

US EPA ARCHIVE DOCUMENT



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June 17, 2003

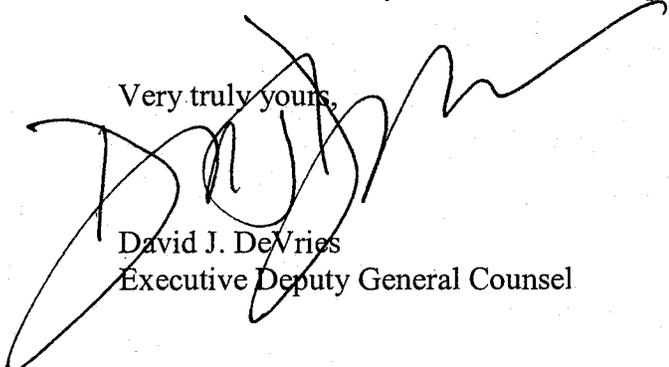
Donald S. Welsh
Regional Administrator
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Dear Mr. Welsh:

Pennsylvania is applying for final authorization under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, *et seq.* The attached PENNSYLVANIA SECOND SUPPLEMENTAL LEGAL STATEMENT FOR FINAL AUTHORIZATION FOR CHANGES TO THE FEDERAL RCRA PROGRAM FROM JULY 7, 1999 THROUGH JUNE 28, 2001 ("Legal Statement") is submitted in support of the Commonwealth's application for updated program authorization under RCRA. This Legal Statement is provided in accordance with 40 CFR 271.7, which requires the Attorney General or independent legal counsel to certify that the state had adequate legal authority to carry out the program described in the application.

EPA's regulations require the "independent legal counsel" signing a legal statement certifying that the state has adequate legal authority to carry out the program described in an application for program authorization to "have full authority to independently represent the State agency in court on all matters pertaining to the State program. 40 CFR 271.7(a) (emphasis added). Since the passage of the Commonwealth Attorneys Act, Act of October 15, 1980 (P.L. 950, No. 164), 71 P.S. § 732.101, *et seq.*, authority to represent Pennsylvania on matters pertaining to the hazardous waste management program is divided between the Office of General Counsel and the Office of Attorney General. In order to assure full compliance with EPA's regulations, I am authorized to sign the Legal Statement for the Office of General Counsel. I am enclosing a separate letter signed by a member of the Office of Attorney General concurring in the Legal Statement.

Very truly yours,


David J. DeVries
Executive Deputy General Counsel

DJD:ddw
Attachments

PENNSYLVANIA SECOND SUPPLEMENTAL LEGAL STATEMENT FOR FINAL
AUTHORIZATION FOR CHANGES TO THE FEDERAL RCRA PROGRAM FROM
JULY 7, 1999 THROUGH JUNE 28, 2001

I hereby certify, pursuant to my authority as Executive Deputy General Counsel and in accordance with Section 3006(b) of the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (42 USC § 6901, *et seq.*), and 40 CFR 271 that in my opinion the laws of the Commonwealth of Pennsylvania (“Commonwealth” or “Pennsylvania”) provide adequate authority to carry out the revised program set forth in the revised Program Description for the Commonwealth’s second program revision application submitted by the Pennsylvania Department of Environmental Protection (“the Department”). The specific authorities provided are contained in statutes or regulations lawfully adopted and in effect at the time this Second Supplemental Legal Statement (“Second Supplemental Legal Statement”) is signed. 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” (“Legal Statement”) and the Pennsylvania Supplemental Legal Statement for Changes to the Federal RCRA Program from July 1998 Through July 6, 1999” (“First Supplemental Legal Statement”), both submitted to the Environmental Protection Agency (“EPA”) on August 10, 2000.

Pennsylvania’s regulations, which took effect on May 1, 1999, 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 incorporated CFR. 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 Pennsylvania 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.

EPA’s regulations require the “independent legal counsel” signing a legal statement certifying that the state has adequate legal authority to carry out the program described in an application for program authorization to “have full authority to independently represent the State agency in court on all matters pertaining to the State program.” 40 CFR 271.7(a) (emphasis added). Since the passage of the Commonwealth Attorneys Act, Act of October 15, 1980 (P.L. 950, No. 164), 71 P.S. § 732.101, *et seq.*, authority to represent Pennsylvania on matters pertaining to the hazardous waste management program is divided between the Office of General Counsel and the Office of Attorney General. In order to assure full compliance with EPA’s regulations, I am authorized to sign the Second Supplemental Legal Statement for the Office of General Counsel. I am enclosing a separate letter signed by a member of the Office of Attorney General concurring in the Second Supplemental Legal Statement

The Legal Statement for final authorization contains the statement and certification for the Commonwealth's provisions analogous to the Federal base program and all revisions to that program through June 1998.

The First Supplemental Segal Statement contains the statement and certification of the Commonwealth's provisions addressing changes made to the Federal program from July 1998 through July 6, 1999.

The Commonwealth seeks authorization at this time for its analogs to changes made to the Federal program between July 7, 1999 and June 28, 2001, and noted in the chart below. This Second Supplemental Legal Statement serves as the statement and certification of the Commonwealth's provisions addressing these changes.

I hereby certify that statutes cited in the previous authorization application submitted to EPA on August 10, 2000, have not been amended, modified, or revised.

I hereby certify that the Commonwealth has not enacted any legislation or implemented any regulatory initiatives that could potentially limit or interfere with the authority to implement, administer, or enforce the authorized hazardous waste program.

There have not been any judicial decisions that limit or interfere with the Commonwealth's authority to implement, administer, or enforce the authorized hazardous waste program.

Federal Register Citation	Date Promulgated	Description of Regulation
64 FR 56469	10-20-99	Land Disposal Restrictions; Wood Preserving Wastes, Metal Wastes, Zinc Micronutrients Fertilizer, etc.
65 FR 12378	03-08-00	Waste Water Treatment Sludges from Metal Finishing Industry; 180-day Accumulation Time
65 FR 14472	03-17-00	Organobromine Production Wastes

65 FR 36365	06-08-00	Organobromine Production Waste and Petroleum Refining Process Waste: Technical Correction
65 FR 67068	11-08-00	Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Chlorinated Aliphatics Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities: Final Rule
65 FR 81373	12-26-00	Deferral of Phase IV Standards for PCB's as a Constituent Subject to Treatment in Soil: Final Rule
66 FR 27218	05-16-01	Storage, Treatment and Disposal of Mixed Waste
66 FR 27266	05-16-01	Hazardous Waste Identification Rule (HWIR): Revisions to the Mixed and Derived-From Rules
66 FR 34374	06-28-01	Change of Official EPA Mailing Address; Additional Technical Amendments and Corrections

The Commonwealth is not seeking authorization for the following RCRA revisions that occurred between July 7, 1999 and June 28, 2001, because they contain elements of the federal Used Oil Regulations, for which the Commonwealth will separately seek authorization:

Federal Register Citation	Date Promulgated	Description of Regulation
64 FR 52827	09-30-99	NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (MACT Rule)
64 FR 63209	11-19-99	NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors; Final Rule Technical Correction

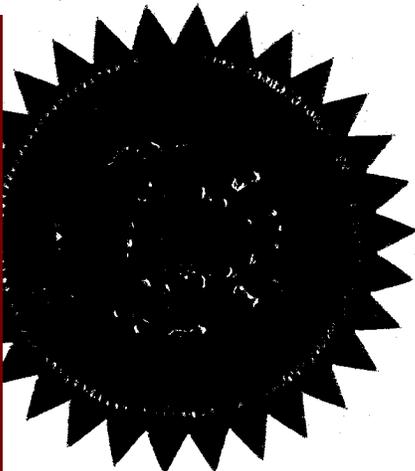
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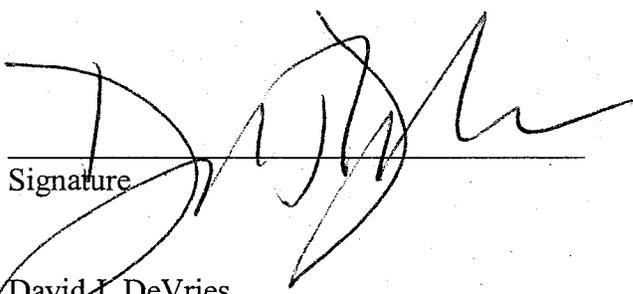
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NESHAPS: Final Standards for Hazardous Air Pollutants
for Hazardous Waste Combustors; Technical Corrections

As annotated above, the Commonwealth's analogs to the RCRA regulatory revisions for which it is seeking authorization are identical to the Federal provisions because the Commonwealth has incorporated the Federal provisions by reference. Therefore, it is not necessary to submit regulatory checklists in support of this application.

US EPA ARCHIVE DOCUMENT





Signature

David J. DeVries

Name (Type or Print)

Executive Deputy General Counsel

Title

6/17/03

Date