

US EPA ARCHIVE DOCUMENT

WEST VIRGINIA PROGRAM REAUTHORIZATION
GENERAL COUNSEL'S STATEMENT
FOR FINAL AUTHORIZATION FOR REAUTHORIZATION
OF THE FEDERAL HAZARDOUS WASTE PROGRAM

I hereby certify, pursuant to my authority as the General Counsel of the West Virginia Department of Environmental Protection 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 Part 271, that in my opinion the laws of the State of West Virginia provide adequate authority to carry out the hazardous waste program set forth in the Program Description submitted herewith by the West Virginia Department of Environmental Protection (DEP) and to meet the requirements of 40 CFR Part 271, Subpart A.

The specific authorities provided are contained in statutes or regulations lawfully adopted at the time this Statement is signed and that are in effect now. The statutory authorities for the State of West Virginia are documented in the State's RCRA Statutory Checklist, dated December 5, 2011. In 2005, West Virginia's provisions at W. Va. Code §§ 22B-3-4 and 22-12-4, were amended. Specifically, the legislation repealed § 22B-3-4 in 2005 and amended § 22-12-4 so that the Secretary of the DEP now has "the sole and exclusive authority to promulgate standards of purity and quality for groundwater of the state." In my opinion, statutes relied on in previously approved authorization applications have not been amended, modified or revised by legislation or judicial decision in a way that diminishes or interferes with the authority to carry out the previously authorized hazardous waste program to meet the requirements of 40 CFR Part 271, Subpart A.

The official State regulations are contained in the following Legislative Rules:

1. 33 Code of State Regulations Series 20 (33CSR20), "Hazardous Waste Management System" effective June 1, 2012;
2. 45CSR25, "Control of Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities," effective June 1, 2012;
3. 150CSR11, "Rules Governing The Transportation Of Hazardous Waste By Rail," effective December 24, 2002; and
4. 157CSR07, "Transportation of Hazardous Wastes Upon the Roads and Highways," effective April 17, 2012.

The DEP has the authority to incorporate the Federal regulations by reference. The State's authority to adopt and incorporate Federal rules by reference is provided by W. Va. Code § 22-1-3(c), which states "if the [secretary] determines that the rule should be the same in substance as a counterpart regulation, then to the greatest degree practicable, such proposed rule shall incorporate by reference the counterpart federal regulation." Under W. Va. Code §§ 22-18-5(a), 22-18-6(a) and 22-18-23, the State rules must be consistent with, but no more expansive in coverage or more stringent in effect than the rules and regulations promulgated by the U.S. Environmental Protection Agency pursuant to RCRA, as amended. However, W. Va. Code § 22-1-3a states that in the absence of a Federal rule, the adoption of a State rule shall not be

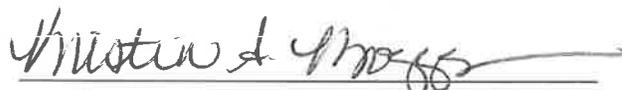
construed to be more stringent than a Federal rule, unless the absence of a Federal rule is the result of a specific Federal exemption.

The State is also seeking approval to utilize, at RCRA corrective action sites, the cleanup standards in its Voluntary Remediation Program (VRP), as addressed in its Voluntary Redevelopment Act (W. Va. Code § 22-22-1, et seq.) and its implementing administrative rules as set forth in Title 60, Series 3 of the Code of State Rules. The Memorandum of Agreement between the West Virginia Department of Environmental Protection and the Environmental Protection Agency sets forth more specific detail regarding how the State will implement corrective action at hazardous waste sites and clarifies the role of the VRP cleanup standards within the Corrective Action Program.

No provision of the Voluntary and Redevelopment Act or the administrative rules promulgated pursuant thereto relieves any person of the responsibility to comply with any otherwise applicable portion of the authorized hazardous waste program or prevents the Secretary of the Department of Environmental Protection from exercising the full extent of its authority corresponding to the state program approval requirements found in 40 CFR 271.16 ("Requirements for enforcement authority"), in any matter.

West Virginia Code § 22-1-6(d)(8) authorizes the Secretary of DEP to "employ in-house counsel to perform all legal services for the secretary and the department, including, but not limited to, representing the secretary any chief, the department or any office thereof in any administrative proceeding or in any proceeding in any state or federal court." The Secretary has the legal discretion to determine that he need not call upon the West Virginia Attorney General for legal assistance and representation in any matters related to the authorized hazardous waste management program.

This certification supplements my or my predecessors' certification(s) submitted to EPA on January 13, 2000 and June 4, 2003.



Kristin A. Boggs, General Counsel
Department of Environmental Protection

Date: May 1, 2013