

US EPA ARCHIVE DOCUMENT

Maryland
Legislation Checklist
Review Comments

Titles of State Legislation: Environment, Title 1, §§601 through 607, Annotated Code of Maryland (1996).
Environment, Title 1, §§601 through 607, Annotated Code of Maryland (1999 Supplement).
Environment Article, Title 7, Subtitle 2, Annotated Code of Maryland (1996).
Environment Article, Title 7, Subtitle 2, Annotated Code of Maryland (1999 Supplement).

Blanket Comment: Section 7-206 provides the Secretary of the Environment with general authority to supervise and control hazardous substances.

Statutory Element	State Cite	Coverage Yes/No?	Comment
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DEFINITIONS

The State needs the authority to define the following terms in a manner at least as stringent as the Federal program. If definitions of these terms appear in State statutes, they must be at least as stringent as the analogous Federal Statutory or regulatory definition.

Disposal	§7-208(a)	YES	Section 7-208(a) contains broad authority to adopt rules and regulations to carry out the provisions of Subtitle 2, which governs disposal of controlled hazardous substances (CHS).
Generator	§7-208(a)	YES	Section 7-208(a) contains broad authority to adopt rules and regulations to carry out the provisions of Subtitle 2, which governs generation of CHS.
Hazardous waste *	§7-201(b) §7-208(e)(1)	YES	Maryland uses the term "controlled hazardous substance" ("CHS"), which is defined as any hazardous substance the Department identifies as a controlled hazardous substance under Subtitle 2, or low-level nuclear waste. Section 7-208(e)(1) requires the Department, by rule or regulation, to identify all controlled hazardous substances.
Manifest	§7-208(a)	YES	Section 7-208(a) contains broad authority to adopt rules and regulations to carry out the provisions of Subtitle 2, which governs the use of manifests for shipments of CHS.

Maryland Legislation Checklist (cont'd)

Statutory Element	State Cite	Coverage Yes/No?	Comment
Person	§7-201(r) §7-208(a)	YES	The statutory definition of "person" includes "the federal government, this State, any county, municipal corporation, or other political subdivision of this State, and any of their units". This definition does not include trusts, joint stock companies, partnerships, associations, and interstate bodies, which are included in the Federal definition. The broad authority in §7-208(a) however, authorizes the adoption of a regulatory definition of "person" for purposes of regulating the generation, transportation, storage, treatment, and disposal of CHS.
Storage	§7-208(a)	YES	Section 7-208(a) contains broad authority to adopt rules and regulations to carry out the provisions of Subtitle 2, which governs storage of CHS.
Transport	§7-208(a)	YES	Section 7-208(a) contains broad authority to adopt rules and regulations to carry out the provisions of Subtitle 2, which governs transportation of CHS.
Treatment	§7-201(v) §7-208(a)	YES	The statutes define "treatment" is found at §7-201(v). The broad authority in §7-208(a) authorizes the adoption of a regulatory definition of "treatment" for purposes of regulating the treatment of CHS.
Treatment, Storage or Disposal facility	§7-201(c) §7-208(a)	YES	That statutes defines "controlled hazardous substance facility" as a disposal structure, system, or geographic area designated by the Department for treatment, storage related to treatment or disposal, or disposal of CHS. In addition, the broad authority in §7-208(a) authorizes the adoption of a regulatory definition of "TSD facility" for purposes of regulating the treatment, storage, and disposal of CHS.

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Maryland Legislation Checklist (cont'd)

Statutory Element	State Cite	Coverage Yes/No?	Comment
Waste (solid)	§7-201(t)	YES	<p>Maryland's statutes define "solid waste" as "any abandoned material or substance which is disposed of, burned, or incinerated or accumulated, stored, or treated before or in lieu of being disposed of, burned, or incinerated;" "material or substance which is recycled or accumulated, stored, or treated before recycling;" or "material or substance which is considered inherently waste-like."</p> <p>Maryland excludes "irrigation return flows" from the definition of "solid waste," where the Federal definition only excludes "solid or dissolved materials" in irrigation return flows. This does not affect the scope of regulated substances, however.</p> <p>Maryland excludes "materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process". Because these materials are not discarded or disposed of, they would also not be solid waste under the Federal definition.</p>

* Note that the State must have authority to regulate the recycling and reuse of hazardous waste in a manner at least as stringent as the Federal program.

HAZARDOUS WASTE IDENTIFICATION AND LISTING [See 40 CFR §271.9]

Authority for:			
1. HW characteristics	§7-208(e)(2)	YES	Section 7-208(e)(2) gives the Department the authority to set standards to identify lethal, toxic, and other injurious effects of controlled hazardous substances.
2. HW list	§7-208(e)(1)	YES	Section 7-208(e)(1) gives the Department the authority to identify all hazardous substances that are controlled hazardous substances governed by Subtitle 2.

STANDARDS FOR GENERATORS [See 40 CFR §271.10]

The State needs the authority to regulate all generators EPA regulates under 40 CFR Part 262.

General Comment: Sections 7-208(a) contains broad authority to adopt rules and regulations to carry out the provisions of Subtitle 2, which governs the generation, transportation, storage, treatment, and disposal of CHS. Section 7-208(e)(5) provides specific authority for monitoring the generation of CHS. Section 7-209(c) explicitly subjects generators generating greater than 100 kilograms (kg) of CHS during a calendar month to the applicable regulations adopted under §7-208(e).

Maryland Legislation Checklist (cont'd)

Statutory Element	State Cite	Coverage Yes/No?	Comment
Authority to promulgate regulations on:			
1. I.D. numbers	§§7-208(a) & (e)(5) §7-209(c)	YES	See the general comment for generators.
2. Requiring generator to determine whether waste is hazardous	§§7-208(a) & (e)(5) §7-209(c)	YES	See the general comment for generators.
3. Recordkeeping practices	§§7-208(a) & (e)(5) §7-209(c)	YES	See the general comment for generators.
4. Packaging, labeling, marking and placarding practices	§§7-208(a) & (e)(5) §7-209(c) §7-253(1)	YES	See the general comment for generators. In addition, §7-253(1) requires generators of CHS to label the CHS prior to transportation in accordance with rules and regulations of the Department.
5. Use of appropriate containers	§§7-208(a) & (e)(5) §7-209(c)	YES	See the general comment for generators.
6. Furnishing information	§§7-208(a) & (e)(5) §7-209(c)	YES	See the general comment for generators.
7. Use of manifest consistent with DOT and EPA	§§7-208(a) & (e)(5) §7-209(b) §7-209(c) §7-253(2)	YES	See the general comment for generators. In addition, §7-209(b) provides the Department with authority to require a manifest and to determine the contents of the manifest. Section 7-253(2) requires a generator having CHS transported to a CHS facility to provide a manifest for each CHS vehicle.
8. International shipments	§§7-208(a) & (e)(5) §7-209(b) §7-209(c) §7-253(2)	YES	See the general comment for generators. In addition, §§7-209(b) and 7-253(2) require the use of a manifest as described in the previous comment.
9. Designation of and delivery to permitted facilities	§§7-208(a) & (e)(5) §7-209(b) §7-209(c) §7-253(4)	YES	See the general comment for generators. In addition, §7-209(b) requires that generators generating greater than 100 kg of CHS in a month include the EPA identification number of the designated facility on the manifest. Section 7-253(4) states that generators may only contract for treatment, storage, or disposal of CHS with a facility permit holder or a CHS hauler who has a valid contract with a CHS facility for treatment, storage, or disposal.

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Statutory Element	State Cite	Coverage Yes/No?	Comment
10. Investigation of unreturned shipments	§§7-208(a) & (e)(5) §7-209(c)	YES	See the general comment for generators.
11. Submission of reports	§§7-208(a) & (e)(5) §7-209(c) §7-253(5)	YES	See the general comment for generators. In addition, §7-253(5) requires that generators report, from time to time, on the form the Department requires, information about shipments of CHS.

STANDARDS FOR TRANSPORTERS [See 40 CFR §271.11]

The State needs the authority to regulate all transporters EPA regulates under 40 CFR Part 263.

General Comment: Section 7-208(a) contains broad authority to adopt rules and regulations to carry out the provisions of Subtitle 2, which governs the generation, transportation, storage, treatment, and disposal of CHS. Section 7-208(e)(5) provides general authority for monitoring the transportation of CHS. Note that Maryland requires transporters to obtain hauler certificates, vehicle certificates, and driver certificates; this requirement is outside the scope of the Federal program.

Authority to promulgate regulations on:			
1. I.D. numbers	§§7-208(a) & (e)(5)	YES	See the general comment for transporters.
2. Recordkeeping	§§7-208(a) & (e)(5)	YES	See the general comment for transporters.
3. Labeling	§§7-208(a) & (e)(5) §7-252(4)	YES	See the general comment for transporters. In addition, §7-252(4) requires transporters to label the controlled hazardous substance in accordance with the Department's rules and regulations.
4. Compliance with manifest system	§§7-208(a) & (e)(5) §7-252(3)	YES	See the general comment for transporters. In addition, §7-252(3) requires the transporter to carry the manifest in the cab of the CHS vehicle.
5. Spill notification	§§7-208(a), (d)(2), & (e)(5)	YES	See the general comment for transporters. In addition, §7-208(d)(2) gives the Department authority to adopt "special provisions for alert and abatement standards and procedures for occurrences or emergencies of pollution or on other short term conditions that are an acute danger to public health or to the environment".

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Statutory Element	State Cite	Coverage Yes/No?	Comment
6. Spill clean-up	§§7-208(a), (d)(2), & (e)(5)	YES	See the general comment for transporters. In addition, §7-208(d)(2) gives the Department authority to adopt "special provisions for alert and abatement standards and procedures for occurrences or emergencies of pollution or on other short term conditions that are an acute danger to public health or to the environment".
7. Transportation to permitted facility	§§7-208(a) & (e)(5)	YES	See the general comment for transporters.
8. Consistency with DOT regulations	§§7-208(a) & (e)(5) §7-252(4)	YES	See the general comment for transporters. In addition, §7-252(4) requires transporters to label the controlled hazardous substance in accordance with the Department's rules and regulations.

STANDARDS FOR HW STORAGE, TREATMENT, AND DISPOSAL FACILITIES [See 40 CFR 271.12]

The State needs the authority to regulate all of the owners and operators of hazardous waste management facilities whom EPA regulates.

General Comment: Section 7-208(e)(5) grants the Department the authority to adopt regulations establishing procedures for monitoring the treatment, storage, and disposal of CHS. Section 7-208(e)(6) gives the Department the authority to adopt regulations that set minimum requirements for the operation, maintenance, monitoring, reporting, and supervision of any CHS facility.

Authority to promulgate regulations on:			
1. I.D. numbers	§§7-208(e)(5)&(6)	YES	See the general comment for TSD facilities.
2. Recordkeeping	§§7-208(e)(5)&(6)	YES	See the general comment for TSD facilities.
3. Reporting	§§7-208(e)(5)&(6)	YES	See the general comment for TSD facilities.
4. Monitoring	§§7-208(e)(5)&(6)	YES	See the general comment for TSD facilities.
5. Inspecting	§§7-208(e)(5)&(6)	YES	See the general comment for TSD facilities.
6. Compliance with manifest system	§§7-208(e)(5)&(6)	YES	See the general comment for TSD facilities.

Maryland Legislation Checklist (cont'd)

Statutory Element	State Cite	Coverage Yes/No?	Comment
7. Operating methods	§§7-208(e)(5)&(6) §7-242(a)(2)	YES	See the general comment for TSD facilities. In addition, §7-242(a)(2) requires that a facility permit holder operate the CHS facility in a manner approved by the Department.
8. Location, design, construction	§§7-208(e)(3),(5),(6)&(9) §7-242(a)(2)	YES	See the general comment for TSD facilities. Also, §7-208(e)(3) gives the Department the authority to set minimum design standards for CHS facilities. Section 7-208(e)(9) gives the Department the authority to set health and safety standards relating to the site of a CHS facility (§7-209(e)(9)(i)-(v) lists minimum siting considerations). In addition, §7-242(a)(2) requires that a facility permit holder design and construct the CHS facility in a manner approved by the Department.
9. Contingency plans	§§7-208(e)(5)&(6) §7-242(a)(3)	YES	See the general comment for TSD facilities. In addition, §7-242(a)(3) requires that a facility permit holder establish emergency procedures and safeguards to prevent accidents and reasonably foreseeable harm to human beings or the environment.
10. Training	§§7-208(e)(5)&(6)	YES	See the general comment for TSD facilities.
11. Ownership	§§7-208(e)(5)&(6)	YES	See the general comment for TSD facilities.
12. Closure and Post-Closure activities	§§7-208(e)(5)&(6) §7-242(a)(6)	YES	See the general comment for TSD facilities. In addition, §7-242(a)(6) requires a facility permit holder to restore the CHS facility to its original condition if use as a CHS facility is terminated, to the extent practicable.
13. Continuity of operation	§§7-208(e)(5)&(6)	YES	See the general comment for TSD facilities.
14. Financial responsibility	§§7-208(e)(5),(6)&(7) §7-236(a)(1) §7-242(a)(1)	YES	See the general comment for TSD facilities. In addition, §7-208(e)(7) contains authority to set requirements for receiving and applying for facility permits. Section 7-236(a)(1) requires evidence of financial responsibility as a prerequisite for issuing a permit. Section 7-242(a)(1) requires maintenance of financial assurance as a requirement for keeping the facility permit.
15. General conditions (see 40 CFR 270.30)	§§7-208(e)(5),(6)&(7)	YES	See the general comment for TSD facilities. In addition, §7-208(e)(7) contains authority to set requirements for receiving and applying for facility permits.

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Statutory Element	State Cite	Coverage Yes/No?	Comment
PERMITS FOR HW STORAGE, TREATMENT AND DISPOSAL FACILITIES [See 40 CFR §271.15 and 271.13]			
1. Require permits for owners and operators of all TSD facilities	§7-232(a)	YES	Section 7-232(a) requires that persons hold a facility permit before owning, operating, establishing, or maintaining a CHS facility.
2. Impose construction ban	§7-232(a)	YES	Section 7-232(a) requires persons to hold a facility permit prior to owning, operating, establishing, or maintaining a CHS facility.
3. Prohibit operation of facilities without permits (State may have an analogue to interim status)	§7-232(a)	YES	Section 7-232(a) requires that persons hold a facility permit before owning, operating, establishing, or maintaining a CHS facility.
4. Require permit application information	§7-208(e)(7) §7-235(1) §7-207(a)(4)	YES	Section 7-208(e)(7) gives the Department the authority to set requirements for receiving and applying for facility permits. In addition, §7-235(1) requires facility permit applicants to submit an application to the Department on the form the Department requires. Finally, §7-207(a)(4) requires submission of plans, specifications, and other information prior to issuance of any permits required by Subtitle 2.
5. Require permits to contain all technical and administrative standards	§7-208(a)&(e)(6)	YES	The general authority to adopt regulations in §7-208(a) and the more specific authority to set minimum requirements for the operation, maintenance, monitoring, reporting, and supervision of a CHS facility in §7-208(e)(6), gives the State sufficient coverage.
6. Provide for permit modifications and termination (revocation)	§7-207(a)(2)&(5) §7-257(b)(7)	YES	Section 7-207(a)(2) gives the Department the authority to modify or revoke permits that require construction, modification, extension, or alteration of new or existing disposal systems or treatment works, while §7-207(a)(5) gives the Department the authority to modify or revoke permits to install, modify, or operate disposal systems. Section 7-257(b)(7) authorizes the Department to revoke a facility permit when there is "good cause".
7. Allow public disclosure of name and address of permit applicants and permittees	§1-603(b) §7-239(a)	YES	Section 7-239(a) requires the Department to comply with Title 1, Subtitle 6. Section 1-603(b) requires the Department to make permit applications available to the public.

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Maryland Legislative Checklist (cont'd)

Statutory Element	State Cite	Coverage Yes/No?	Comment
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PUBLIC PARTICIPATION

General Comment: Section 7-239(a) requires the Department to comply with the Title 1, Subtitle 6 requirements which govern public participation.

<p>Authority to provide:</p> <p>1. Draft permit, fact sheet, etc.</p>	<p>§1-604(a)(1)&(2) §7-239(a)</p>	<p>YES</p>	<p>See the general comment for public participation. Section 1-604(a)(1) requires that the Department prepare a tentative determination explaining/describing the proposed decision. Section 1-604(a)(2) requires that the Department include the draft permit in the tentative determination.</p>
<p>2. Notice of all draft permits by radio broadcasts and notices in newspapers, etc.</p>	<p>§1-604(a)(3) §7-239(a)</p>	<p>YES</p>	<p>See the general comment for public participation. Section 1-604(a)(3) requires the Department to issue notice of its tentative determination.</p>
<p>3. 45-day public comment period on all draft permits</p>	<p>§1-604(a)(3) §7-208(e)(6) §7-239(a)</p>	<p>YES</p>	<p>See the general comment for public participation. Section 1-604(a)(3) only requires the Department to allow 30 days for public comment after the publication of the tentative decision. The Department's general authority at §7-208(e)(6) provides the authority to require a longer (45-day) comment period.</p>
<p>4. Informal hearing with written notice of opposition</p>	<p>§1-604(a)(4)(i) §7-208(e)(6) §7-239(a)</p>	<p>YES</p>	<p>Section 1-604(a)(4)(i) requires the Department to schedule a public hearing if written request for public hearing is made within 20 days of the notice of tentative determination. The general authority at §7-208(e)(6) permits the Department to require public hearings if requested in writing later in the public comment period.</p>
<p>5. Consideration of and response to public comments</p>	<p>§7-208(a)</p>	<p>YES</p>	<p>The general language at §7-208(a) provides sufficient authority for adoption of this standard in the regulations.</p>

Maryland Legislation Checklist (cont'd)

Statutory Element	State Cite	Coverage Yes/No?	Comment
INSPECTIONS			
1. Right to enter, inspect and obtain samples (at all regulated premises and where records are kept)	§7-256(a)	YES	Section 7-256(a) gives the Department the authority to enter, at any reasonable time, any hazardous substance facility to: inspect the facility; to obtain water, waste, soil or air samples; to drill test wells; and to measure the volume and kinds of substances that are received, treated, stored, or disposed of.
ENFORCEMENT [See 40 CFR 271.16]			
Authority to:			
1. Immediately restrain unauthorized activity	§§7-263(a),(c),&(d)	YES	Section 7-263(a) gives the Department the authority to seek an injunction against any person who violates Subtitle 2 or any rule or permit issued under Subtitle 2. Section 7-263(c) allows the Department to obtain an injunction without showing a lack of adequate remedy at law. Section 7-263(d) allows the Department to sue for an immediate injunction if an emergency exists from imminent danger to the public health, public welfare, or the environment.
2. Sue to enjoin any threatened or continuing program violation without prior revocation of permit	§§7-263(a), (c)	YES	Section 7-263(a) gives the Department the authority to seek an injunction against any person who violates Subtitle 2 or any rule or permit issued under Subtitle 2. Section 7-263(c) allows the Department to obtain an injunction without showing a lack of adequate remedy at law.
3. Obtain civil penalties for any violation (maximum no less than \$10K per day)	§§7-266(a)&(b)	YES	Section 7-266(a) allows the Department to obtain civil penalties of up to \$25,000 for each day of violation. In addition, under §7-266(b), the Department may impose a penalty of up to \$25,000 for each violation (where each day a violation occurs is a separate violation), but not exceeding \$100,000 total.

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Statutory Element	State Cite	Coverage Yes/No?	Comment
4. Obtain criminal penalties for specified maximum violations (no less than \$10K per day and imprisonment with maximum no less than 6 months); burden of proof no greater than under Federal law	§7-265(a)	YES	Section 7-265(a) states that criminal penalties may be obtained against any person who treats, stores or disposes of CHS without a permit; who transports CHS to any place other than a permitted facility; falsifying any information required by the Department; or directing any such offense. A person convicted of any of these offenses is subject to a fine not to exceed \$100,000 or imprisonment not exceeding 5 years.
5. Allow intervention (See 40 CFR 271.16(d))	MOA	YES	This program element was addressed in Section VIII of the Base AG Statement. There is no statutory provision, however, case law supports the proposition that intervention is allowed. The MOA should include language that Department agrees to not oppose intervention in accordance with 40 CFR 271.16(d)(2).
MISCELLANEOUS			
1. Authority to share all information with EPA	§7-207(b)(2)	YES	Section 7-207(b)(2) gives the Department the authority to advise, consult, and cooperate with units of the Federal government to carry out the provisions of Subtitle 2.
2. Variance and waiver provisions	§7-208(d)(3) §7-208(e)	YES	Section 7-208(d)(3) gives the Department the authority to specify different provisions, as circumstances require, for different waste sources and geographical areas. In addition, the State's general regulatory authority in §7-208(e) may allow for variances or waivers.
3. Importation ban		NO	Maryland does not have an importation ban.
4. Exemptions	§7-208(d)(4)	YES	Section 7-208(d)(4) gives the Department the authority to grant exemptions which are consistent with Federal law or Federal regulations.
5. Siting	§7-208(e)(9)	YES	Section 7-208(e)(9) allows the Department to set health and safety standards that relate specifically to the site of a hazardous waste.