

US EPA ARCHIVE DOCUMENT

**COMMONWEALTH OF PENNSYLVANIA**

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**PENNSYLVANIA SUPPLEMENTAL LEGAL  
STATEMENT FOR FINAL AUTHORIZATION FOR  
CHANGES TO THE FEDERAL RCRA PROGRAM FROM  
JULY 1998 THROUGH JULY 6, 1999**

**July 27, 2000**

**PENNSYLVANIA SUPPLEMENTAL LEGAL STATEMENT  
FOR FINAL AUTHORIZATION FOR CHANGES TO THE  
FEDERAL RCRA PROGRAM FROM JULY 1998  
THROUGH JULY 6, 1999**

I hereby certify, pursuant to my authority as Deputy General Counsel and in accordance with Section 3006(b) of the Resource Conservation and Recovery Act (hereinafter "RCRA"), 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 Commonwealth of Pennsylvania (hereinafter "Commonwealth" or "Pennsylvania") provide adequate authority to carry out the program set forth in the "Program Description" submitted by the Pennsylvania Department of Environmental Protection (hereinafter referred to as "the Department"). The specific authorities provided are contained in statutes or regulations lawfully adopted at the time this Supplemental Legal Statement is signed and which are in effect now, as specified below. These authorities and this certification supplement the previously certified authorities described in the "Pennsylvania Legal Statement for Final Authorization Including Changes to the Federal RCRA Program Through June 1998" (hereinafter "Legal Statement"). The Commonwealth's final rulemaking was made under the authority of the Solid Waste Management Act, Act of July 7, 1980 (P.L. 380, No. 97), as amended (hereinafter referred to as "Act 97"), sections 105, 401-403 and 501 (35 P.S. §§ 6018.105, 6018.401-6018.403 and 6018.501); sections 5, 402 and 501 of The Clean Streams Law (35 P.S. §§ 691.5, 695.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P.S. §§ 510-20).

Pennsylvania's regulations became effective on May 1, 1999, and they incorporated by reference the Federal hazardous waste regulations in the *Code of Federal Regulations* (CFR) that were in effect as of May 1, 1999. As stated in 25 Pa. Code § 260a.3(e), the incorporation by reference also includes subsequent modifications and additions to the CFR incorporated. The purpose of incorporating by reference is to ensure that the Commonwealth's hazardous waste regulations are consistent with the Federal regulations. As documented in the Commonwealth's Legal Statement, the Commonwealth has the authority to lawfully adopt regulations that reference EPA (or other) regulations and adopt certain EPA criteria by reference to 40 CFR. Pennsylvania courts have upheld the validity of regulations that reference other existing regulations, including Federal regulations. (East Suburban Press v. Township of Penn Hills, 40 Pa. Cmwlth. 438, A.2d 1263 (1979); Commonwealth v. Tarabilda, 222 Pa. Super. 237, 294 A.2d 830 (1972); Fisher's Petition, 344 Pa. 96, 23 A.2d 878 (1942)) The practice is expressly authorized by Section 1937(a) of the Statutory Construction Act of 1972, 1 Pa. C.S. § 1937(a), which applies to documents codified in the Pennsylvania Code.

This Supplemental Legal Statement contains the statement and certification of the Commonwealth's provisions addressing changes made to the Federal program between July 1, 1998 and June 30, 1999 (RCRA Cluster IX). The Commonwealth's regulatory provisions are documented on Revision Checklists 169 through 181, which are attached to this Supplemental Legal Statement. On the Revision Checklists, an "X" in the "equivalent" column implies that the Commonwealth provision is

identical to the Federal provision because the Commonwealth has incorporated the Federal provision by reference.

## **I. IDENTIFICATION AND LISTING**

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

- (31) Listing of four wastes (K169-K172) generated during petroleum refining process, 40 CFR 261.32, Part 261 Appendix VII as amended August 6, 1998 [63 FR 42110], Revision Checklist 169.***

Federal Authority: RCRA §3001(b).

### **Citation of Laws and Regulations; Date of Enactment and Adoption**

Act 97, Title 35, Pennsylvania Statutes (1993), (35 P.S.), § 6018.402.

Title 25, Pennsylvania Code (25 Pa. Code), § 261a.1, effective May 1, 1999.

### **Remarks of the General Counsel**

Pennsylvania has incorporated by reference, without change, the provisions in 40 CFR 261.32 and Part 261, Appendix VII. 35 P. S. § 6018.402 gives the Environmental Quality Board the authority to establish rules and regulations identifying the characteristics of hazardous waste and listing particular waste. It also gives the Department the authority to regulate such hazardous wastes when the Department has determined that such waste poses a "substantial present or potential hazard" to human health or the environment.

***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 167 E and 179.***

Federal Authority: RCRA §3001; 40 CFR 261.4(b)(7) as amended May 26, 1998 (63 FR 28556) and May 11, 1999 (64 FR 25408).

### **Citation of Laws and Regulations; Date of Enactment and Adoption**

35 P.S. §§ 6018.103, 6018.105(a) and 6018.402.

25 Pa. Code § 261a.1, effective May 1, 1999.

Remarks of the General Counsel

Coal refuse and acid mine drainage treatment plant sludge are expressly excluded from the Commonwealth's definition of "hazardous waste" at 35 P.S. § 6018.103. Under the Federal scheme, these and other mining wastes are excluded by regulation at 40 CFR 261.4(b)(7). 35 P.S. § 6018.402 provides the Environmental Quality Board with the authority to establish rules and regulations identifying the characteristics of hazardous waste and listing particular waste. In addition, 35 P.S. § 6018.105(a) gives the Environmental Quality Board the broad authority to adopt rules and regulations to accomplish the purposes and carry out the provisions of Act 97. This includes the authority to grant exemptions. Pennsylvania has incorporated by reference, without change, the provision at 40 CFR 261.4(b)(7).

***QQ. State statutes and regulations include revisions that expand the headworks exemption to include waste generated during petroleum refining process (K169-K172), as indicated in Revision Checklist 169.***

Federal Authority: RCRA §§2002(a) and 3001, 40 CFR 261.3(a)(2)(iv)(C), as amended August 6, 1998 (63 FR 42110) and October 9, 1998 (63 FR 54356).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.103, 6018.105(a) and 6018.402.  
25 Pa. Code § 261a.1, effective May 1, 1999.

Remarks of the General Counsel

35 P.S. § 6018.402 provides the Environmental Quality Board with the authority to establish rules and regulations identifying the characteristics of hazardous waste and listing particular waste. In addition, 35 P.S. § 6018.105(a) gives the Environmental Quality Board the broad authority to adopt rules and regulations to accomplish the purposes and carry out the provisions of Act 97. This includes the authority to grant exemptions. Pennsylvania has incorporated by reference, without change, the provision at 40 CFR 261.3(a)(2)(iv)(C) which is consistent with the definition of "hazardous waste" at 35 P.S. § 6018.103.

***RR. State statutes and regulations include an exemption for catalyst support media as indicated in Revision Checklist 169.***

Federal Authority: RCRA §§2002(a) and 3001, 40 CFR 261.3(c)(2)(ii)(E), as amended August 6, 1998 (63 FR 42110) and October 9, 1998 (63 FR 54356).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.103, 6018.105(a) and 6018.402.

25 Pa. Code § 261a.1, effective May 1, 1999.

Remarks of the General Counsel

35 P.S. § 6018.402 provides the Environmental Quality Board with the authority to establish rules and regulations identifying the characteristics of hazardous waste and listing particular waste. In addition, 35 P.S. § 6018.105(a) gives the Environmental Quality Board the broad authority to adopt rules and regulations to accomplish the purposes and carry out the provisions of Act 97. This includes the authority to grant exemptions. Pennsylvania has incorporated by reference, without change, the provision at 40 CFR 261.3(c)(2)(ii)(E) which is consistent with the definition of "hazardous waste" at 35 P.S. § 6018.103.

***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

35 P.S. §§ 6018.103, 6018.105(a) and 6018.402.  
25 Pa. Code § 261a.1, effective May 1, 1999.

Remarks of the General Counsel

35 P.S. § 6018.402 provides the Environmental Quality Board with the authority to establish rules and regulations identifying the characteristics of hazardous waste and listing particular waste. In addition, 35 P.S. § 6018.105(a) gives the Environmental Quality Board the broad authority to adopt rules and regulations to accomplish the purposes and carry out the provisions of Act 97. This includes the authority to grant exemptions. Pennsylvania has incorporated by reference, without change, the provision at 40 CFR 261.4(g) which is consistent with the definition of "hazardous waste" at 35 P.S. § 6018.103.

***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

35 P.S. §§ 6018.103, 6018.105(a) and 6018.402.  
25 Pa. Code § 261a.1, effective May 1, 1999.

Remarks of the General Counsel

35 P.S. § 6018.402 provides the Environmental Quality Board with the authority to establish rules and regulations identifying the characteristics of hazardous waste and listing particular waste. In addition, 35 P.S. § 6018.105(a) gives the Environmental Quality Board the broad authority to adopt rules and regulations to accomplish the purposes and carry out the provisions of Act 97. This includes the authority to grant exemptions. Pennsylvania has incorporated by reference, without change, the provision at 40 CFR 261.4(b)(15) which is consistent with the definition of "hazardous waste" at 35 P.S. § 6018.103.

***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

35 P.S. §§ 6018.104(1) and 6018.105(a).  
25 Pa. Code § 260a.1(a), effective May 1, 1999.

Remarks of the General Counsel

35 P.S. §§ 6018.104(1) and 6018.105(a) give the Environmental Quality Board broad authority to administer the Commonwealth's solid waste management program and to adopt rules and regulations to accomplish the purposes and carry out the provisions of Act 97. Pennsylvania has incorporated by reference, without change, the provisions at 40 CFR 260.11(a)(11) and 260.11(a)(16).

**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 Checklists 167 D and 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 26, 1998 (63 FR 28556) and May 11, 1999 (64 FR 25408).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.103, 6018.105(a) and 6018.402.  
25 Pa. Code § 261a.1, effective May 1, 1999.

Remarks of the General Counsel

35 P. S. § 6018.402 gives the Environmental Quality Board the authority to establish rules and regulations identifying the characteristics of hazardous waste and listing particular waste. In addition, 35 P.S. § 6018.105(a) gives the Environmental Quality Board the broad authority to adopt rules and regulations to accomplish the purposes and carry out the provisions of Act 97. Pennsylvania has incorporated by reference, without change, the provisions at 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) which are consistent with the definition of "solid waste" at 35 P.S. § 6018.103.

***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 169.***

Federal Authority: RCRA § 3001; 40 CFR 261.3(c)(2)(ii)(B), 261.4(a)(12), 261.4(a)(18) & (19), 261.6(a)(3)(iv)(C), 261.6(a)(3)(v), 261.31(a), and 266.100(b)(3), as amended August 6, 1998 (63 FR 42110) and October 9, 1998 (63 FR 54356).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.103, 6018.105(a) and 6018.402.  
25 Pa. Code § 261a.1 and 266a.20, effective May 1, 1999.

Remarks of the General Counsel

The Commonwealth has the authority to establish rules and regulations identifying the characteristics of hazardous waste and listing particular waste pursuant to 35 P.S. § 6018.402. In addition, 35 P.S. § 6018.105(a) gives the Environmental Quality Board the broad authority to adopt



rules and regulations to accomplish the purposes and carry out the provisions of Act 97. This includes the authority to grant exemptions. Pennsylvania's regulations are identical to the Federal code because the Commonwealth has incorporated by reference, without change, the provisions addressed by Revision Checklist 169. These regulations are consistent with the statutory definition of "hazardous waste" at 35 P.S. § 6018.103.

### **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**

35 P.S. §§ 6018.102(4) and 6018.104(1)&(6).

25 Pa. Code §§ 264a.1(a) and 270a.1(a), effective May 1, 1999.

#### **Remarks of the General Counsel**

Pennsylvania is not seeking authorization for corrective action at this time. Therefore, the Department is not seeking authorization for this exemption from the facility wide corrective action requirements. Note that the Commonwealth is seeking authorization for the standards applicable to cleanup-only remediation waste management sites (See Sections XV(CC), (DD) and (EE), below). As a HSWA provision, the Federal exemption is a self-implementing regulation and is in effect in Pennsylvania as part of the Federally administered corrective action program. Thus, implementing the requirements for remediation waste management sites is not in conflict with the Federal corrective action standards. Even though the Commonwealth is not seeking authorization for this exemption, Pennsylvania's provisions are identical to the Federal code because the Commonwealth has incorporated by reference, without change, the provisions addressed by Revision Checklist 175. The Commonwealth intends to implement the exemption when it seeks and receives authorization for RCRA corrective action at facilities managing "as-generated" hazardous wastes.

### **XV. STANDARDS FOR FACILITIES**

***W. State statutes and regulations provide for organic air emission standards for tanks, surface impoundments and containers and provide that air emission control requirements be added to the permit terms and provisions specified for miscellaneous units as specified in Revision Checklists 154, 163 and 177.***

Federal Authority: RCRA § 3004(n); 40 CFR 60 Appendix A, 260, 261, 262, 264 and 265, and 270 as amended December 6, 1994 (59 FR 62896); May 19, 1995 (60 FR 26828); 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); December 8, 1997 (62 FR 64636); and January 21, 1999 (64 FR 3382).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.102(4), 6018.103 "disposal", 6018.104(1)&(6), 6018.105(a), 6018.401, 6018.403, 6018.501, 6018.502, 6018.507 and 6018.608(2).  
25 Pa. Code §§ 262a.10, 264a.1(a) and 265a.1(a), effective May 1, 1999.

Remarks of the General Counsel

The Commonwealth's definition of "disposal" at 35 P.S. § 6018.103 includes emissions into the air. As discussed in detail in the Legal Statement, the Commonwealth has the authority to regulate new and existing hazardous waste treatment, storage and disposal facilities, and to issue and specify conditions in permits. This combined with the general authority at 35 P.S. § 6018.105(a) provides the authority for the Commonwealth to monitor and control air emissions at hazardous waste treatment, storage, or disposal facilities. Pennsylvania's provisions are identical to the Federal code because the Commonwealth has incorporated by reference, without change, the provisions addressed by Revision Checklist 177.

***AA. State statutes and regulations remove requirements to issue post-closure permits at each facility and allow post-closure care requirements to be imposed at interim status facilities using either permits or approved alternate authorities as indicated in Revision Checklist 174.***

Federal Authority: RCRA §§ 2002(a), 3005 and 3006; 40 CFR 264.90(e), 265.110(c), 265.118(c)(4), 265.121 and 270.1(c) as amended October 22, 1998 (63 FR 56710).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.102(4) and 6018.104(1)&(6).  
25 Pa. Code §§ 264a.1(a), 265a.1(a), and 270a.1(a) effective May 1, 1999.

Remarks of the General Counsel

The Department currently has the express authority to regulate the storage, collection, transportation, processing, treatment, and disposal of hazardous waste under 35 P.S. §§ 6018.104(1)&(6), and the express authority under 35 P.S. § 6018.102(4) to protect the public health, safety and welfare from the short and long term dangers of hazardous waste management

activities. Pennsylvania has adopted regulations that are identical to the Federal code because the Commonwealth has incorporated by reference, without change, the provisions addressed by Revision Checklist 174. Note that the Commonwealth does not intend to interfere with Federal implementation of facility-wide corrective action at such facilities.

***BB. State statutes and regulations give discretion to the State Director to impose requirements developed for corrective action in lieu of 40 CFR 264.91-264.100 and Subparts G, and H at certain regulated facilities, either permitted or interim status, that appear to have released to the environment, if nearby SWMUs also appear to have contributed to the same release as indicated in Revision Checklist 174.***

Federal Authority: RCRA §§ 2002(a), 3004, 3005 and 3006; 40 CFR 264.90(f), 264.110(c), 264.112(b)&(c), 264.118(b)&(d), 264.140(d), 265.90(f), 265.110(d), 265.112(b)&(c), 265.118(c)(5)&(d)(1)(iii), and 265.140(d) as amended October 22, 1998 (63 FR 56710).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.102(4) and 6018.104(1)&(6).

25 Pa. Code §§ 264a.1(a) and 265a.1(a) effective May 1, 1999.

Remarks of the General Counsel

Pennsylvania has adopted regulations that are identical to the Federal code because the Commonwealth has incorporated by reference, without change, the provisions addressed by Revision Checklist 174. The Department currently has the express authority to regulate the storage, collection, transportation, processing, treatment, and disposal of hazardous waste under 35 P.S.

§§ 6018.104(1)&(6), and the express authority under 35 P.S. § 6018.102(4) to protect the public health, safety and welfare from the short and long term dangers of hazardous waste management activities. Note, however, that the Commonwealth is not seeking authorization for facility-wide corrective action at this time. Pennsylvania's implementation of these alternate requirements will not impede or interfere with Federal implementation of facility-wide corrective action. However, at such time as Pennsylvania seeks authorization for Revision Checklist 17L, the Commonwealth will have sufficient authority to require facility-wide corrective action that is applicable to those regulated units subject to these alternate requirements.

***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

35 P.S. §§ 6018.102(4) and 6018.104(1)&(6).  
25 Pa. Code §§ 264a.1(a), effective May 1, 1999.

Remarks of the General Counsel

Pennsylvania has adopted provisions that are identical to the Federal code because the Commonwealth has incorporated by reference, without change, the provisions addressed by Revision Checklist 175. The Department intends to provide reduced requirements for remediation waste management sites that are not subject to Federal corrective action, since Pennsylvania is not seeking authorization for corrective action at this time. The Department currently has the express authority to regulate the storage, collection, transportation, processing, treatment, and disposal of hazardous waste under 35 P.S. §§ 6018.104(1)&(6), and the express authority under 35 P.S. § 6018.102(4) to protect the public health, safety and welfare from the short and long term dangers of hazardous waste management activities.

***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

35 P.S. §§ 6018.102(4) and 6018.104(1)&(6).  
25 Pa. Code §§ 260a.1(a), 264a.1(a), 265a.1(a), 268a.1(a), and 270a.1(a) effective May 1, 1999.

Remarks of the General Counsel

Pennsylvania has adopted provisions that are identical to the Federal code because the Commonwealth has incorporated by reference, without change, the provisions addressed by Revision Checklist 175. The Department intends to allow the use of staging piles at remediation waste management sites that are not subject to Federal corrective action, since Pennsylvania is not seeking authorization for corrective action at this time. The Department currently has the express authority to regulate the storage, collection, transportation, processing, treatment, and disposal of hazardous waste under 35 P.S. §§ 6018.104(1)&(6), and the express authority under 35 P.S. § 6018.102(4) to protect the public health, safety and welfare from the short and long term dangers of hazardous waste management activities.

***EE. State statutes and regulations expand the use of Corrective Action Management Units (CAMUs) and Temporary Units for 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

35 P.S. §§ 6018.102(4) and 6018.104(1)&(6).

25 Pa. Code §§ 260a.1(a), 264a.1(a), 265a.1(a), 268a.1(a), and 270a.1(a) effective May 1, 1999.

Remarks of the General Counsel

Pennsylvania has adopted provisions that are identical to the Federal code because the Commonwealth has incorporated by reference, without change, the provisions addressed by Revision Checklist 175. In addition, the Commonwealth has adopted provisions introduced by Revision Checklist 121 which establish standards for CAMUs and temporary units. The Department intends only to use CAMUs and temporary units at remediation waste management sites that are not subject to Federal corrective action, since Pennsylvania is not seeking authorization for corrective action at this time. The Department currently has the express authority to regulate the storage, collection, transportation, processing, treatment, and disposal of hazardous waste under 35 P.S. §§ 6018.104(1)&(6), and the express authority under 35 P.S. § 6018.102(4) to protect the public health, safety and welfare from the short and long term dangers of hazardous waste management activities.

Note that, the Commonwealth is not seeking authorization for Revision Checklist 121 which introduced CAMUs and temporary units to be used as part of the corrective action program. Specifically, Pennsylvania is not seeking authorization to use these types of units at facilities managing "as-generated" hazardous wastes. However, since Pennsylvania is seeking authorization to use these types of units at cleanup-only remediation waste management sites that are not subject to facility wide corrective action, many of the revisions introduced by Revision Checklist 121 needed to be adopted. The following table provides the Commonwealth's analogs to provisions not addressed by Revision Checklist 175, but that are necessary in order to implement the use of CAMUs and temporary units and cleanup-only remediation waste management sites:

FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
		EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
260.10 "disposal facility"	260a.1(a)	X			



FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
		EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
260.10 "landfill"	260a.1(a)	X			
260.10 "miscellaneous unit"	260a.1(a)	X			
264.552(b)-(h)	264a.1(a)	X			
264.553(b)-(g)	264a.1(a)	X			
270.2 "disposal facility"	270a.1(a)	X			
270.42, Appendix I	270a.1(a)	X			

When Pennsylvania seeks authorization for corrective action, the Commonwealth intends to use CAMUs and temporary units as components of its corrective action program.

#### **XVI. REQUIREMENTS FOR PERMITS**

***CC. State statutes and regulations require that owners and operators seeking a post-closure permit have to submit only that information required by 40 CFR 270.28 as indicated in Revision Checklist 174.***

Federal Authority: RCRA §3006; 40 CFR 270.14 and 270.28 as amended October 22, 1998 (63 FR 56710).

#### **Citation of Laws and Regulations; Date of Enactment and Adoption**

35 P.S. §§ 6018.102(4) and 6018.104(1)&(6).

25 Pa. Code § 270a.1(a), effective May 1, 1999.

#### **Remarks of the General Counsel**

Pennsylvania has adopted regulations that are identical to the Federal code because the Commonwealth has incorporated by reference, without change, the provisions addressed by Revision Checklist 174. The Department currently has the express authority to regulate the storage, collection, transportation, processing, treatment, and disposal of hazardous waste under 35 P.S. §§ 6018.104(1)&(6), and the express authority under 35 P.S. § 6018.102(4) to protect the public health, safety and welfare from the short and long term dangers of hazardous waste management activities. This authority extends to the required submission of information for facilities that will be covered by an enforceable document in lieu of a post-closure care permit.



***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

35 P.S. §§ 6018.102, 6018.103, 6018.104, 6018.105(a)&(b), 6018.401, 6018.403(a),  
6018.501, 6018.502, 6018.503, 6018.504 and 6018.610.  
25 Pa. Code § 270a.1(a), effective May 1, 1999.

Remarks of the General Counsel

Pennsylvania's provisions are identical to the Federal code because the Commonwealth has incorporated by reference, without change, the provisions addressed by Revision Checklist 175. The Commonwealth's permit authorities are discussed in detail in the Legal Statement. In addition, 35 P.S. § 6018.105(a) gives the Environmental Quality Board the broad authority to adopt rules and regulations to accomplish the purposes and carry out the provisions of Act 97.

**XXI. LAND DISPOSAL RESTRICTIONS**

***U. State statutes and regulations provide for an extension of the national capacity variance for spent potliners from primary aluminum production (Hazardous Waste Number K088) so that K088 wastes do not have to be treated to meet LDR treatment standards until September 21, 1988, as indicated in Revision Checklists 155, 160, and 173.***

Federal Authority: RCRA §3004(d)-(k), and (m), 40 CFR 268.39(c) as amended January 14, 1997 (62 FR 1992), July 14, 1997 (62 FR 37694), and September 24, 1998 (63 FR 51254).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.102, 6018.104(1)&(6), 6018.105(a) and 6018.401(a).  
25 Pa. Code § 268a.1(a), effective May 1, 1999.

Remarks of the General Counsel

The Commonwealth's general authorities at 35 P.S. §§ 6018.102, 6018.104(1)&(6) and 6018.105(a), together with its specific authority at 35 P.S. § 6018.401(a) to regulate the disposal of solid waste, provide Pennsylvania with an adequate authority to restrict land disposal of hazardous wastes and to promulgate standards specifying levels or methods of treatment and the authority to

exempt wastes from the land disposal prohibitions. Pennsylvania's provisions are identical to the Federal code because the Commonwealth has incorporated by reference, without change, the provisions addressed by Revision Checklist 173.

***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 s 167 A and 179.***

Federal Authority: RCRA §§3004(g)(4) and (m); 40 CFR 268.2(i), 268.3(d), 268.34, 268.40(e)&(h), 268.40 table, and 268.48 as amended May 26, 1998 (63 FR 28556) and May 11, 1999 (64 FR 25408).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.102, 6018.104(1)&(6), 6018.105(a) and 6018.401(a).  
25 Pa. Code § 268a.1(a), effective May 1, 1999.

Remarks of the General Counsel

The Commonwealth's general authorities at 35 P.S. §§ 6018.102, 6018.104(1)&(6) and 6018.105(a), together with its specific authority at 35 P.S. § 6018.401(a) to regulate the disposal of solid waste, provide Pennsylvania with an adequate authority to restrict land disposal of hazardous wastes and to promulgate standards specifying levels or methods of treatment and the authority to exempt wastes from the land disposal prohibitions. Pennsylvania's provisions are identical to the Federal code because the Commonwealth has incorporated by reference, without change, the provisions addressed by Revision Checklist 179.

***FF. State statutes and regulations include treatment standards for contaminated soils as indicated in Revision Checklists 167 B and 179.***

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 262.34(d)(4), 268.2(h), 268.2(k), 268.7(a)(4) (1)-(6), 268.7(b)(1)-(3), 268.7(b)(4) intro & (b)(4)(iv), 268.9(d)(2) intro, 268.9(d)(2)(i), 268.7(e), 268.44(h)(3)-(5), 268.49 as amended May 26, 1998 (63 FR 28556) and May 11, 1999 (64 FR 25408).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.102, 6018.104(1)&(6), 6018.105(a) and 6018.401(a).  
25 Pa. Code § 268a.1(a), effective May 1, 1999.

Remarks of the General Counsel

The Commonwealth's general authorities at 35 P.S. §§ 6018.102, 6018.104(1)&(6) and 6018.105(a), together with its specific authority at 35 P.S. § 6018.401(a) to regulate the disposal of solid waste, provide Pennsylvania with an adequate authority to restrict land disposal of hazardous wastes and to promulgate standards specifying levels or methods of treatment and the authority to exempt wastes from the land disposal prohibitions. Pennsylvania's provisions are identical to the Federal code because the Commonwealth has incorporated by reference, without change, the provisions addressed by Revision Checklist 179.

***GG. State statutes and regulations include corrections and clarifications to the land disposal restrictions as indicated in Revision Checklist s 167 C and 179.***

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 268.4(a)(2)(ii)&(iii), 268.7(a)(7), 268.7(b)(3)(ii)/Table, 268.7(b)(4)(iv)&(v), 268.7(b)(5)&(6), 268.40/Table, 268.40(e), 268.42(a), 268.45(a) intro, 268.45(d)(3)&(4), 268.48, 268 Appendices VII & VIII as amended May 26, 1998 (63 FR 28556), June 8, 1998 (63 FR 31266) and May 11, 1999 (64 FR 25408).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.102, 6018.104(1)&(6), 6018.105(a) and 6018.401(a).  
25 Pa. Code § 268a.1(a), effective May 1, 1999.

Remarks of the General Counsel

The Commonwealth's general authorities at 35 P.S. §§ 6018.102, 6018.104(1)&(6) and 6018.105(a), together with its specific authority at 35 P.S. § 6018.401(a) to regulate the disposal of solid waste, provide Pennsylvania with an adequate authority to restrict land disposal of hazardous wastes and to promulgate standards specifying levels or methods of treatment and the authority to exempt wastes from the land disposal prohibitions. Pennsylvania's provisions are identical to the Federal code because the Commonwealth has incorporated by reference, without change, the provisions addressed by Revision Checklist 179.

***HH. State statutes and regulations include a waste-specific prohibition and treatment standards for K169-K172 wastes under the land disposal restriction program, as indicated in Revision Checklist 169.***

Federal Authority: RCRA § 3004(g) and (m); 268.35 and 268.40, as amended August 6, 1998 (63 FR 42110).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.102, 6018.104(1)&(6), 6018.105(a) and 6018.401(a).  
25 Pa. Code § 268a.1(a), effective May 1, 1999.

## Remarks of the General Counsel

The Commonwealth's general authorities at 35 P.S. §§ 6018.102, 6018.104(1)&(6) and 6018.105(a), together with its specific authority at 35 P.S. § 6018.401(a) to regulate the disposal of solid waste, provide Pennsylvania with an adequate authority to restrict land disposal of hazardous wastes and to promulgate standards specifying levels or methods of treatment and the authority to exempt wastes from the land disposal prohibitions. Pennsylvania's provisions are identical to the Federal code because the Commonwealth has incorporated by reference, without change, the provisions addressed by Revision Checklist 169.

***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 Checklists 170 and 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

35 P.S. §§ 6018.102, 6018.104(1)&(6), 6018.105(a) and 6018.401(a).  
25 Pa. Code § 268a.1(a), effective May 1, 1999.

## Remarks of the General Counsel

The Commonwealth's general authorities at 35 P.S. §§ 6018.102, 6018.104(1)&(6) and 6018.105(a), together with its specific authority at 35 P.S. § 6018.401(a) to regulate the disposal of solid waste, provide Pennsylvania with an adequate authority to restrict land disposal of hazardous wastes and to promulgate standards specifying levels or methods of treatment and the authority to exempt wastes from the land disposal prohibitions. Pennsylvania's provisions are identical to the Federal code because the Commonwealth has incorporated by reference, without change, the provisions addressed by Revision Checklists 170 and 179.

***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 171 and 179.***

Federal Authority: RCRA § 3004(d)-(k) and (m); 40 CFR 268.40(g)-(j), 268.40/Table, and 268.48(a)/Table as amended September 4, 1998 (63 FR 47410) and May 11, 1999 (64 FR 25408).

Citation of Laws and Regulations: Date of Enactment and Adoption

35 P.S. §§ 6018.102, 6018.104(1)&(6), 6018.105(a) and 6018.401(a).  
25 Pa. Code § 268a.1(a), effective May 1, 1999.

Remarks of the General Counsel

The Commonwealth's general authorities at 35 P.S. §§ 6018.102, 6018.104(1)&(6) and 6018.105(a), together with its specific authority at 35 P.S. § 6018.401(a) to regulate the disposal of solid waste, provide Pennsylvania with an adequate authority to restrict land disposal of hazardous wastes and to promulgate standards specifying levels or methods of treatment and the authority to exempt wastes from the land disposal prohibitions. Pennsylvania's provisions are identical to the Federal code because the Commonwealth has incorporated by reference, without change, the provisions addressed by Revision Checklists 171 and 179.

***KK. State statutes and regulations provide for an extension of the compliance date until November 26, 1998, for treatment standards for secondary lead slags that exhibit the toxicity characteristic for metals as indicated in Revision Checklist 172.***

Federal Authority: RCRA § 3004(d)-(k) and (m); 40 CFR 268.34(b) as amended September 9, 1998 (63 FR 48124).

Citation of Laws and Regulations: Date of Enactment and Adoption

35 P.S. §§ 6018.102, 6018.104(1)&(6), 6018.105(a) and 6018.401(a).  
25 Pa. Code § 268a.1(a), effective May 1, 1999.

Remarks of the General Counsel

The Commonwealth's general authorities at 35 P.S. §§ 6018.102, 6018.104(1)&(6) and 6018.105(a), together with its specific authority at 35 P.S. § 6018.401(a) to regulate the disposal of solid waste, provide Pennsylvania with an adequate authority to restrict land disposal of hazardous wastes and to promulgate standards specifying levels or methods of treatment and the authority to exempt wastes from the land disposal prohibitions. Pennsylvania's provisions are identical to the Federal code because the Commonwealth has incorporated by reference, without change, the provisions addressed by Revision Checklist 172.

***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 173 and 179.***

Federal Authority: RCRA §3004(d)-(k), and (m); 40 CFR 268.40, as amended September 24, 1998 (63 FR 51254) and May 11, 1999 (64 FR 25408).

Citation of Laws and Regulations: Date of Enactment and Adoption

35 P.S. §§ 6018.102, 6018.104(1)&(6), 6018.105(a) and 6018.401(a).  
25 Pa. Code § 268a.1(a), effective May 1, 1999.

Remarks of the General Counsel

The Commonwealth's general authorities at 35 P.S. §§ 6018.102, 6018.104(1)&(6) and 6018.105(a), together with its specific authority at 35 P.S. § 6018.401(a) to regulate the disposal of solid waste, provide Pennsylvania with an adequate authority to restrict land disposal of hazardous wastes and to promulgate standards specifying levels or methods of treatment and the authority to exempt wastes from the land disposal prohibitions. Pennsylvania's provisions are identical to the Federal code because the Commonwealth has incorporated by reference, without change, the provisions addressed by Revision Checklists 173 and 179.

**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 Checklists 142 A and 176 .***

Federal Authority: RCRA §§2002, 3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 260.10, 261.5(c), 261.5(f)(3)(vi), 261.5(g)(3)(vi), 261.9 intro, 262.10(b), 262.11(d), 264.1(g)(11) intro, 265.1(c)(14) intro, 268.1(f) intro, 270.1(c)(2)(viii) intro, 273.1(a) intro, 273.1(b), 273.5, 273.6, 273.10, 273.11, 273.12, 273.14 intro, 273.15-273.31, 273.32(a)(1)&(2), 273.32(b), 273.34 intro, 273.35-273.70, as amended May 11, 1995 (60 FR 25492) and December 24, 1998 (63 FR 71225).

Citation of Laws and Regulations: Date of Enactment and Adoption

35 P.S. §§ 6018.102, 6018.104 and 6018.105.  
25 Pa. Code § 266b.1, effective May 1, 1999.

Remarks of the General Counsel



35 P.S. §§ 6018.102, 6018.104 and 6018.105 give the Department the broad authority to administer the solid waste management program and to adopt rules and regulations to accomplish the purposes and to carry out the purposes of Act 97. Pennsylvania's provisions are identical to the Federal code because the Commonwealth has incorporated by reference, without change, the provisions addressed by Revision Checklist 176. Pennsylvania, however, is more stringent. At 25 Pa. Code § 266a.80, the regulations clarify that facilities that treat spent lead-acid batteries prior to reclamation are subject to full regulation and must obtain a permit or interim status. The Federal program only requires a permit for the storage of such materials prior to reclamation.

***B. State statutes and regulations include hazardous waste batteries as a universal waste as indicated in Revision Checklists 142 B and 176.***

Federal Authority: RCRA §§3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 260.10, 261.9(a), 264.1(g)(11)(i), 265.1(c)(14)(i), 266.80(a), 266.80(b), 268.1(f)(1), 270.1(c)(2)(viii)(A), 273.1(a)(1), 273.2, 273.6, 273.13(a), 273.14(a), 273.33(a), and 273.34(a), as amended May 11, 1995 (60 FR 25492) and December 24, 1998 (63 FR 71225).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.102, 6018.104 and 6018.105.  
25 Pa. Code § 266b.1, effective May 1, 1999.

Remarks of the General Counsel

35 P.S. §§ 6018.102, 6018.104 and 6018.105 give the Department the broad authority to administer the solid waste management program and to adopt rules and regulations to accomplish the purposes and to carry out the purposes of Act 97. The Commonwealth incorporates by reference, without change, the provisions addressed by Revision Checklist 176. Pennsylvania, however, is more stringent. At 25 Pa. Code § 266a.80, the regulations clarify that facilities that treat spent lead-acid batteries prior to reclamation are subject to full regulation and must obtain a permit or interim status. The Federal program only requires a permit for the storage of such materials prior to reclamation.

***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

35 P.S. §§ 6018.102, 6018.104 and 6018.105.

25 Pa. Code §§ 266b.1 and 266b.30(a), effective May 1, 1999.

Remarks of the General Counsel

35 P.S. §§ 6018.102, 6018.104 and 6018.105 give the Department the broad authority to administer the solid waste management program and to adopt rules and regulations to accomplish the purposes and to carry out the purposes of Act 97. At 25 Pa. Code § 266b.1, the Commonwealth incorporates by reference, without change, the provisions addressed by Revision Checklist 181. At 25 Pa. Code § 266b.30(a), the Commonwealth's regulations clarify that a large quantity handler of universal waste complying with Subpart C of 40 CFR Part 273 is deemed to have a permit.

**XXVI. ADDITIONAL ENFORCEMENT REMEDIES**

*A. State statutes and regulations provide authority for enforcement of documents issued in lieu of post-closure permits as provided in 40 CFR 270.1(c)(7), or as a source of alternative requirements for regulated units, as provided under 40 CFR 264.90(f), 264.110(c), 264.140(d), 265.90(d), 265.110(d), and 265.140(d), 40 CFR 270.28 as outlined in 40 CFR 271.16(e).*

Federal Authority: RCRA §3006; 40 CFR 271.16(e) as amended October 22, 1998 (63 FR 56710).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.104(7), (10), (11), and (13), 6018.602 and 6018.603.

Remarks of the General Counsel

The Department has the express authority to issue orders, and specify the terms and conditions thereof, to implement the purposes and provisions of Act 97 pursuant to 35 P.S. § 6018.104(7). 35 P.S. §§ 6018.104(10) & (11) provide the Department with authority to institute proceedings in a court of competent jurisdiction to compel compliance with any order and to institute prosecutions against any person subject to the Act. In addition, pursuant to 35 P.S. § 6018.104(13), the Department has broad authority to do any and all acts not inconsistent with the Act, which it may deem necessary or proper for the effective enforcement of the Act and the implementing regulations. 35 P.S. § 6018.602 provides the Department with authority to issue orders to such persons as it deems necessary to aid in the enforcement of the provisions of the Act. This power is in addition to any other remedy which may be afforded to the Department. At 35 P.S. § 6018.603, the Act requires any person to proceed diligently to comply with any order issued pursuant to 35 P.S. § 6018.602. Any person failing to do so

shall be guilty of contempt and shall be punished by the court in an appropriate manner, and for this purpose, application may be made by the Department to the court. Note that since the Commonwealth is not seeking authorization for facility-wide corrective action at this time, no enforcement proceeding instituted by the Department will interfere with the Federal implementation of facility-wide corrective action at the subject facility.

R. Grimaldi  
Signature

Rick Grimaldi  
Name (Type or Print)

Deputy General Counsel  
Title

July 27, 2000  
Date