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THE ATTORNEY GENERAL

MARYLAND ATTORNEY GENERAL'S STATEMENT

Final Authorization

I hereby certify, pursuant to my authority as Attorney General of the State of Maryland and in accordance with Section 3006(b) of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6901, et seq.), and 40 C.F.R. 271 that in my opinion the laws of the State of Maryland provide adequate authority to carry out the program set forth in the "Program Description" submitted by the Maryland Department of Health and Mental Hygiene ("DHMH"). The specific authorities provided, which are contained in statutes or regulations lawfully adopted at the time this Statement is signed and which shall be fully effective by the time the program is approved, include those identified below. I further certify that I have reviewed the information in the prior Attorney General's Statements for Interm Authorization and those certifications, which are attached, are still valid with the additions and changes set forth below.

I. IDENTIFICATION AND LISTING

A. Maryland statutes and regulations define hazardous waste so as to control all the hazardous waste controlled under 40 C.F.R. 261, 271.9 as indicated in Check List I.A.

Citation of Laws and Regulations:

Health-Environmental Article, §§ 7-201(1), 7-208(e);
COMAR 10.51.02.

Comments of the Attorney General:

Section 7-201(1) of the Health-Environment Article defines hazardous substance to include all material identified as hazardous waste by the Environmental Protection Agency. Section 7-208 (e)(1) specifically authorizes the Department of Health and Mental Hygiene (henceforth "DHMH") to identify hazardous substances by regulation. COMAR 10.51.02.02. defines "solid waste" and "other waste material" in the same language as 40 CFR 261.2. The terms "discarded" and "disposed of" are also identically defined. The definition of "hazardous waste" in COMAR 10.51.02.03 is equivalent to the definition in 40 CFR 261.3 including coverage of mixtures and reference to listed wastes and wastes which are hazardous by characteristic. COMAR 10.51.02.04 and .05 con-

US EPA ARCHIVE DOCUMENT

tain exclusions equivalent to those in 40 CFR 261.4 and 261.5 as to materials which are not solid wastes or hazardous wastes and an exclusion for small quantity generators. COMAR 10.51.02.06 is equivalent to 40 CFR 261.6 as to special requirements for hazardous waste which is used, re-used, recycled or reclaimed except that Maryland regulations are more stringent in not specifically exempting spent pickle liquor.

Health-Environmental Article, §§7-201(1) and 7-208(e) provide authority to regulate acutely hazardous wastes of greater than one kilogram per month as indicated in 40 C.F.R. §261.5(e)(1). After July 1, 1985 all hazardous wastes generated in quantities greater than 100 kilograms per month will also be regulated. Section 7-209(c). New §7-209(c) in no way diminishes the State's authority over acute hazardous wastes of greater than one kilogram per month.

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

Citation of Laws and Regulations:

Health-Environmental Article, §§7-201(1) and 7-208(e)
COMAR 10.51.02.09-.17;

Comments of the Attorney General:

COMAR 10.51.02.09-.13 define characteristics of hazardous waste equivalent to those of 40 CFR 261.20-24 including definitions of ignitability, corrosivity, reactivity and EP toxicity. COMAR 10.51.02.14-.17 set forth lists of hazardous wastes identical to those in 40 CFR 261.30-.33.

II. STANDARDS FOR GENERATORS

Maryland statutes and regulations provide coverage of all the generators covered by 40 C.F.R. 262 as indicated in Checklist II. RCRA § 3002 (42 U.S.C. 6922); 40 C.F.R. 262, 271.10.

Citation of Laws and Regulations:

Health-Environmental Article, §§7-206, 7-208 and 7-253;
COMAR 10.51.03.01-07.

Comments of the Attorney General:

Health-Environmental Article, §§7-206, 7-208 and 7-253 specifically authorize DHMH to regulate the generation of hazardous waste and transportation standards for generators. COMAR 10.51.03 provides standards for generators equivalent to federal regulations including requiring generators to determine if solid

wastes are hazardous, to obtain an EPA identification number, to follow extensive manifest and pre-transport requirements, maintain records and make reports and comply with special conditions under specified circumstances.

III. STANDARDS FOR TRANSPORTERS

Maryland statutes and regulations provide coverage of all the transporters covered by 40 C.F.R. 263 as indicated in Checklist III. RCRA §3003 (42 U.S.C. 6923); 40 C.F.R. 263, 271.11.

Citation of Laws and Regulations:

Health-Environmental Article, §§7-206, 7-208 and 7-249 et seq. COMAR 10.51.04.01-.04.

Comments of the Attorney General:

Health-Environmental Article, §§7-206 and 7-208 authorize DHMH to issue regulations governing transporters of hazardous wastes. COMAR 10.51.04, with the comments noted below, establishes standards equivalent to those set forth in 40 CFR 263 including requiring an EPA identification number, compliance with the manifest system, detailed record keeping and immediate action in the event of a hazardous waste discharge. Maryland regulations are more stringent in requiring transporters to or from facilities in Maryland to obtain a hauler's certificate and a bond to indemnify the State for the cost of abating possible spills. These additional requirements are authorized by Health-Environmental Article, §7-249.

Requirements for manifests are authorized by §§7-208(e)(5) and 7-253(2), which will continue to be in force. These provisions authorize the Department to require a suitable manifest to accompany shipments of hazardous waste, including those shipments of acutely hazardous wastes generated in quantities of more than one kilogram per month. See COMAR 10.51.02.05C(1) and (2). On July 1, 1985 §7-209(b) will go into effect, which will add the more stringent requirement of using a manifest to accompany, at a minimum, any shipment which is a part of a total quantity generated by a generator producing greater than 100 kilograms during one calendar month. This additional requirement does not preclude the Department from imposing the lower cut-off level of one kilogram per month in the case of acutely hazardous wastes, defined in COMAR 10.51.02.05C(1) and (2).

IV. STANDARDS FOR FACILITIES

A. Maryland statutes and regulations provide permit standards for hazardous waste management facilities covered by 40

C.F.R. 264 as indicated in Checklist IV. A. RCRA § 3004 (42 U.S.C. 6924); 40 C.F.R. 264, 271.12.

Citation of Laws and Regulations:

Health-Environmental Article, §§7-201, 7-206, 7-207, 7-208, 7-232, 7-236 and 7-242. COMAR 10.51.05.01-.15.

Comments of the Attorney General:

Maryland statutes and regulations setting standards for storage, treatment and disposal facilities are equivalent to those provided by federal regulations. Specifically, COMAR 10.51.05.01 applies to all owners and operators of facilities covered by federal regulations. Specific facility standards include the requirement of an EPA identification number (10.51.05.02 B), notice of receipt of certain wastes and to new owners and operators (10.51.05.02 C), waste analysis (10.51.05.02 D), security (10.51.05.02 E), general inspection requirements (10.51.05.02 F), special requirements for ignitable, reactive or incompatible wastes (10.51.05.02 H), location standards (10.51.06.01), emergency preparedness and prevention (10.51.05.03-.04), record-keeping (10.51.05.05), groundwater protection (10.51.05.06), closure and post-closure (10.51.05.07), and financial requirements (10.51.05.08). Maryland regulations concerning financial requirements properly incorporate by reference the federal regulations as amended through April 16, 1982 and are effective on the dates that the incorporated federal regulations are effective.

Maryland regulations also provide standards for the use and management of containers (10.51.05.09), tanks (10.51.05.10), surface impoundments (10.51.05.11), waste piles (10.51.05.12), land treatment (10.51.05.13), land-fills (10.51.05.14) and incinerators (10.51.05.15). Maryland regulations are more stringent than federal regulations in not permitting an exemption for double-lined surface impoundments (49 CFR 264.222), exemptions for certain waste piles (264.253) and land-fill disposal of some materials (264.314-316). The Maryland definition of "treatment" in §7-201(U) is equivalent to that in §1004(34) of RCRA and applies to the rendering of wastes amenable for recovery and storage.

Maryland does not provide for interim status for facilities but requires all facilities to comply with the permitting standards.

V. REQUIREMENTS FOR PERMITS

Maryland statutes and regulations provide requirements

for permits as indicated in Checklist V. RCRA § 3005 (42 U.S.C. 6925); RCRA § 7004 (42 U.S.C. 6974); 40 C.F.R. 271.13 and .14

Citation of Laws and Regulations:

Health-Environmental Article, §§7-207, 7-208(e), 7-224(a), 7-232, 7-235, 7-236, 7-238, 7-239, 7-240, 7-242 and 7-257; COMAR 10.51.05 and 10.51.07.

Comments of the Attorney General:

Maryland regulations are equivalent to federal requirements for permits. Health-Environmental Article, §7-232 requires owners and operators of facilities to obtain permits as does COMAR 10.51.07.01. The other Maryland statutes cited spell out standards for obtaining and maintaining permits and provide additional authority for Maryland regulations.

VI. INSPECTIONS

Maryland 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 program including compliance with permit terms and conditions and other program requirements. RCRA § 3007 (42 U.S.C. 6927), 40 C.F.R. 271.15.

Citation of Laws and Regulations:

Health-Environmental Article, §§7-236(a)(3), 7-245(a), 7-246, 7-252(a)(5), 7-256 and 7-256.1.

Comments of the Attorney General:

Health-Environmental Article, §7-256.1 provides for the issuance of administrative search warrants in order to conduct any inspection required or authorized by law to determine compliance with laws relating to controlled hazardous substances. The statute specifically authorizes such warrants to perform samplings and any other functions authorized by law to determine compliance. Maryland law also authorizes the issuance of criminal warrants in appropriate cases.

In addition, the Department is specifically granted right-of-entry to hazardous substance facilities by Health-Environmental Article, §§7-236, 7-252 and 7-256. The other statutes cited specifically require the Department to make certain inspections.

VII. ENFORCEMENT REMEDIES

Maryland statutes and regulations provide the following:

A. Authority to restrain immediately by order or by suit in Maryland Circuit Courts any person from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment. RCRA § 3006 (42 U.S.C. 6926); 40 C.F.R. 271.16(a)(1).

Citation of Laws and Regulations:

Health-Environmental Article, §§7-258, 7-259, 7-262 and 7-263.

Comments of the Attorney General:

Health-Environmental Article, §7-263 specifically authorizes immediate injunctive relief against any person who violates or is about to violate any hazardous substance statute, regulation or permit condition. On such a showing, an injunction can be obtained without showing the lack of an adequate remedy at law, so the availability of administrative remedies, such as permit revocation, is irrelevant. Such injunctions are available on an emergency basis if there is an imminent danger to public health, public welfare or the environment.

In addition, §§7-258, 7-259 and 7-262 provide for the issuance of administrative orders to assure compliance with statutes, rules, regulations and permit conditions.

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. RCRA § 3006 (42 U.S.C. 6926); 40 C.F.R. 271.16(a)(2).

Citation of Laws and Regulations:

Health-Environmental Article, §§ 7-263 and 7-266.

Comments of the Attorney General:

See Comments under VIIA above. Health-Environmental Article, §7-263(c) also expressly provides that injunctive relief is available against threatened violations as it permits injunctions against persons who are "about to violate."

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. RCRA § 3006 (42 U.S.C. 6926); 40 C.F.R. 271.16(a)(3)(i).

Citation of Laws and Regulations:

Health-Environmental Article, §7-266.

Comments of the Attorney General:

Health-Environmental Article, §7-266 authorizes suit for civil penalties up to \$10,000 for each day of violation.

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; 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. RCRA § 3006 (42 U.S.C. 6926); 40 C.F.R. 271.16(a)(3)(ii).

Citation of Laws and Regulations:

Health-Environmental Article, §§7-265 and 7-267.

Comments of the Attorney General:

Health-Environmental Article, §7-267 provides for criminal penalties up to \$25,000 per day and imprisonment up to 1 year for first-time violators and \$50,000 per day and imprisonment up to 2 years for others who violate hazardous substance statutes, regulations and permit conditions. Health-Environmental Article, §7-265 also provides for greater penalties, up to \$100,000 per day or 5 years or both, for certain violations including storing or disposing of a controlled hazardous substance in any location other than a permitted facility, illegally transporting a CHS or falsifying required information.

VIII. PUBLIC PARTICIPATION IN THE STATE ENFORCEMENT PROCESS

Maryland State laws and regulations provide for public participation in the enforcement process which allows intervention in a manner analogous to Federal Rule 24(a)(2) of the Federal Rules of Civil Procedure.

Citation of Laws and Regulations:

Maryland Rule of Procedure 208(a).

Comments of the Attorney General:

Maryland law liberally allows individuals to intervene in civil proceedings to assure the enforcement of environmental laws, Citizens Coordinating Committee on Friendship Heights, Inc., et al. v. TKU Associates, et al., 276 Md. 705 (1976). As that case holds, Maryland Rule 208(a) is analagous to, and was derived from, Federal Rule 24 and the federal rule serves as guidance in interpreting the Maryland Rule. The case further held that the requirement that existing representation "may be inadequate" is a "minimal one" (quoting Trobovich v. Mine Workers, 404 U.S. 528 (1972) where a citizen's group wishes to intervene in a proceeding already involving a public agency.

Natural Resources Article, §1-503 further broadens intervention in actions to protect the environment by granting standing to anyone who resides in the county or city where the action is brought or where the alleged condition, activity or failure affects the environment.

Based on the foregoing, the Department has agreed in the Memorandum of Agreement not to oppose intervention by persons otherwise having standing under Maryland Rule 208(a) on the ground that the interest of the proposed intervenor is already adequately represented by the State.

Therefore Maryland provides for alternative hybrid participation equivalent to that provided by federal law as set forth in 40 CFR 271.16(d)(2). Specifically, Maryland law provides sufficient authority to permit intervention as of right where the intervenor's interests would be adversely affected. This alternative is specifically authorized in 46 Fed.Reg. 5616 at 5617 (January 19, 1981) and 49 Fed.Reg. 7370 at 7372 (February 29, 1984).

IX. AUTHORITY TO SHARE INFORMATION WITH EPA

Maryland statutes and regulations provide authority for any information obtained or used in the administration of the program to be available to EPA upon request without restriction. RCRA § 3007(b) (42 U.S.C. 6927); 42 C.F.R. 271.17.

Citation of Laws and Regulations:

Health-Environmental Article, §§ 7-245(b), 7-256.1; Article 76A, §§1-5A. COMAR 10.51.01.02D.

Comments of the Attorney General:

COMAR 10.51.01.02D allows information which is otherwise confidential and which was required (or could have been required) to be supplied to the Department to be made available to EPA upon request. This includes all information submitted in support of a permit application or obtained or used in the administration of the authorized program. In addition, the Maryland Public Information Act, Article 76A, §§1-5A, generally provides for access by any person, including federal agencies, to State documents. The only relevant documents which, as a general matter, cannot be disclosed are documents containing trade secrets, privileged information and confidential commercial, financial, geological or geophysical data. Also falling into this category are medical records, personal files, letters of references, school records, addresses of State employees, records of individual persons' finances, occupational and professional licensing records, retirement files and information security manuals. However, this category of information can be released if "otherwise provided by law." Therefore to the extent specific information must be released under federal regulations, such release is otherwise provided by law and the Department can release such information upon request without restriction. 40 CFR §271.17(a) constitutes such regulatory authority to release information obtained or used in the State's program to EPA without restriction.

Records of inspections of facilities are specifically made public by Health-Environmental Article, §7-245(b). While §7-245(b) states that information gathered as the result of such an inspection would remain confidential, COMAR 10.51.01.02D makes it clear that this information can be released to EPA. The statutory prohibition applies only to public disclosure.

X. AUTHORITY TO COMMIT TO PROCEDURAL REQUIREMENTS BY AGREEMENT

Maryland law permits the Department to commit to certain procedural requirements, specifically to following CHS permit procedures in issuing "equivalent permits" and utilizing media publications and broadcasts, by way of the MOA. Under Maryland law, the Department has the authority to enter into such agreements and to carry out such agreements, and no applicable State statute requires the agreements to be promulgated as rules to be binding.

Citation of Laws and Regulations:

Health-Environmental Article, §§7-207(a)(1), (a)(7) and (b)(2).

Comments of the Attorney General:

The Department, under §7-207(a)(1) and (b)(2), is specifically authorized to accept grants from the federal government and cooperate with federal agencies to carry out its functions. That authority includes the authority to commit to those requirements by MOA.

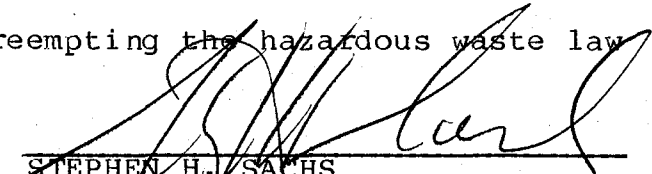
XI. PREEMPTION

Maryland statutes and regulations cited in Sections I through X above are not preempted by any other State statutes or regulations.

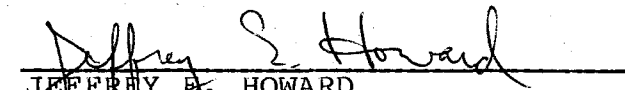
Comments of the Attorney General:

No Maryland statutes preempting the hazardous waste law exist.

June 29, 1984
Date


STEPHEN H. SACHS
Attorney General

26 June 1984
Date


JEFFREY E. HOWARD
Assistant Attorney General