procedural requirements. The State has the authority to enter into and carry out the agreement, and no applicable State statute (including the State Administrative Procedures Act) requires that the procedure be promulgated as a rule in order to be binding.

The undersigned executes this Attorney General's Statement on authority delegated by M. Jane Brady, Attorney General of the State of Delaware.

Seal of Office



Signature

Matthew P. Chesser

Name (Type or Print)

Deputy Attorney General

Title

January 31, 2002

Date

Revision 4 AGS.doc

Cc: M. Jane Brady, Attorney General